



UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKS INTERNATIONAL UNION (UNITED STEELWORKERS), Applicant v. COMFORT CABS LTD., Respondent

LRB File Nos. 249-13; September 30, 2013

Vice-Chairperson, Steven D. Schiefner.; Members: Duane Siemens and Brenda Cuthbert

For the Applicant Union: Mr. Peter J. Barnacle

For the Respondent: Mr. John R. Beckman, Q.C. and Ms. Rebecca Wood

Remedy – Interim order – Taxi plates leased by certain taxi drivers were cancelled and leased to other taxi drivers – Union tenders evidence that taxi drivers who lost their taxi plates were known supporters of the Union – Union tenders evidence that principals of taxi company were not pleased that its taxi drivers wanted a trade union in the workplace - Board satisfied that union raised arguable case that respondent taxi company had violated The Trade Union Act – Board also satisfied that the balance of labour relations harm favoured granting interim relief – Board grants some remedial relief on interim basis but not satisfied based on the evidence that taxi company has independent authority to reinstate taxi plates.

The Trade Union Act, ss. 5(d), 5(e), 5(f), 5.3 & 11(1)(e).

REASONS FOR DECISION – INTERIM APPLICATION

Background:

[1] Steven D. Schiefner, Vice-Chairperson: This case involves an interim application by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International Union (United Steelworkers) (the “Union”), who seeks remedial relief from the Saskatchewan Labour Relations Board (the “Board”) pending a full hearing of various allegations it has made against the Respondent, Comfort Cabs Ltd. (“Comfort Cabs”).

[2] The Union alleges that Comfort Cabs has committed various violations of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the “Act”) with respect to certain individuals who, until

recently, drive taxis for them. The nature of the allegations is that Comfort Cabs has effectively terminated the employment of these four (4) individuals because of their involvement in, or support for, an organizing campaign on behalf of the Union in the workplace. The allegations are contained in nine (9) applications that have been filed with the Board; these include a general application alleging the commission of unfair labour practices¹ by the Respondent, Comfort Cabs; four (4) applications² seeking reinstatement of certain named taxi drivers; and four (4) concomitant applications³ seeking compensation for monetary loss for these same individuals. In response to these allegations, Comfort Cabs denies that the subject taxi drivers are/were employees and denies that it committed any violation of the *Act*. All of the Union's applications have been combined and are set to be heard by this Board commencing on November 7, 2013.

[3] Prior to a full hearing of its allegations, the Union seeks interim relief from this Board pursuant to s. 5.3 of the *Act*. In its interim application, the Union seeks an order directing Comfort Cabs to reinstate the driving privileges that these individuals enjoyed until recently and to maintain said privileges pending a determination by this Board on the Union's allegations. Comfort Cabs argues that this is not an appropriate case for this Board to exercise the discretion granted pursuant to s. 5.3. Simply put, Comfort Cabs argues that the Union's evidence neither demonstrates a probable case of a violation of the *Act* nor that the balance of convenience favours granting the desired remedies.

[4] The Union's interim application was heard in Saskatoon on September 16, 2013. In support of its application, the Union filed affidavits of Nasir Bhatti, Qaisir Bhatti, Ashan Kamboh, Shakeel Arif Muhammad, and Haroon Ihtisham; each of whom drove taxis for Comfort Cabs. The Employer filed the affidavit of Javed Mian, the General Manager of Comfort Cabs.

[5] Having considered the evidence and the argument of the parties, we are satisfied that the Union has raised an arguable case that a violation of *The Trade Union Act* has occurred and that the balance of labour relations harm favours some intervention by this Board prior to a formal hearing of the Union's allegations. However, we are not prepared to grant all of the remedies sought by the Union. These are our Reasons for coming to these conclusions.

¹ See: LRB File No. 240-13.

² See: LRB File Nos. 241-13, 243-13, 245-13 & 247-13.

³ See: LRB File Nos. 242-13, 244-13, 246-13 & 248-13.

Facts:

[6] Comfort Cabs is a taxi service operating in the City of Saskatoon. All of the individuals named in the Union's application drove taxis for Comfort Cabs until recently.

[7] In most cities in Canada, the taxi industry is heavily regulated at the municipal level. In Saskatoon, for example, the city regulates the taxi industry through a number of means, including the distribution of taxi licenses (or "plates" as they are commonly referred) and through the regulation of such things as types of vehicles, defined areas of service, and the fares that can be charged to passengers. To operate a vehicle as a taxi cab in Saskatoon, the owner must have a valid taxi plate. Taxi plates are obtained from the City and their numbers are limited. An individual who has obtained a single taxi plate and who operates their own vehicle as a taxi using that plate is known as a "single car franchise owner". None of the subject taxi drivers were single car franchise owners. Rather, they each leased their respective taxi plates from someone else who was not using it at the time.

