SASKATCHEWAN GOVERNMENT & GENERAL EMPLOYEES' UNION, Applicant v. VALLEY HILL YOUTH TREATMENT CENTRE INC., Respondent

LRB File Nos. 024-13, 029-13, 030-13 & 031-13; October 30, 2013
Vice-Chairperson, Steven Schiefner; Members: Duane Siemens and Don Ewart

For the Applicant: Ms. Heather L. Robertson.
For the Respondent: Ms. Victoria E. Elliot-Erickson.

Unfair Labour Practice – Anti-union Animus – Trade union alleges that employer violated *The Trade Union Act* when it terminated the employment of an employee soon after trade union filed an application for certification – Board notes employee was trade union's main contact in the workplace and the person responsible for the organizing drive – Board satisfied that employer was aware of employee's involvement with the organizing drive and that its decision to terminate her employment was tainted by anti-union animus - Board finds that employer violated s. 11(1)(e) of *The Trade Union Act* - Board orders reinstatement of subject employee and finds that she is eligible for monetary loss arising out of her unlawful termination.

Vote – Eligibility - Certification – Board finds that employee who was unlawfully terminated by employer after trade union filed certification application but before vote was conducted is eligible to participate in representational question.

***The Trade Union Act*, ss. 11(1)(e).**

REASONS FOR DECISION

Background:

[1] Steven D. Schiefner, Vice-Chairperson: On February 13, 2013, the Saskatchewan Government and General Employees' Union (the "Union") applied[1] to the Saskatchewan Labour Relations Board (the "Board") to be designated as the certified bargaining agent for all non-managerial employees employed by Valley Hill Youth Treatment Centre Inc. (the "Employer"). The Employer is a non-profit corporation that operates a residential treatment centre for young people struggling with alcohol and substance abuse. The parties were in

[1] See: LRB File No. 024-13.

agreement as to both the appropriateness and scope of the proposed bargaining unit. Likely the Union's certification application would have been processed in the ordinary course and with little fanfare. However, that is not how events unfolded.

[2] Soon after the Union filed its certification application with the Board (and before a representational vote could be concluded), the Employer terminated the employment of Ms. Charlene Cote, who was the Union's main point of contact within the workplace and the person in the workplace who was responsible for the organizing drive. As a consequence, the Union also filed an application alleging a violation of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "*Act*") and seeks the immediate reinstatement of Ms. Cote, together with an Order that the Employer compensate her for the monetary losses she has suffered as a consequence of her termination[2].

[3] The Employer denies that it was aware of Ms. Cote's involvement with the Union or that it terminated Ms. Cote in violation of the *Act*.

[4] All four (4) of the Union's applications were consolidated for hearing, which commenced on May 8, 2013 and concluded on October 3, 2013. The Union called Mr. Kevin Yates, a Labour Relations Officer with the Union; and Ms. Charlene Cote, the subject of the Union's unfair labour practice application. The Employer called Ms. Sandra McLachlan, the Director of Human Resources for the Prince Albert Grand Council; Mr. Norman Lewsey, the former Executive Director of the Valley Hill Youth Treatment Centre[3]; and Mr. Glen McMaster, the Centre's Clinical Supervisor and Ms. Cote's immediate supervisor (prior to her termination).

[5] Most of the evidence in these proceedings was not in dispute save two (2) crucial points; the Employer's knowledge of Ms. Cote's involvement with the Union; and whether or not that knowledge was a factor in the Employer's decision to terminate Ms. Cote.

[6] For the reasons that follow, we find that the Employer was aware that Ms. Cote was the person in the workplace responsible for the Union's organizing drive and that its decision to terminate her employment was tainted by an anti-union animus. As a consequence, we find that the Employer has committed a violation of *The Trade Union Act*; that Ms. Cote ought to be

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[2] See: LRB File Nos. 029-13, 030-13 & 031-13.

[3] During the course of the hearing, Mr. Lewsey's employment relationship with the Employer ceased.

reinstated; and that she is entitled to compensation for the monetary loss she has suffered as a result of her unlawful termination. We also find that she was eligible to participate in the representational question on the Union's certification application.

Facts:

[7] The Employer is a non-profit corporation formed by the Prince Albert Grand Council and funded by the Prince Albert Parkland Regional Health Authority. The Valley Hill Youth Treatment Centre (the "Centre) was opened in September of 2012 and is a healing and recovery facility for youth dealing with the difficult issues associated with alcohol and drug abuse. The Centre is located in Prince Albert, Saskatchewan but is open to participants from anywhere in the province. It is a residential facility and has capacity to house up to fifteen (15) participants. In addition to its secure residential facilities, the Centre includes class room facilities, a smudge/prayer room, a craft room and eating facilities. It is a co-ed facility with both male and female youth residing at the Centre and participating together in recovery and treatment programs. The laudable goal of the Centre is to help participants overcome the various problems associated with alcohol and drug misuse.

[8] By all accounts, the Centre is a state of the art facility that serves a very important function and is a much-needed facility in this province. To their credit, the Prince Albert Grand Council and its partners have a long history of successfully operating addiction treatment facilities in Saskatchewan.

[9] The Centre operates with a staff of approximately twenty-eight (28) employees, including addiction counsellors, youth care workers, cultural/recreational support, a community liaison worker and night support staff. Management at the Centre consists of the Executive Director and a clinical supervisor. Until her employment was terminated on February 20, 2013, Ms. Cote was a youth care worker and was among the first group of employees hired to staff the new facility when in was first opened. Because the Centre was new, many of the staff, including Ms. Cote, were hired prior to opening of the facility. This first group of employees was involved in developing the Centre's guidelines, policies and procedures, together with the program materials and other resources to be used at the Centre in treating the youth.

[10] The treatment regime established for the Centre involves a healing and recovery journey designed to improve the participants' awareness, motivation, insight and preparedness

to maintain long-term recovery. The treatment program was designed to be delivered over a six (6) week period wherein the participants reside at the Centre, complete their school work and participate in both therapeutic and recreational activities; all with the goal of helping the participants to stabilize their lives and to provide them with the skills necessary to overcome the challenging effects of alcohol and drug addictions.

[11] To be admitted to the Centre, youth must be between the ages of twelve (12) and seventeen (17) and must be experiencing problems related to drug and/or alcohol misuse. The youth must be willing to accept the guidelines and restrictions of the Centre, including a requirement that the youth remain substance free while residing at the Centre; that they must actively participate in treatment programs and related activities; that they must be respectful of themselves, the Centre's staff and other participants; that they must be responsible for their own personal housekeeping; and that they must complete various assigned chores at the Centre.