[8] A little background on the taxi industry may be helpful. The scarcity of taxi plates has caused these licenses to have capital value. In Saskatoon, this value can easily exceed the cost of the vehicle upon which the licenses are placed. Many of the people who obtain taxi plates (common known as "franchise owners") will own multiple plates and may choose not to operate a vehicle for all of the plates they own. Some franchise owners choose not to operate a vehicle for any of the plates they own, treating the ownership of taxi plates as merely an investment opportunity. In either case, franchise owners lease their surplus plates to taxi drivers who have their own vehicle and desire to operate that vehicle as a taxi. Individuals who lease a taxi plate and own their own vehicle are referred to as "lease operators". Lease operators pay a monthly franchise fee to the franchise owner for the lease of the taxi plate. The cost of franchise fees is paid out of the revenue generated through the operation of the vehicle (i.e.: the fares paid by passengers) while it is in service as a taxi.

[9] In the taxi industry, taxis tend to be operated on a twenty-four (24) hour basis and thus are driven by multiple taxi drivers. Both single car franchise owners and lease operators typically only operate their own vehicle for a portion of the time it is in service and arrange for other qualified taxi drivers (a "taxi driver") to operate their vehicle for remainder of time the vehicle is available. Taxi drivers pay a shift rental or other fee to the owner of the vehicle in

compensation for the use of that vehicle. Shift rentals are paid by taxi drivers out of the fares they receive for passengers while operating the taxi.

[10] Finally, whoever is driving the taxi is responsible for the cost of the fuel consumed while operating that vehicle. These costs are paid by the single car franchise owners, lease operators and taxi drivers out of the fares they received while operating the taxi.

[11] Whether required by law or out of convenience or efficiency, taxis are generally operated as part of a larger taxi service or dispatcher, such as Comfort Cabs. Taxi services/dispatchers provide a number of services to franchise owners (companies/individuals who lease their taxi plates to others), single car franchise owners (individuals who operate a taxi using their own taxi plate), lease operators (individuals who operate a taxi using a plate leased from someone else) and taxi drivers (individuals who merely drive a taxi owned by someone else).

[12] Firstly, taxi companies often act as brokers for franchise owners by connecting them with lease operators who wish to lease their surplus or available taxi plates. Generally speaking, because of the scarcity of taxi plate, there tends to be a wait list for taxi drivers desiring to obtain a taxi plate. In other words, even if you have a vehicle (or are willing to buy a vehicle), a taxi driver may not be able to find an available taxi plate for a significant period of time. Taxi companies collect and remit franchise fees from lease operators on behalf of franchise owners.

[13] Secondly, taxi companies provide dispatch and other services on behalf of the operators that are associated with them and operate under their marketing banner, including single car franchise owners, lease operators and drivers; each of whom pay a monthly fee to the taxi company. To the various individuals that drive a taxi for them, taxi companies provide coordinated dispatch services, radio services, metering services, computer services, office and accounting services, and marketing. In addition, both single car franchise owners and lease operators enter into contractual arrangements with taxi companies related to certain characteristics of the vehicles used in association with a particular taxi company, including age of the vehicle and its colour and condition of operation.

[14] The income earned by single car franchise holders and lease operators is determined by the fares earned while operating their vehicle, plus the shift rentals paid by other drivers who operate their vehicle, minus the costs of repairs and upkeep of the vehicle, minus the franchise fees (in the case of lease operators) paid to the owner of the taxi plate, and minus the fees charged by the taxi company with whom they are associated. The income earned by taxi drivers is determined by the fares earned while driving taxi minus the shift rental for the vehicle they are driving, minus the cost of fuel, and minus the fees charged by the taxi company with whom they are associated. To say the least, there are a number of factors that must be considered when calculating the income earned by the various individuals who drive taxis for a living.

[15] Collective bargaining has a novel and arguably awkward application in the taxi industry. The individuals who drive taxis are not employees in the traditional sense. They are not paid by their employer, the taxi company; rather they are paid by the customers who utilize their services. Nonetheless, labour boards have accepted that certain individuals who drive taxi are dependent contractors and, thus, may be treated as “employees” for purposes of *The Trade Union Act*. In addition, labour boards have accepted that taxi companies can exercise a certain level of control over workplace rules and working conditions for taxi drivers (either inherently or as a result of delegated authority from affiliated franchise owners). Once organized, the members of the bargaining unit (typically single car franchise owners, lease operators and taxi drivers) then bargain with the taxi company to, *inter alia*, minimize the fees and other charges paid to the tax company and with respect to other terms of their engagement with the taxi company, such as dispatch rules, installation of new equipment, etc.

[16] In the present application, all four (4) of the individuals who are the subject matter of the Union’s applications were lease operators with Comfort Cabs. These individuals included Nasir Bhatti, Quisir Bhatti (Nasir Bhatti’s brother), Ashan Kamboh, and Shakeel Arif Muhammad. Each of these individuals entered into arrangements with franchise owners for the purpose of leasing taxi plates thus enabling them to provide and operate their own vehicles as taxis. Each of franchise owners from whom these individuals leased taxi plates had an association with Comfort Cabs. These individuals bought or acquired vehicles that met Comfort Cabs’ specifications and agreed to operate their vehicles under Comfort Cabs banner. Finally, these individuals paid the cost of having computers, taxi meters, and other equipment installed in their respective vehicles. While the ownership of this equipment appears to rest with the franchise

owners, the installation fees were paid to Comfort Cabs, who did the actual installation of the equipment on behalf of franchise owners.

[17] The evidence with respect to the scope of the relationship between Comfort Cabs and the associated franchise owners was scant. Nonetheless, there was evidence that Comfort Cabs plays some form of management role with respect to the taxi plates that are leased by associated franchise owners. Mr. Nasir Bhatti deposed in his affidavit that, in 2009, when Comfort Cabs was formed, various franchise owners held a meeting in Saskatoon to recruit lease operators. At that meeting, the following letter was distributed:

Comfort Cabs Ltd would like to take this opportunity to thank you for your interest in leasing a taxi and joining the Comfort Cab team. Congratulations on being selected.

Please be advised that in order to maintain your lease you must follow the terms and conditions listed below:

- *All lease contracts will require a \$1500.00 deposit. As well, Comfort Cabs will withhold any monies payable to the lease to cover damages or outstanding office dispatch fees, or any other monies owed to the company*
- *Lease payments will be collected at the beginning of each month. Lease fees are collected in advance for the current month*
- *All vehicles that a lease desires to put on taxi must receive prior approval from the management and must:*
 - *Be a 2002 model year or newer*
 - *Be painted white, including the inside door jambs and trunk rails*

By leasing a taxi plate under the management of Comfort Cabs Ltd, you are agreeing to follow the rules and regulations of Comfort Cabs Ltd, as well as to offer highest level of courtesy and customer service possible. Leasing a taxi plate under the management of Comfort Cabs in no way constitutes or implies ownership in any way, shape or manner of the City of Saskatoon Business License, taxi meter, top sign, in car computer system, or two way radio.

Final lease contracts will be signed and kept on file at the office of Comfort Cabs Ltd and will encompass the terms and conditions set out in this letter of understanding.

Sincerely,

*Ken Yuzik
General Manager*

[18] It is noted that Mr. Ken Yusik was a director and officer with Comfort Cabs at the time of the Union's application. The directors/officers of Comfort Cabs at that time included Ken

Yuzik, Khobr Bardouh, Marwin Bardouh and James Frie. It was noted for the Board that the status of some of these individuals had changed by the time of the hearing. Nonetheless, at least two (2) of the officers/director of Comfort Cabs are/were franchise owners. Mr. Mian deposed that Mr. Frie is the owner of J G Taxis Ltd. (a franchise owner) and there was evidence that either or both Khobr Bardouh and Marwin Bardouh were also franchise owners.

[19] Comfort Cabs is not certified and there is no pending certification application before the Board with respect to this workplace. Nonetheless, there was a recent campaign in the workplace asking various individuals working for Comfort Cabs to join the Union. The Union filed a certification application with the Board on May 31, 2013⁴. Ultimately, this organizing campaign was unsuccessful in garnering majority support and the Union abandoned its certification application on July 15, 2013.

UUEvidence respecting Nasir Bhatti:

[20] Prior to January 13, 2013, Nasir Bhatti was a lease driver for Comfort Cabs. Qaisir Bhatti had previously leased a taxi plate from J G Taxis Ltd. The owner of J G Taxis Ltd. is (or was) Mr. Frie, who as indicated is also an officer/director of Comfort Cabs. On or about January 13, 2013, Mr. Frie informed Nasir Bhatti that he was no longer going to lease a taxi plate to him. As a consequence, Mr. Bhatti lost the right to provide and drive his own vehicle as a taxi. However, Nasir Bhatti was permitted to remain associated with Comfort Cabs as a driver. Although the evidence is vague, Mr. Bhatti deposes that he maintained an association with Comfort Cabs as a driver until on or about July 31, 2013, when he noticed his identification was no longer valid with Comfort Cabs. Mr. Bhatti says his identification was blocked in Comfort Cabs dispatch computer. On the other hand, Mr. Javed Mian deposed in his affidavit that Nasir Bhatti's identification was not blocked; rather, because he had not driven for Comfort Cabs for a period in excess of ninety (90) days, Nasir Bhatti's identification was "automatically" removed from the "list of eligible drivers" in Comfort Cabs' computer system.

[21] Nasir Bhatti deposed in his affidavit that Comfort Cabs became aware that he was organizing on behalf of the Union as a result of the recent certification campaign. The evidence is unclear as to when Nasir Bhatti's involvement with the Union began.