[12] Ms. Cote was hired on August 13, 2012 as a youth care worker. Like other employees of the Centre who were hired at that time, Ms. Cote signed an employment agreement with the Prince Albert Grand Council (on behalf of the Valley Hill Youth Treatment Centre). Nonetheless, all parties agreed that the Valley Hill Youth Treatment Centre Inc. was the employer for all relevant purposes. Ms. Cote's employment agreement indicates that she was hired for a defined term position for a period of one (1) year and was placed on probation for a period of six (6) months[4]. Ms. Cote began working on August 15, 2012 approximately one (1) month before the Centre began accepting participants.

[13] The Centre's expectations with respect to the duties and responsibilities of its youth care workers are indeed fulsome, as can be seen by the ambitious job description developed for this position. The position summary reads as follows:

> *Based on the daily needs of the facility, cares for, and supervises clients. The Youth Care Worker utilizes a client-centred approach, provides proactive solutions when addressing complex and challenging behaviours and recognizes potential safety risks to the well-being of self, clients, staff and others, also demonstrates a high degree of flexibility, a willingness to take on a number of roles and responsibilities from day-to-day, at the direction of the Clinical Supervisor and in support of the clinical team within a framework of best practices and evidence-based treatment principles.*

[4] While the employment agreement refers to Ms. Cote being employed for a defined term, the Board makes no determination on this issue of whether or not Ms. Cote's employment relationship was for a fixed term.

[14] Simply put, youth care workers are expected to establish a trusting and therapeutic relationship with participants; to support and deliver the Centre's treatment programs and provide recreational and counseling services; to monitor the safety and well-being of participants; to be flexible and proactive in dealing with the often complex and challenging behaviours exhibited by participants; to model and promote appropriate behaviours; to control and normalize inappropriate behavours by participants; to complete appropriate documentation, including written assessments and progress notes; and to participate in interdisciplinary, clinical and staff meetings.

[15] Many of the Centre's participants are aboriginal and all witnesses agreed that culture is an important part of healing for persons of aboriginal descent. As a consequence, in addition to having the requisite training and experience (i.e.: in clinical treatment for addiction, particularly youth), the Employer looks for staff with an awareness of aboriginal culture and knowledge of first nations languages. Ms. Cote came to the Centre with training in social services from the University of Regina. She also had seventeen (17) years of previous experience working with at-risk youth in various capacities, including aboriginal youth. In addition, Ms. Cote is of aboriginal descent and speaks at least one (1) first nations language. Her background and experience in working with aboriginal children at risk was impressive, as was her understanding of the complexities and challenges of treating individuals suffering from the various problems associated with addiction.

[16] Another condition of employment for working at the Centre is confidentiality. As with most addiction treatment programs, confidentiality is a major consideration for the Employer. It was a particularly sensitive issue at the Centre because its participants were all young persons whose care had been entrusted to the Centre by the parents and guardians of these children. A detailed privacy policy was developed for the Centre and all staff were trained and/or received orientation on the Centre's privacy policy. An obvious example of the restrictions imposed by this policy was the prohibition on staff from releasing information about who is receiving treatment at the Centre. Essentially, there were two (2) goals of the Employer's privacy policy. The first goal was to permit participants to receive treatment in a confidential setting. The second goal was to avoid or limit external distractions for participants. For example, participants who are residing at the Centre are not permitted to receive calls from, or make calls to, anyone that was not on their "contact list". Simply put, the overarching goal of the Centre's privacy policy

was to establish and maintain an environment within which participants could receive treatment on a confidential basis and experience a period of recovery without unnecessary distractions.

[17] During the Centre's first year of operation, there was a significant amount of staff turn-over at the Centre. During the first seven (7) months of operations, approximately sixteen (16) employees left the Centre; they either abandoned their jobs, resigned, or were dismissed. Two (2) reasons were cited for the high level of staff turn-over; firstly, the wages and benefits that the Centre was able to provide to its staff was below that provided by other employers; and secondly, the challenges of finding qualified individuals with the appropriate combination of trainings, experience and temperament. Both Ms. McLachlan and Mr. Lewsey testified that funding for the Centre was fixed by the local health region and that there had been no increase in funding since the facility first opened. The limited funding available to the Centre constrained its capacity to enhance the wages and benefits it could provide to its staff.

[18] One (1) issue that management recognized early on in the Centre's operations was the difficulty that staff were having in establishing and maintaining appropriate professional boundaries with participants. Staff were expected to establish a trusting and therapeutic relationship with participants, but at the same time, were also expected to maintain appropriate boundaries in that relationship. Essentially, staff were expected to establish a professional or "clinical" relationship with participants but not a "personal" relationship or friendship. Maintaining this balance was intended to help staff remain objective in the provision of services to the participants, to avoid compassion fatigue or "burn-out", and to help participants by modeling healthy communications and professional relationships. Simply put, professional boundaries help staff from becoming a "rescuer" (by essentially caring too much) or from turning into a "prosecutor" (by caring too little) or from developing co-dependency issues.

[19] Like so many things in life, there can be a world of difference between theory and practice. All witnesses agreed on the theory (i.e.: the need for staff to establish and maintain appropriate boundaries with participants). However, the practical application of that theory during the many day-to-day interactions that staff have with the youth proved to be more difficult. To aid all staff in establishing and maintaining professional boundaries, the Centre developed a detailed policy in November of 2012 entitled *"Professional Boundaries"*. Management had several meetings with staff in December of 2012 as a number of its employees were struggling with this issue. The fact that this policy document is eight (8) pages in length is perhaps

indicative of just how difficult it can be to establish and maintain professional boundaries while delivering the kind of services that are expected of the Centre's staff. In fact, the Employer developed a second policy document (also 8 pages in length) entitled "*Discharging Participants (Boundary Issue Considerations)*" that further elaborated on the warning signs of a breach of professional boundaries and re-iterated the importance of establishing and maintaining professional boundaries with the youth residing at the Centre.

[20] Maintaining professional boundaries was an issue identified by the Employer for Ms. Cote. In October of 2012, Ms. Cote attended to the Centre on her day off and gave one of the participants a manicure. On another occasion, Ms. Cote bought coffee for a youth in her care. These incidents occurred before the Centre had developed its professional boundaries policies and were the kind of incidents that prompted the Centre to develop these policies in the first place. Other incidents of this nature occurred with other staff. Management believed that providing manicures to, or buying coffee for, particular participates risked crossing the boundary between a professional therapeutic relationship into friendship. Ms. Cote was cautioned regarding her conduct in a non-disciplinary manner which could best be described as "coaching".