Evidence respecting Ashan Kamboh:

[22] Ashan Kamboh was also a lease driver with Comfort Cabs. Mr. Kamboh had previously leased a taxi plate from J G Taxis Ltd. (as had Nasir Bhatti). Mr. Kamboh deposed that he had a conversation with Mr. Mian in January of 2013, at which point Mr. Mian was aware that an organizing campaign was underway in the workplace. Mr. Kamboh deposed that he was told by Mr. Mian that “ ... *you’re part of the union guys, which we don’t like*”. Mr. Kamboh deposed that Mr. Mian threatened to take his taxi plate away at that time but did not do so after cautioning Mr. Kamboh that “*you have a family, you should keep away from the union*”. On or about June 4, 2014, Mr. Kamboh was required to attend to the office of Comfort Cabs, at which time he was informed the franchise owner of his taxi plate (Mr. Frie) had sold that plate to another franchise owner. Mr. Kamboh deposed that he was permitted to continue leasing the plate until July 28, 2013, when he was required to attend to the offices of Comfort Cabs. While at the offices of Comfort Cabs, the computers, the taxi meters, the radio and other equipment were removed from his vehicle. Mr. Kamboh deposed that he has not worked as a driver since that time.

Evidence respecting Qaisir Bhatti:

[23] Until recently, Qaisir Bhatti (Nasir Bhatti’s brother) was also a lease driver with Comfort Cabs. Qaisir Bhatti had previously leased a taxi plate from Phyllis Schlosser Investment Ltd. Qaisir Bhatti deposed in his affidavit that, on or about August 20, 2013, he was approached by the manager of Comfort Cabs and asked if he was a supporter of the Union. Qaisir Bhatti deposed that he told the manager that he had signed a union card. On or about August 27, 2013, Qaisir Bhatti’s car, while being driven by another driver, was called down to the offices of Comfort Cabs and all of the taxi equipment was removed from the vehicle. Qaisir Bhatti deposed that he was informed by Comfort Cabs that his taxi plate was being taken from him so that it could be given to another driver. Qaisir Bhatti received the following letter at that time:

August 27, 2013

...

Dear Mr. Bhatti

Comfort Cabs on behalf of Phyllis Schlosser Investment Ltd has decided to cease the operation of cab number 135 with the city plate # 143 in your custody. This decision was rendered based on the fact that you have been operating this franchise for a number of years now, and the company has decided that the next senior driver in the company should be granted the lease of this taxi franchise for a reasonable period of time to maintain transparency within our company.

Your affiliation with comfort cabs is continued and you can drive any car in the fleet you like. I look forward to maintain our professional relationship in the future. I thank you for your cooperation in this matter.

*Javed M Mian
General Manager,
Comfort Cabs Ltd.*

Evidence respecting Shakeel Arif Muhammad:

[24] Finally, Shakeel Arif Muhammad was also a lease driver with Comfort Cabs until recently. Mr. Muhammad had also previously leased a taxi plate from Phyllis Schlosser Investment Ltd. He deposed that on or about August 27, 2013, he was required to attend to the office of Comfort Cab because of a reported problem with the taxi computer. While at the offices of Comfort Cabs, all of the taxi equipment was removed from the vehicle. Mr. Muhammad deposed that he was informed by Comfort Cabs that his taxi plate was being taken from him so that it could be given to another driver. Mr. Muhammad received essentially the same letter that Quisir Bhatti had received. Mr. Muhammad deposed that it was general knowledge in the workplace that he was a supporter of the Union. He also deposed to his belief that Comfort Cabs knew he was a supporter of the Union because he had been at a meeting with Mr. Mian when the issue of unionization had been discussed. Mr. Muhammad also deposed that, in a conversation with Mr. James Frie, an officer/director of Comfort Cabs, Mr. Muhammad was told by Mr. Frie that he was “working against him”, which Mr. Muhammad took to be a reference to his support for the Union.

Evidence of Mr. Mian:

[25] Mr. Mian deposed that Comfort Cabs is merely a dispatch company and that it owns no taxi plates and does not lease taxi plates on behalf of franchise owners. Mr. Mian deposed that Comfort Cabs was directed by Phyllis Schlosser Investment Ltd. and by J G Taxi Ltd. to inform Shakeel Arif Muhammad and Qaisir Bhatti that the franchise owners were cancelling their plates and giving other drivers the opportunity to lease them. Mr. Mian deposed that Comfort Cabs has no independent authority or ability to take a taxi plate from the person to whom it has been leased. As Mr. Mian put it, Comfort Cabs' role is merely to inform others of the decisions made by franchise owners.