[21] Another issue arose involving Ms. Cote's work performance. A youth came to the conclusion following a conversation with Ms. Cote that there was a potential for being charged early by the Centre if she completed her assigned material; potentially up to a week early. While some youth had been discharged a few days earlier to accommodate travel and/or other arrangements, the Centre's preference was that all participants complete the Centre's full treatment program. On December 12, 2012, Mr. Lewsey met with Ms. Cote on the belief that she had misinformed the youth about the potential of early discharge. If such was the case, the Employer was prepared to impose discipline in the magnitude of a three (3) day suspension. Following the meeting, Mr. Lewsey concluded that it was not clear whether or not Ms. Cote had acted inappropriately as the potential existed for someone else to have given misinformation to the youth or for the youth to have misinterpreted the information Ms. Cote had provided. In any event, no discipline was imposed upon Ms. Cote. On the other hand, Ms. Cote was "coached" on the importance of not accidentally leaving participants with the mistaken belief that early discharge was an option for participants at the Centre.

[22] Another incident occurred in January of 2013 wherein Ms. Cote unintentionally pointed out a possible discharge date for a participant; a date that was earlier than desired by

the Centre. The Employer was concerned that Ms. Cote's error had negatively impacted the services delivered by the Centre to this youth. On January 9, 2013, Mr. Lewsey and Mr. McMaster met with Ms. Cote with the intention of giving her a verbal reprimand that her conduct was in error and represented a serious breach of the Centre's policies. After hearing from Ms. Cote, the Employer modified its position and gave her a non-disciplinary verbal warning (which was contained in a letter dated January 10, 2013). In this letter, the authors[5] applauded Ms. Cote's commitment to her job and the participants at the Centre. The authors also commented that Ms. Cote was a good employee and that she had made great progress since she started at the Centre. The authors expressed their intention to support her in becoming an outstanding youth care worker. However, the Employer believed that the cause of Ms. Cote's mistakes was rooted in a co-dependency problem, which is a professional boundaries issue. As a consequence, the Employer asked Ms. Cote to complete a remedial plan, involving rereading the Employer's professional boundaries policy, speaking with someone from a third-party service provider about the subject of co-dependency, and reading a book entitled "*Co-dependency No More*". The culmination of this non-disciplinary remedial plan was that Mr. McMaster was to monitor Ms. Cote's progress in establishing and maintaining professional boundaries and to meet with her in February of 2013 to review whether or not the problems she was having with co-dependency and maintaining professional boundary were improving.

[23] The Employer adapted a performance management system from the Prince Albert Grand Council. This system involved employees and their supervisors developing a set of goals and objectives and then having supervisors measure each employee's progress toward those goals and objectives at the end of a specified period. Soon after Ms. Cote began working at the Centre, she and Mr. McMaster set goals and objectives for her for the upcoming year. These goals and objectives were recorded in a performance plan. In February, 2013, Mr. McMaster received an automated reminder that he needed to complete a performance evaluation for Ms. Cote. In response to this notification, Mr. McMaster met with Ms. Cote on February 12, 2013 to review her performance during the preceding six (6) months; being the conclusion of her probationary period. In conducting his evaluation, Mr. McMaster rated Ms. Cote's performance during the preceding months on a variety of scales, including her job knowledge, her analytical abilities, her verbal communication skills, her written communication skills, her judgment, her problem-solving abilities, her decision-making abilities, her initiative, her flexibility, her work habits, her interpersonal skills and her organization. Mr. McMaster's

[5] The Employer's letter to Ms. Cote dated January 10, 2013 was authored by both Mr. Lewsey and Mr. McMaster.

evaluation was completed on or about February 12, 2013 and all of his ratings of Ms. Cote's performance were either "*excellent*", "*competent*" or somewhere in between. Ms. Cote received no ratings that indicated that she "*needed improvement*" or that her performance was "*unsatisfactory*". During this meeting, no mention was made of Ms. Cote's remedial plan or that she had not satisfied the Employer's remedial plan or that the Employer continued to have significant concerns with how she was dealing with co-dependency issues or maintaining professional boundaries with participants. While the notes on her performance evaluation mention "*working on boundary [issues] at work and home"*, Mr. McMaster rated her as above *"competent*" on this category. Mr. McMaster concluded his meeting with Ms. Cote on February 12, 2013 by saying "*Good job kiddo*. *I'll see you in a year*". Ms. Cote walked out of that meeting and proudly announced to her coworkers that she had passed her probation. Mr. McMaster heard Ms. Cote make this statement and made no effort to correct her. However, Mr. McMaster testified that Ms. Cote's performance evaluation was not complete at this time because it had not been reviewed by Mr. Lewsey, who had final approval for all performance evaluations.

[24] While working at the Centre, the topic of unionization came up in conversation with staff. Based on her believe that a significant number of staff were interested in becoming unionized, Ms. Cote took it upon herself to follow up with a trade union. On February 7, 2013, she emailed the president of the Union. The next day, she spoke with Mr. Yates. During the course of this conversation, Ms. Cote agreed that she and a coworker would seek support from staff over the course of the upcoming weekend. Ms. Cote testified that, based on conversations in the workplace and from talking with other staff about unionization, she was pretty sure which employees would support a certification application. She also knew where everyone lived. On February 9th, 2013, Ms. Cote and a coworker began contacting staff and collecting signatures for support cards. Mr. Yates testified that a number of employees came by the Union's office in Prince Albert on February 9, 2013. By February 10, 2013, the Union had gathered the requisite support for a certification application.

[25] Mr. McMasters testified that word of the organizing drive began to spread in the community soon after the Union's organizing drive began and that he was aware of union activity in the workplace before Mr. Yates formally advised the Centre of the pending certification application. Mr. McMasters testified that he heard about a drive to unionize the employees of the Centre on "*coffee row*". Mr. McMaster testified that he had a conversation with Mr. Lewsey on

February 10, 2013 and told him about the rumors circulating in the community about a union drive at the Centre.

[26] On February 11, 2013, Mr. Yates (and another representative of the Union) attended to the Centre to advise management of its intention to submit a certification application to the Board. Upon his arrival, Mr. Yates was introduced to Mr. Lewsey. Mr. Yates' notes described this meeting as "*memorable*". For example, Mr. Lewsey refused to shake Mr. Yates' hand when it was offered, refused to admit the Union representatives beyond the reception area of the Centre, and displayed what could generally be described as "*unwelcoming*" behaviour. Mr. Yates testified that, when he advised Mr. Lewsey that the Union was filing a certification application with the Board, Mr. Lewsey indicated that he already knew "*what was going on*" and mentioned Ms. Cote as potentially being one of the employees involved. Mr. Yates testified that, during his conversation with Mr. Lewsey, he confirmed that Ms. Cote was in fact one of the employees who was organizing for the Union.

[27] Mr. Lewsey admitted in his testimony that his conduct on February 11, 2013 was "*unprofessional*" and that his behaviour was "uncharacteristic" for him. Mr. Lewsey testified that his unprofessional conduct toward the Union's representatives was because he was "*stunned*" and "*overwhelmed*" and that "*he needed time to process the news*". In his testimony, Mr. Lewsey denied having an anti-union animus. Mr. Lewsey indicated that, at this point in time, he was uncertain that any of the employees of the Centre would want to be represented by a trade union and that he was unaware that Ms. Cote was involved in an organizing drive to achieve that result. Mr. Lewsey testified that, while he and Mr. McMaster had speculated about who might have been the driving force behind the union drive, Ms. Cote's name never came up in their conversation. Mr. Lewsey denied having any recollection that Ms. Cote's name was mentioned during his conversation with Mr. Yates on February 11, 2013.

[28] Mr. Lewsey did, however, attend the afternoon shift change meeting of staff at the Centre on February 11, 2013. Mr. Lewsey was not scheduled to attend this meeting but he did so for the express purpose of informing staff that he was "*surprised*" by their actions and that "*he did not like surprises*". Mr. Lewsey testified that he was "*blind-sided*" by the Union's announcement that it was seeking to represent the employees of the Centre. Mr. Lewsey testified that he was "*distressed*" that the staff had failed to communicate with him about their concerns and that they had failed to allow him the opportunity to make the case for wage parity

or improvements with the Board. In cross-examination, Mr. Lewsey admitted that he was not happy being surprised by his staff and that he went to the staff change meeting on February 11, 2013 because he wanted them to know that. Mr. Lewsey indicated that he would have preferred that the employees of the Centre had come to him first; that they would have given him a "*heads-up"* before they went to a trade union.

[29] Mr. McMasters also denied any specific knowledge that Ms. Cote was involved in the organizing drive but admitted the rumors were circulating on coffee row. On February 18, 2013, Mr. McMasters and Ms. Cote had a conversation about unionization during a smoke break outside of the Centre. Ms. Cote testified that Mr. McMaster asked her "*why is unionization necessary?"* Mr. McMaster testified that he could not remember what he said to Ms. Cote on this occasion but admitted that he had a conversation with her about unionization in the workplace prior to her termination.

[30] The specific incident that led to Ms. Cote's termination occurred on February 19, 2013. A former participant (a male who had earlier been asked to leave the Centre because he was not addressing his treatment requirements) called the Centre wanting to speak with a number of female participants who continued to be receiving treatment at the Centre. Ms. Cote was given the phone and asked to speak with this individual. Ms. Cote was aware that this male was not on any of the contact lists for the females with whom he wanted to speak. She denied specifically allowing the male to have direct communication with any of the females. She did, however, admit that she permitted the females to yell "*hello*" across the room knowing that the male would be able to hear their voices. She also admitted that she agreed to provide the female participants with the mailing address of the male so that they could write to him. Ms. Cote testified that she did not know whether or not it was permissible for them to write to him. However, she permitted the female participants to write letters to the male that evening and she put those letters on Mr. McMaster's desk for him to deal with the next day. Although Ms. Cote recorded her actions in the progress notes for the participants, she did not leave any other note or explanation of the letters for either Mr. Lewsey or Mr. McMaster. An example of one such progress note was provided to the Board and read as follows:

> *Feb 19/13 4pm-12am*
> *[Participant's name] had a great night. She was very jovial and positive. A participant whom had left contacted VHYTC this evening and left a mailing address. [Participant's name] was excited to write to the past participant. No concerns.*

[31] On the morning of February 20, 2013, Mr. Lewsey and Mr. McMaster became aware of what had transpired the evening before. They spoke with each of the female participants to get their description of what happened. Mr. Lewsey and Mr. McMaster each testified that they were informed by the participants that Ms. Cote had permitted them to write letters to the former participants and that one of them had been permitted to speak with him on the phone. Mr. Lewsey and Mr. McMaster then contacted Ms. McLachlan (the Human Resource officer for the Prince Albert Grand Council) that afternoon to discuss the appropriate disciplinary action for Ms. Cote. The conclusion from this discussion was that Ms. Cote should be terminated effective immediately. When Ms. Cote reported for work later that day, Mr. Lewsey and Mr. McMaster asked to meet with her. Ms. Cote testified that she readily admitted what happened the previous evening but denied that she had permitted any of the female participants to speak with the male. At the conclusion of the meeting, Ms. Cote was given a letter of termination.

[32] The representational vote on the Union's certification application occurred by mail-in ballots. Ballots were mailed to the employees of the Centre on February 14, 2013 and were required to be returned to the Board's agent on or before February 28, 2013. Ms. Cote received a ballot as part of this process and her ballot, together with all the other ballots, remain untabulated, sealed and in the Board's agent's possession.

Relevant statutory provision:

[33] The relevant provision of *The Trade Union Act* is Section 11(1)(e), which provides as follows:

> *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:*
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> *. . .*
>
> *(e) to discriminate in regard to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including discharge or suspension or threat of discharge or suspension of an employee, with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in an proceeding under this Act, and if an employer or an employer's agent discharges or suspends an employee from his employment and it is shown to the satisfaction*

> *of the board that employees of the employer or any of them had exercised or were exercising or attempting to exercise a right under this Act, there shall be a presumption in favour of the employee that he was discharged or suspended contrary to this Act, and the burden of proof that the employee was discharged or suspended for good and sufficient reasons shall be upon the employer; but nothing in this Act precludes an employer from making an agreement with a trade union to require as a condition of employment membership in or maintenance of membership in the trade union or the selection of employees by or with the advice of a trade union or any other condition in regard to employment, if the trade union has been designated or selected by a majority of employees in any such unit as their representative for the purpose of bargaining collectively;*

Employer's arguments:

[34] The Employer argues that it did not terminate Ms. Cote contrary to s. 11 of the *Act*. Rather, the Employer says that Ms. Cote was dismissed at the conclusion of her probationary period because the Employer had simply come to the conclusion that she was not a good fit for the Centre; because she continued to display problems maintaining appropriate boundaries with participants; and because she failed to remediate the Employer's concerns about her performance and breaches of the employer's policies. The Employer argued that the evidence demonstrated that Ms. Cote displayed an ongoing failure to comply with the policies of the Centre despite coaching by her supervisors; despite counseling on the need for her to modify her behaviour; and despite warnings that her behavior could lead to disciplinary action.