[26] Finally, Mr. Mian deposed that both Shakeel Arif Muhammad and Qaisir Bhatti continued to drive for Comfort Cabs and as long as they remain active (by driving a taxi cab) every ninety (90) days, they would remain eligible to drive with Comfort Cabs. With respect to Mr. Nassir Bhatti, Mr. Mian deposed that he has not been associated with Comfort Cabs as a driver since January 13, 2013. As indicated, Mr. Mian deposed that Mr. Bhatti became inactive on the driver list in Comfort Cabs' computer because he had not driven a taxi associated with Comfort Cabs for a period in excess of ninety (90) days.

Relevant statutory provision:

[27] Relevant provisions of *The Trade Union Act* include the following:

5. *The board may make orders:*
 - (d) *determining whether an unfair labour practice or a violation of this Act is being or has been engaged in;*
 - (e) *requiring any person to do any of the following:*
 - (i) *refrain from violations of this Act or from engaging in any unfair labour practice;*
 - (ii) *subject to section 5.1, to do any thing for the purpose of rectifying a violation of this Act, the regulations or a decision of the board;*
 - (f) *requiring an employer to reinstate any employee discharged under circumstances determined by the board to constitute an unfair labour practice, or otherwise in violation of this Act;*

5.3 *With respect to an application or complaint made pursuant to any provision of this Act or the regulations, the board may, after giving each party to the matter an opportunity to be heard, make an interim order pending the making of a final order or decision.*

...

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:*

...

(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 a 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 reason 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;*

Applicant Union's arguments:

[28] The Union takes the position that Comfort Cabs has effectively terminated four (4) of its taxi drivers because of their involvement in, or support for, an organizing campaign on behalf of the Union in the workplace; namely, Nassir Bhatti, Quisir Bhatti, Ashan Kamboh and Shakeel Arif Muhammad. The specific allegations are that Comfort Cabs:

1. (either independently or in concert with the franchise owners thereof) cancelled the leases of certain taxi plates that permitted these individuals to use their own cars as taxis within the City of Saskatoon and removed from these vehicles the computers, meter, radio systems, exterior roof lights, decals and taxi plate necessary for their operation as a taxi; and
2. blocked or removed the identification of the subject taxi drivers from their internal dispatch system, thus preventing the subject taxi drivers from driving for other taxi drivers (lease operators) working for Comfort Cabs.

[29] The Union argued that its evidence demonstrated that there was an arguable case that the Respondent had committed a number of violations of the *Act*. The Union pointed to the evidence that, in response to its organizing campaign in the workplace, the Respondent, either on its own authority, or in concert with certain franchise owners, revoked that taxi plates that had been given to the four (4) named individuals and stripped their vehicles of their taxi equipment, thus restricting their capacity to make a living as a lease operator or even as a taxi driver. The Union argued that, as a result of these actions, each of these individuals has suffered, and continues to suffer, monetary loss. Furthermore, the Union argued that the effect (if not the goal) of the Respondent's actions was to discourage other taxi drivers working in association with Comfort Cabs from supporting the Union. The Union argues that the urgency of its application arises out the loss of income for the named individuals and the damage that is being done to the Union's reputation during second organizing campaign that the Union asserts is going on in the workplace.

[30] For these reasons, the Union seeks an interim order directing Comfort Cabs to reinstate the taxi plates previously leased to Quisir Bhatti, Ashan Kamboh and Shakeel Arif Muhammad. Simply put, the Union takes the position that, if Comfort Cabs had the capacity to take the taxi plates away from these individuals, they surely have the authority to give them back (temporarily or otherwise). The Union also noted that at least two (2) of the officers/directors of Comfort Cabs were franchise owners. The Union argues that this creates a reasonable inference that Comfort Cabs was a party to the decisions to revoke the subject taxi plates, if not a reasonable inference that Comfort Cabs has the authority to re-instate them.

[31] The Union also seeks an Order that Comfort Cabs be directed to carry out the re-installation, at the Respondent's cost, all of the equipment that was removed by Comfort Cabs. The Union also seeks such other Orders as are necessary so that Quisir Bhatti, Ashan Kamboh and Shakeel Arif Muhammad can resume their lease driver positions with Comfort Cabs. With respect to Nasir Bhatti, the Union seeks an Order directing that he be re-instated in Comfort Cabs' computer system and permitted to drive for other lease operators pending resolution of the Union's applications.

[32] Finally, because the Union asserts that an organizing campaign is underway in the workplace, the Union asks that the Respondent be directed to post these Reasons and any Order issued by this Board in a conspicuous place in the workplace and communicated by

Comfort Cabs to its lease operators and drivers by the Respondents normal means of communication with these individuals.