[35] The Employer took the position that it had good and sufficient reason to terminate Ms. Cote's employment and that her involvement with unionization was not a factor in the Employer's decision making process. In this regard, the Employer argued that it was not aware of Ms. Cote's involvement in the organizing activities in the workplace until after she was dismissed. The Employer argued that, even if Mr. Yates did mention the names of the individuals who were organizing the employees to Mr. Lewsey when they met, it was not apparent in his subsequent conduct that Mr. Lewsey knew about Ms. Cote's involvement. In support of this assertion, Counsel pointed to the consistent evidence of Mr. Lewsey, Mr. McMaster and Ms. McLachlan that Ms. Cote's involvement with the union drive was not mentioned by any of them when they met to discuss her termination.

[36] The Employer argued that Mr. Lewsey did not even know about any union-related activity until after he was advised by Mr. McMaster of a rumour in the community on February

10, 2013 and that he did not know anything for certain until February 11, 2013, when Mr. Yates attended to the Centre and advised that a certification application was being filed with the Board. The Employer argues that there was no evidence that Mr. Lewsey said anything to any staff about unionization other than that he was disappointed that no one had mentioned unionization to him earlier because he did not like being "blind-sided". The Employer argues that this conduct was not anti-union; rather, it was merely an understandable response by Mr. Lewsey to what he perceived as the staff's lack of confidence in his ability to address the concerns of staff despite his commitment to do so.

[37] The Employer argues that the facts of the present case are similar to the circumstance before this Board in the case of *Grain Services Union Canada v. Startek Canada Services Ltd.*, 2005 CanLII 63089 (SK LRB), LRB File Nos. 115-04, 116-04, 117-04 & 193-04, wherein the Board concluded that the employer had good and sufficient reasons to terminate the subject employee despite flaws in the progressive discipline used. In that case, the Board was also not persuaded that an anti-union motivation had tainted the employer's decision to terminate the subject employee. The Employer argues that, like the subject employee in the *Startek* case, Ms. Cote had received previous warnings regarding her performance and, despite these warnings, she continued to make errors in judgment related to boundary and co-dependency issues. The Employer argues that the incident that occurred on February 19, 2013 was a culminating event and part of an ongoing series of concerns with Ms. Cote's performance that clearly demonstrated that she was not going to be a good fit for the Centre.

[38] Simply put, the Employer argues that, despite repeated warnings, coaching and a clear remedial plan, Ms. Cote continued to breach the Employer's policies and failed to head the directions of her supervisors. The Employer takes the position that its decision to terminate her employment only occurred because Ms. Cote refused to acknowledge her errors and because she refused to demonstrate reformative intent.

[39] Counsel on behalf of the Employer provided detailed written briefs of law, which we have read and for which we are thankful.

Union's arguments:

[40] The Union, on the other hand, disputes the Employer's assertion that it had good and sufficient reasons for terminating Ms. Cote. The Union argues that all of the Employer's

claims regarding Ms. Cote's conduct are exaggerated or were not supported by the evidence, including the Employer's claims that her conduct in any of the impugned incidents in the workplace represented a serious violation of the Employer's policies; or that she failed to demonstrate reformative intent. The Union notes that all of the incidents involving Ms. Cote's performance were minor and most had been resolved prior to her termination. The Union argues that the Employer's assertion that Ms. Cote was not a good fit for the Centre was clearly inconsistent with the performance evaluation of Ms. Cote undertaken by Mr. McMaster just one (1) week before she was fired. The Union takes the position that the Employer's assertion that it had good and sufficient reasons for terminating Ms. Cote's employment is untenable and that the timing of the Employer's actions is clearly suspicious. The Union acknowledges that it is not this Board's role to determine whether or not the Employer had just cause for terminating Ms. Cote. However, the Union argues that the weakness of the Employer's rationale for Ms. Cote's termination, as well as the timing of that action, are both factors that ought to be taken into consideration by this Board in finding that the Employer's actions were tainted by an anti-union animus.

[41] In addition, the Union takes the position that there is clear evidence from which this Board can infer an anti-union animus on the part of the Employer. The Union argues that Mr. Lewsey's conduct was wholly inconsistent with his assertion that he was neutral on unionization. The Union points to Mr. Lewsey's behaviour when he first met the Union's representatives, which Mr. Lewsey himself admitted was unprofessional. The Union also points the fact that the first things Mr. Lewsey did, after the Union confirmed that it was filing a certification application with the Board, was to attend a staff meeting for the express purpose of telling employees that he was not "*happy*" with their actions. The Union argues that Mr. Lewsey's actions were indicative of management that was not happy that its employees were exercising their rights under *The Trade Union Act*. The Union argues that Mr. Lewsey's conduct, when taken into consideration with the Employer's knowledge that Ms. Cote was responsible for the organizing drive in the workplace, together with the inconsistency between the Employer's claims regarding her past conduct and the overwhelmingly positive performance evaluation conducted by Mr. McMaster, raises a compelling case that the Employer's actions were tainted by an anti-union animus. In the Union's opinion, this is a clear case of an employer punishing an employee for exercising a right granted pursuant to the *Act*.

[42] Counsel on behalf of the Union filed briefs of law, which we have read and for which we are thankful.

Analysis:

[43] Section 11(1)(e) represents an important safety net for employees interested in unionization. Simply put, this provision prevents an employer from using coercion or intimidation and/or from discriminating in the treatment of its employees because of their support for a trade union, because of their desire to be unionized, or because they have exercised a right granted pursuant to *The Trade Union Act*. In fact, it is somewhat of a unique provision. Not only does this provision prohibit an employer from discriminating against or coercing its employees (with a view to influencing membership in or activities associated with a trade union), but s. 11(1)(e) also imposes a reverse onus on employers if an employee is discharged or suspended during an organizing drive or at a time when employees are exercising their rights under the *Act*. The reverse onus operates by creating a statutory presumption in favour of the subject employee(s) that he/she was discharged or suspended contrary to the *Act* unless the employer can demonstrate that it took the actions it did for good and sufficient reason. See: *United Food and Commercial Workers, Local 1400 v. 303567 Saskatchewan Ltd. (Handy Special Events Centre),* (unreported), LRB File Nos. 064-12, 075-12 & 081-12.

[44] It is noted that this Board has commented in a number of decisions on the purpose of s. 11(1)(e) of the *Act* and the tests to be applied in determining whether or not a violation thereof has occurred. For example, a helpful description of the purpose or policy objective that underlies the provision was provided by the Board in *Service Employees' International Union, Local 299 v. LifeLine Ambulance Services Ltd.,* [1993] 4th Quarter Sask. Labour Rep. 171, LRB File Nos. 227-93, 228-93 & 229-93:

> *Section 11(1)(e) of The Trade Union Act is meant to ensure that distinctions are not drawn between employees on the basis of their involvement in trade union activity, and that employees are allowed full scope to pursue their rights under the statute without being penalized for it. It is clear from the wording of the section that the legislature was particularly concerned about the exposure of employees to possible suspension or discharge by an employer who wished to demonstrate the dangers to employees of pursuing their rights under the Act. In the case of these penalties, if it can be shown that an employee was attempting to pursue rights under the statute, there is a presumption that the suspension or discharge was imposed for that reason, and the onus lies on the employer in these circumstances to show that the suspension or discharge was not animated by anti-union sentiment, and that it occurred solely for legitimate reasons.*

[45] By way of further example, this Board summarized the principles and rationale underlying the application of s. 11(1)(e) in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Moose Jaw Exhibition Co. Ltd.,* [1996] Sask. L.R.B.R. 575, LRB File Nos. 131-96, 132-96 & 133-96 as follows:

> *The Board has always attached critical importance to any allegation that the suspension or dismissal of an employee may have been affected by considerations relating to the exercise by that employee or other employees of rights under the Act. In a decision in Saskatchewan Government Employees' Union v. Regina Native Youth and Community Services Inc., [1995] 1st Quarter Sask. Labour Rep. 118, LRB Files No. 144-94, 159-94 and 160-94, the Board commented on this matter as follows, at 123:*
>
> > *It is clear from the terms of Section 11(1)(e) of the Act that any decision to dismiss or suspend an employee which is influenced by the presence of trade union activity must be regarded as a very serious matter. If an employer is inclined to discourage activity in support of a trade union, there are few signals which can be sent to employees more powerful than those which suggest that their employment may be in jeopardy. The seriousness with which the legislature regards conduct of this kind is indicated by the fact that the onus rests on the employer to show that trade union activity played no part in the decision to discharge or suspend an employee.*
>
> *The Board made further comment on the significance of the reverse onus under Section 11(1)(e) of the Act in The Newspaper Guild v. The Leader-Post, [1994] 1st Quarter Sask. Labour Rep. 242, LRB Files No. 251-93, 252-93 and 254-93, at 244:*
>
> > *The rationale for the shifting to an employer of the burden of proof under Section 11(1)(e) of the Act to show that a decision to terminate or suspend an employee was completely unaffected by any hint of anti-union animus has, in our view, two aspects. The first is that the knowledge of how the decision was made, and any particular information regarding the employment relationship involving that employee, is often a matter available exclusively to that employer. The trade union knows of the termination or suspension, knows of the union activity, and asserts that there is a link between them of anti-union animus. A decision that this link does in fact exist can often only be established on the basis of information provided by the employer. Whether this is described as a legal onus of proof, which is the basis of the challenge made by the Employer to the courts, or whether it is seen as an evidentiary burden, an employer must generally be able to provide some explanation of the coincidence of trade union activity and the suspension or termination in question.*
> >
> > *The second aspect of the rationale, which is particularly important in a case, such as this one, where union activity with an employer is in its infancy, addresses the relative power of an employer and a trade union. An employer enjoys certain natural advantages over a trade union in terms of the influence it enjoys with employees, and the power it can wield over them, particularly where the power to terminate or discipline is not subject to the constraints of a collective agreement or to scrutiny through the grievance procedure. In these circumstances, the vulnerability of employees, and their anxieties, even if exaggerated, about the position in which they may be put by communicating what they know of the circumstances surrounding the dismissal to trade union representatives, and possibly to this Board, makes it*

> *difficult for the trade union to compile a comprehensive evidentiary base from which they may put their application in its fairest light.*

As the Board has pointed out, it is not sufficient to meet the onus of proof under Section 11(1)(e) of the Act for an employer to demonstrate the existence of a defensible business reason for the decision to suspend or terminate an employee. In United Steelworkers of America v. Eisbrenner Pontiac Asüna Buick Cadillac GMC Ltd., [1992] 3rd Quarter Sask. Labour Rep. 135, LRB Files No. 161-92, 162-92 and 163-92, the Board made the following observation in this connection, at 139:

> *When it is alleged that what purports to be a lay-off or dismissal of an employee is tainted by anti-union sentiment on the part of an employer, this Board has consistently held, as have tribunals in other jurisdictions, that it is not sufficient for that employer to show that there is a plausible reason for the decision. Even if the employer is able to establish a coherent and credible reason for dismissing or laying off the employee - and we are not persuaded that the reasons put forward by Eisbrenner are entirely convincing -those reasons will only be acceptable as a defence to an unfair labour practice charge under s. 11(1)(e) of the Act if it can be shown that they are not accompanied by anything which indicates that anti-union feeling was a factor in the decision.*

An important element of the task of this Board in assessing a decision which is the subject of an allegation made pursuant to s. 11(1)(e) of the Act is the evaluation of the explanation which is offered by an employer in defence of the decision to dismiss. In this respect, the Board has emphasized that our objective is somewhat different than that of an arbitrator determining whether there is "just cause" for dismissal. In The Leader-Post decision, supra, the Board made this comment, at 248:

> *For our purposes, however, the motivation of the Employer is the central issue, and in this connection the credibility and coherence of the explanation for the dismissal put forward by the Employer is, of course, a relevant consideration. We are not required, as an arbitrator is, to decide whether a particular cause for dismissal has been established. Nor, like a court, are we asked to assess the sufficiency of a cause or of a notice period in the context of common law principles. Our task is to consider whether the explanation given by an employer holds up when the dismissal of an employee and some steps taken in exercise of rights under the Act coincide. The strength or weakness of the case an employer offers in defence of the termination is one indicator of whether union activity may also have entered the mind of the Employer.*

As the Board has pointed out on a number of occasions, the fact that trade union activity is taking place does not mean that an employer is prevented altogether from taking serious disciplinary steps against an employee. The onus imposed on an employer by s. 11(1)(e) of the Act is not impossible to satisfy. There is no question, however, that it is difficult to meet. In order to satisfy ourselves that the grounds stated for a decision to dismiss an employee do not disguise sentiments on the part of an employer which run counter to the purposes of the Act, it is necessary for us to evaluate the strength or weakness of the explanation which is given for a dismissal, in the light of other factors, including the kind of trade union activity which is going on, the stage and nature of the collective bargaining relationship, and the possible impact a particular disciplinary action may have on the disciplined employee and other employees.