[33] In support of its application, the Union relies upon the decisions of this Board in *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 5917 v. Investigation Services Ltd.* 2011 CanLII 27648 (SK LRB), LRB File No. 034-11, *United Food and Commercial Workers, Local 1400 v. The Watrous Cooperative Association Limited*, LRB File Nos. 037-11, 038-11, 039-11 & 040-11, *Seiu West v. Revera Retirement Genpar Inc.*, 2011 CanLII 75835 (SK LRB), LRB File Nos. 080-11, 093-11 & 100-11; and *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Sakundiak Equipment*, [2011] 200 C.L.R.B.R. (2d) 179, LRB File No. 120-11.

Employer's arguments:

[34] The Respondent argues that this is not an appropriate case for the exercise of the discretion granted to this Board pursuant to s. 5.3 of *The Trade Union Act*. Firstly, Comfort Cabs disputes that there was any employment relationship between it and Nassir Bhatti, Quisir Bhatti, Ashan Kamboh and Shakeel Arif Muhammad. Comfort Cabs noted that in each case, the subject drivers were lease operators who obtained their taxi plates from someone other than Comfort Cabs. The Respondent takes the position that it was the franchise owners, and not Comfort Cabs, that made the decision to revoke the taxi plates that were being leased to the subject drivers. Comfort Cabs points to the affidavit of Mr. Mian to demonstrate that the impugned conduct (i.e.: the revocation of taxi plates) was an action taken by third parties and not by Comfort Cabs. Simply put, the Respondent argues that it was merely responsible for delivering the message on behalf of franchise owners and that it was not part of the decision to revoke the taxi plates.

[35] For this reason, Comfort Cabs takes the position that it is incapable of reinstating the taxi plates that for the individuals that the subject matter of the Union's applications. The Respondent argues that it is a separate corporation and legal identity from the individuals or corporations that owns the taxi plates that were leased to Quisir Bhatti, Ahsan Kamboh and Shakeel Arif Muhammad. Furthermore, the Respondent asserts that these plates have already been leased to other individuals. As such, Comfort Cabs argued that it would not be possible for Comfort Cabs to comply with an Order of this Board directing that it reinstate these taxi plates as

it does not own these plates and does not have the kind of authority over them that would be necessary to revoke them from the individuals who currently hold them and then re-issue them to the subject drivers.

[36] In addition, Comfort Cabs relied on the decision of this Board in *National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) v. United Cabs Limited*, [2001] Sask. L.R.B.R. 863, LRB File No. 194-01 that the mere change of status from a lease operator to a taxi driver does not establish irreparable harm or sufficient labour relation harm to justify intervention by the Board on an interim basis. The Respondent argued that, as Qaiser Bhatti, Ahsan Kamboh and Shakeel Arif Muhammad continue to be eligible to drive for Comfort Cabs, there is no necessity for the Board to intervene between now and the hearing of the Union's allegations. With respect to Nassir Bhattie, the Respondent notes that he has not driven for Comfort Cabs since January of 2013. As a consequence, Comfort Cabs argues that there is no exigency associated with his circumstances.

[37] Comfort Cabs asks this Board to note that there was very little evidence of an active organizing campaign in the workplace or no evidence of any union activity in the workplace since the Union withdrew its certification application in July of 2013. Comfort Cabs relies on the decision of this Board in *Watrous Cooperative Association Limited*, supra, as standing for the proposition that, to sustain its application for interim relief, the Union must demonstrate that an active membership drive was in progress in the workplace. In the absence of such evidence, Comfort Cabs argues that the Union has failed to demonstrate that the Union would suffer labour relations harm between now and when its applications will be heard and determined by this Board.

[38] For the foregoing reasons, Comfort Cabs asks that the Union's application for interim relief be dismissed. Counsel on behalf of Comfort Cabs filed a detailed written brief of law, which we have read and for which we are thankful.

Analysis:

[39] Section 5.3 was added to *The Trade Union Act* as part of the 1994 amendments to the Act.⁵ This provision clarified that this Board has the authority to grant interim remedial relief prior to a full hearing of a pending case. The legislative purpose and the policy restrictions

associated with the application of s. 5.3 have been outlined in several decisions of this Board, including *United Food and Commercial Workers, Local 1400 v. Tropical Inn*, [1998] Sask. L.R.B.R. 218, LRB File Nos. 374-97, 375-97 & 376-97; and *Canadian Union of Public Employees v. Del Enterprises (St. Anne's Christian Centre)*, [2004] Sask. L.R.B.R. 391, 2004 CanLII 65596 (SK LRB), LRB File Nos. 087-04 to 092-04. A more recent articulation may be found in this Board's decision in *Saskatchewan Government and General Employees' Union v. The Government of Saskatchewan*, 2010 CanLII (SK LRB) 81339, LRB File No. 150-10, wherein the Board made the following observations with respect to the application of s. 5.3 of the Act:

[30] *Interim applications are utilized in exigent circumstances where intervention by the Board is thought to be necessary to prevent harm from occurring before an application pending before the Board can be heard. Because of time constraints, interim applications are typically determined on the basis of evidence filed by way of certified declarations and sworn affidavits without the benefit of oral evidence or cross-examination. As such, the Board is not in a position to make determinations based on disputed facts; nor is the Board able to assess the credibility of witnesses or weigh conflicting evidence. Because of these and other limitations inherent in the kind of expedited procedures used to consider interim applications, the Board utilizes a two-part test to guide in its analysis: (1) whether the main application raises an arguable case of a potential violation under the Act; and (2) whether the balance of convenience favours the granting of interim injunctive relief pending a hearing on the merits of the main application. See: Hotel Employees and Restaurant Employees Union, Local 206 v. Canadian Hotels Income Property Real Estate Investment Trust #19 Operations Ltd. (o/a Regina Inn), [1999] Sask. L.R.B.R. 190, LRB File No. 131-99. See also: Canadian Union of Public Employees, Local 4973 v. Welfare Rights Centre, 2010 CanLII 42668, LRB File No. 083-10. As with any discretionary authority under the Act, the exercise of the Board's authority to grant interim or injunctive relief must be based on a sound labour relations footing in light of both the broad objectives of the Act and the specific objectives of the section allegedly offended.*

[31] *In the first part of the test, the Board is called upon to give consideration to the merits of the main application but, because of the nature of an interim application, we do not place too fine a distinction on the relative strength or weakness of the applicant's case. Rather, the Board seeks only to assure itself that the main application raises, at least, an "arguable case". See: Re: Regina Inn, supra. See also: Canadian Union of Public Employees, Local 4973 v. Welfare Rights Centre, 2010 CanLII 42668, LRB File No. 083-10. The Board has also used terms like whether or not the applicant is able to demonstrate that a "fair and reasonable" question exists (which should be determined after a full hearing on the merits) to describe this portion of the two-part test. See: Re: Macdonalds Consolidated, supra. Simply put, an applicant seeking interim relief need not demonstrate a probable violation or contravention of the Act as long as the main application reasonably demonstrates more than a remote or tenuous possibility.*

[32] *The second part of the test – balance of convenience - is an adaptation of the civil irreparable harm criteria to the labour relations arena. See: Hotel Employees and Restaurant Employees Union, Local 206 v. Chelton Suite Hotel (1998) Ltd., [2000] Sask. L.R.B.R. 434, LRB File Nos. 091-00, 110-00, 125-00, 139-00, 144-00 & 145-00. In determining whether or not the Board ought to grant interim relief prior to a full hearing on the merits of an application, we are called upon to consider various factors, including whether or not a sufficient sense of urgency exists to justify the desired remedy. See: Grain Services Union, Local 1450 v. Bear Hills Pork Producers Ltd. Partnership, [2000] Sask. L.R.B.R. 223, LRB File No. 079-00. The Board will also balance the relative labour relations harm that is anticipated to occur prior to the hearing of the main application without intervention by the Board compared to the harm that could result should a remedy be granted. See: Saskatchewan Joint Board, Retail Wholesale and Department Store Union v. Regina Exhibition Association Limited, et. al., [1997] Sask. L.R.B.R. 667, LRB File No. 266-97; United Brotherhood of Carpenters and Joiners of America, Local 1985 v. Con-Force Structures Limited, [1999] Sask. L.R.B.R. 599, LRB File No. 248-99; and International Association of Fire Fighters, Local 1318 v. South Saskatchewan 911, [2001] Sask. L.R.B.R. 97, LRB File No. 037-01. In assessing the relative labour relations harm, the Board is particularly sensitive to the potential for irreparable or non-compensable harm. See: Retail, Wholesale and Department Store Union, Local 455 v. Tai Wan Pork Inc., [2000] Sask. L.R.B.R. 219, LRB File No. 076-00.*

[33] *In addition, the Board had enunciated certain policy restrictions on when interim relief should be granted (or rather should not be granted). For example, the Board has stated that the relief sought may not be granted were doing so would have the practical effect of granting what the applicant might hope to obtain on the main application. See: Tai Wan Pork Inc., *supra*.*

[34] *While the Board uses a two-part test to aid in its consideration (and for ease of reference), each application for interim relief involves a matrix of considerations involving the factual circumstances of the application, the general goals of the Act, the policy objectives of the particular provision alleged to have been violated, and the nature of the relief being sought.*

[40] As noted by this Board in the *Government of Saskatchewan* case, *supra*, in considering an application for interim relief, it is often helpful for the Board to begin its analysis by considering the legislative objective of the provision that is alleged to have been violated; in this case, s. 11(1)(e). Simply put, this provision prevents employers from using coercion or intimidation and 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*. Although the legislative objective of the provision is straight forward, determining whether or not a violation of s. 11(1)(e) has taken place can be a difficult task. This Board's approach to such determinations was summarized by this Board in *Saskatchewan Government Employees' Union v. Regina Native Youth and Community Services Inc.* [1995] 1st Quarter Sask. Labour Rep. 118, LRB File Nos. 144-94, 159-94 & 160-94 as follows at page 123:

It is clear from the terms of s. 11(1)(e) of The Trade Union 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 nature. 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.

[41] The affidavit evidence of Nasir Bhatti, Quisir Bhatti, Ahsan Kamboh and Shakeel Arif Muhammad established an arguable case that Comfort Cabs was aware that these individuals supported the Union and were involved in the recent organizing campaign in the workplace. There is evidence before this Board to support the assertion that, at least, some of the principals of Comfort Cabs, including Mr. Frie and Mr. Mian, were displeased that these individuals desired to have a trade union present in the workplace. This evidence also supports the assertion that the actions of J G Taxis Ltd. in revoking the taxi plates of Nasir Bhatti and/or Ahsan Kamboh was motivated by an anti-union animus in the form of either a desire to punish these individuals for supporting the Union in the recent organizing drive and/or an effort to discourage support for the Union in the future. On the other hand, the evidence regarding the actions of Phyllis Schlosser Investment Ltd. in revoking the taxi plates leased to Qaiser Bhatti and Shakeel Arif Muhammad is less clear. The strength of the Union's arguments rests in the timing of the franchise owner's decision; not in direct evidence of anti-union animus on the part of Phyllis Schlosser Investment Ltd. Certainly, a major change in a long-standing working relationship involving known supporters of the Union so soon after the Union's failed organizing campaign creates a non-trivial inference of retaliation. Few signals are more intimidating for employees or can send or 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. As a consequence, labour boards must be alert for subtle signs of undue influence on the part of an employer when dealing with a potential violation of s. 11(1)(e). Whether or not a violation of *The Trade Union Act* has occurred can only be determined following a full hearing. However, having considered the whole of the evidence, we are satisfied that the Union has demonstrated an arguable case of a potential violation of s. 11(1)(e) of the *Act*.

[42] Comfort Cabs argued that it is not reasonable for this Board to assume that there was an employment relationship between Comfort Cabs and Nasir Bhatti, Quisir Bhatti, Ahsan Kamboh and Shakeel Arif Muhammad, because these individuals were lease operators and not

employees in the ordinary meaning of that term. The argument of the Respondent goes that, if there was no employment relationship with Comfort Cabs, there can be no violation of the *Act*. With all due respect, we were not persuaded by this argument. This Board has recognized that lease operators can be employees within the meaning of the *Act*, as can single franchise owners and regular taxi drivers. See: *National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) v. United Cabs Limited*, [2002] 73 C.L.R.B.R. 48, [2001] Sask. L.R.B.R. 108, LRB File No. 236-00. In this decision, the Board also recognized that the taxi company was the true employer of these individuals; not the franchise owners from whom the taxi drivers had leased their respective taxi plates. For these reasons, we are satisfied that the Union has raised an arguable case that Nasir Bhatti, Quisir Bhatti, Ahsan Kamboh and Shakeel Arif Muhammad were “employees” and that Comfort Cabs was an “employer” within the meaning of the *Act* during the relevant period of time.

[43] Comfort Cabs argued that, even if it is an employer within the meaning of the *Act*, the decision made to cancel the lease arrangements and revoke the taxi plates from Nasir Bhatti, Quisir Bhatti, Ahsan Kamboh and Shakeel Arif Muhammad were the actions of third parties and not Comfort Cabs. The Respondent argues that it was merely acting upon the decisions of others; but that it was not the decision maker. While there is merit to this argument, in our opinion, the Union has demonstrated an arguable case that Comfort Cabs was, at least, a party to the decisions made to terminate the lease arrangements and to cancel the taxi plates. In this regard, we note that Mr. Jim Frie was the owner of JG Taxi Ltd., when the decision was made by that franchise owner to cancel the taxi plate previously leased to Ashan Kamboh. Mr. Frie was also an officer/director of Comfort Cabs. Furthermore, the timing of the impugned actions so soon after the Union’s failed organizing campaign is undoubtedly suspicious. While the nature of the interrelationships between the relevant franchise owners and Comfort Cabs was not well developed in the affidavit evidence, it was sufficient to establish an arguable case that Comfort Cabs was a party to a potential violation of the *Act*.

[44] Finally, Comfort Cabs argued that it has no authority to issue new taxi plates to Quisir Bhatti, Ahsan Kamboh or Shakeel Arif Muhammad or to reinstate the plates they previously leased. Mr. Mian deposes that Comfort Cabs does not own any taxi plates and that it does not have authority to cancel a taxi plate that has been leased to someone else and then re-lease that taxi plate to the individuals that the are subject matter of the Union’s applications. Simply put, the Respondent argued that the franchise owners are independent third parties with

separate legal identities over which Comfort Cabs exercise no direct control. In our opinion, there is merit to this argument or, at least, there is a problem with