[46] A more recent but similar enunciation of the Board's approach to an alleged violation of s. 11(1)(e) was provided in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Sakundiak Equipment, a Division of WGI Westman Group*, [2005] C. L.R.B.R. (2d) 139, 2011 CanLII 72774 (Sk LRB), LRB File Nos. 107-11 to 109-11 & 129-11 to 133-11. Simply put, if it can be demonstrated that an employee was discharged or suspended from his/her employment at a time when the employees of that workplace were exercising or attempting to exercise a right under the *Act*, the Board is then called upon to examine the impugned actions of the Employer through two (2) lenses. In the first instance, the Board considers the stated reasons or rationale for the impugned discipline or termination. Although an employer need not demonstrate the kind of justification that an arbitrator would expect (i.e.: "*just cause*"), the onus is on the employer to demonstrate at least "*coherent*" and "*credible*" or "*plausible*" and "*believable*" reasons for the actions it took to rebut the statutory presumption. See: *Patrick Monaghan v. Delta Catalytic Industrial Services Ltd..et. al.*, [1996] Sask. L.R.B.R. 429, LRB File No. 187-95. In the absence of good and sufficient reasons, a violation can be found. See: *Canadian Union of Public Employees, Local 4279 v. Regina Friendship Centre, et. al.*, [2000] Sask. L.R.B.R. 481, LRB File Nos. 112-99, 113-99, 117-99, 119-99, 120-99, 123-99, 144-99 to 161-99, 166-99, 182-99, 241-99 and 242-99. See also: *Canadian Union of Public Employees, Local 342 v. City of Yorkton*, [2001] Sask. L.R.B.R. 19, LRB File Nos. 279-99, 280-99 & 281-99.

[47] However, even if the Board is satisfied that there were good and sufficient reasons for the actions that the employer took, the Board may nonetheless still find a violation has occurred if the Board is satisfied that the employer's actions were motivated, even in part, by an anti-union animus. See: *The Newspaper Guild v. The Leader-Post, a Division of Armadale Co. Ltd.*, [1994] 1st Quarter Sask. Labour Rep. 242, LRB File Nos. 251-93, 252-93 & 253-93. Such is the case because there are few signals more intimidating for an employee or can send a more powerful message through the workplace than an indication that your employment relationship may be in jeopardy because of your support for a trade union. Therefore, even if an employer demonstrates a credible explanation for the actions it took, it is nonetheless a violation of the *Act* if we find that a component of the employer's decision-making process involved a desire to punish an employee because of his/her support for a trade union or to signal to other employees that unionization was undesirable. The difficulty in this task arises because seldom will an employer admit to an anti-union sentiment. Rather, the Board must be alert to subtle indications that improper motives have influenced the employer's actions.

[48] Having considered the evidence in these proceedings and the fulsome arguments of able counsel, we have concluded that the Employer has violated s. 11(1)(e) of *The Trade Union Act* in its decision to terminate Ms. Cote. We come to this conclusion because of a number of factors.

[49] Firstly, we are satisfied that both Mr. Lewsey and Mr. McMaster were aware that Ms. Cote was the driving force behind the organizing efforts at the Centre. With respect to the events that occurred on February 11, 2013 when representatives of the Union attended to the Centre, we prefer the evidence of Mr. Yates over the evidence of Mr. Lewsey as to what transpired during this interaction. Mr. Yates' evidence was credible, logical and corroborated by his notes. His evidence was delivered in a forthright and balanced manner both in chief and in cross-examination. On the other hand, Mr. Lewsey's evidence was less credible on this point and less consistent with the preponderance of probabilities of events unfolding at that time. Rumors were circulating in the community about the union drive and these rumors quickly came to Mr. McMaster's attention and then to Mr. Lewsey's even before the Union's representatives attended to the workplace. We need not decide whether Mr. Lewsey mentioned Ms. Cote' name or whether Mr. Yates did because we are satisfied that one of them did. By the end of this conversation, Mr. Lewsey would have known that Ms. Cote was the driving force behind the move to unionize the Centre's workforce. This knowledge is consistent with the fact that Mr. McMaster had a conversation with Ms. Cote on February 18, 2013 about unionization particularly so, in light of the tenor of that conversation. In this regard, we prefer the testimony of Ms. Cote over that of Mr. McMaster as to what was said on this occasion. Ms. Cote's testimony was both credible and logical in describing this particular conversation. On the other hand, Mr. McMaster's testimony was less candid, more equivocal and generally too vague to be given much weight. We are satisfied that Mr. McMaster did, in fact, ask Ms. Cote "*why is unionization necessary?*; a question that is reasonable for Mr. McMaster to ask Ms. Cote only if he already knew that she was the driving force behind unionization at the Centre.

[50] All witnesses testified that Prince Albert is a small community and that little happens in this community without it being picked up by the rumor mill. In fact, Prince Albert's rumor mill picked up on the union drive at the Centre pretty quickly. It is reasonable to assume that these rumors would have included the names of the employees who were leading the charge, so to speak. Even if the rumors did not confirm Ms. Cote's involvement, Mr. Lewsey's

conversation with Mr. Yates certainly did. In our opinion, it is improbable that Mr. Lewsey would have been as distraught as he was by the news that his employees had lost confidence in him (by pursuing unionization) but, at the same time, that he would have been disinterested in which of his employees was responsible for that action. The more logical conclusion is that Mr. Lewsey was very interested in the names of the people who were involved. It is also reasonable to assume that he would not have been particularly happy with Ms. Cote at that point in time.

[51] Secondly, the Employer's conclusion that Ms. Cote was a "*poor fit*" for the workplace appears to only have arisen subsequent to discovering that she was the employee leading the charge to unionize the Centre. The Employer pointed to numerous incidents that occurred in Ms. Cote's six (6) month tenure. However, with all due respect, all of these incidents, save that which occurred on the February 19, 2013 were resolved with coaching or minor disciplinary actions. None of these incidents maintained sufficient magnitude for Ms. Cote's direct supervisor to even mention them during her performance evaluation. In fact, the performance evaluation conducted by Mr. McMaster is more indicative of an exemplary employee than a "*poor fit*". Even the verbal warning letter provided to Ms. Cote on February 10, 2013 indicated the Employer's intention to support her in becoming an "*outstanding*" youth care worker.

[52] In our opinion, the testimony of Mr. Lewsey, Ms. McLachlan and Mr. McMaster as to Ms. Cote's performance in the workplace is hard to reconcile with the written documentation of the Employer, in particular her performance evaluation. Clearly, the Employer had been raising "boundary issues" with her, as they had been with other staff. She received at least one "coaching" session and one non-disciplinary verbal warning. On the disciplinary scale, these incidents were minor and did not retain enough significance to be mentioned during her performance evaluation. In our opinion, these incidents represent a poor justification for the Employer's position that Ms. Cote's conduct was indicative of a pattern of substandard performance; or that she refused to acknowledge that her conduct was in breach of the Employer's policies; or that she refused to demonstrate a reformative intent despite repeated warnings and coaching by the Employer.

[53] Therefore, we are left with the possibility that the incident that occurred on February 19, 2013 was of a sufficient magnitude to justify summary termination. With all due respect, it is difficult to come to this conclusion. Ms. Cote made a judgment call in a

circumstance that the Employer's policies did not appear to clearly anticipate. Mr. Lewsey and Ms. McLachlan both passionately argued that her conduct was egregious and a flagrant violation of the Centre's privacy policy. However, it is very difficult to not see the Employer's position as an opportunistic amplification of what otherwise would have been a modest error in judgment. Ms. Cote's error was to permit some level of communication between a past male participant and certain female participants and to allow these young women to write letters to this individual; letters that were never sent. The Employer argues that these actions resulted in a very significant breach of the Centre's privacy policy, sufficient to justify her immediate termination. The Employer argues that Ms. Cote should have known that any communication with this particular person[6] would have represented a dangerous distraction for the female participants; a distraction likely to impair their therapeutic recovery. The Employer also argues that Ms. Cote's error in judgment was compounded by her unwillingness to recognize the magnitude of her error.

[54] With all due respect, it is difficult for this Board to recognize the magnitude of this particular error. The male and the female participants came into contact because the Centre operates a co-ed facility. Ms. Cote's actions represented a judgment call at a time when neither Mr. Lewsey nor Mr. McMaster was present to provide her with operational guidance. Maybe Ms. Cote could have left a better message seeking specific instructions from her supervisors on what to do with the letters that had been written but she reported her actions in the Centre's progress reports knowing that the clinical supervisor would read those notes the next morning. She clearly recorded what happened the evening before. From a privacy perspective, all of the participants already knew each other and already knew that they each were receiving (or had received) treatment at the Centre. Therefore, there was no actual privacy breach. With respect to the potential that Ms. Cote's actions caused a therapeutic distraction for the female participates, the genesis of this distraction arose because the Employer operates a co-ed facility and young men and young women are receiving treatment at the same time in the same place. At worst, Ms. Cote's actions would have represented an increment in a spectrum of distraction caused by young men and women being young men and women. To the extent that Ms. Cote made an error in judgment, such error would have been far from egregious or flagrant or the kind of conduct that would typically justify summary termination (physical, sexual or verbal abuse).

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[6] Evidence was presented that the male former participant was a known gang member and a "player", someone interested in developing a romantic relationship with one or more of the female participants notwithstanding that he was involved with another woman who was carrying his child.

[55] When all of the incidents (which the Employer suggests justify its actions) are viewed objectively, they appear (both individually and collectively) wholly insufficient to justify Ms. Cote's termination. While the Employer need only demonstrate a "*coherent*" and "*credible*" or a "*plausible*" and "*believable*" reason for the actions it took to rebut the statutory presumption, we are inescapably drawn to the conclusion that Ms. Cote's involvement with the Union was the catalyst that transformed the Employer's previous view of her performance from "*excellent*" and "*competent*" (as noted in her performance evaluation) to its current view that her performance is substandard. In our opinion, the more probable conclusion is that the Employer's decision to terminate Ms. Cote was tainted by her decision to launch an organizing campaign in the workplace. There can be little doubt that Mr. Lewsey was unhappy when representatives of the Union appeared at the Centre. He was demonstrably unhappy with the decision of his staff to seek out a trade union rather than wait for him to resolve the Centre's wage disparity issues. He may well have perceived this as a loss of confidence in his leadership. Nonetheless, he was so unhappy with his staff that he went out of his way to go to a staff meeting so that he could tell his staff that he was unhappy with them. It is a reasonable conclusion that Mr. Lewsey would have been equally unhappy with the very person who brought these events to fruition.

[56] In an application alleging a violation of s. 11(1)(e), an employer's actions are examined in an attempts to ascertain the motives that went into those actions (as difficult as that may be). On the facts of this case, we are inescapably drawn to the conclusion that Mr. Lewsey's unhappiness with the decision of his employees to pursue unionization (and Ms. Cote's actions in providing the vehicle to do so) tainted the Employer's decision making with respect to Ms. Cote's conduct and manifested itself in an unlawful termination. While it is not unusual for employers to be disappointed to hear that their employees feel the need for a trade union or for management to view unionization as a loss of confidence, *The Trade Union Act* expects employers (and their respective management personnel) to conduct themselves with an appropriate degree of balance and with due respect for the right of employees to determine their own destiny under the *Act*. In our opinion, the relatively weak foundation for the Employer's case, coupled with our finding that the Employer knew that Ms. Cote was the person responsible for the organizing drive; coupled with Mr. Lewsey's palpable displeasure with anyone who surprises him; raises a compelling inference that the decision to terminate Ms. Cote was motivated by a desire to punish her for exercising a right protected by *The Trade Union Act*.

[57] For these reasons, we find that the Employer has violated s. 11(1)(e) of *The Trade Union Act*. An Order shall issue concomitant with these Reasons for Decision directing the Employer to immediately reinstate Ms. Cote and to reimburse her for any monetary loss she has suffered as a consequence of her unlawful termination. We leave it to the parties to determine the quantum of such loss and grant leave to the parties, or either of them, to return to the Board for a determination as to the quantum of such loss, if necessary.

[58] We also find that Ms. Cote was eligible to participate in the representation question and that her ballot ought to be counted during tabulation.

DATED at Regina, Saskatchewan, this **30th** day of **October, 2013.**

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson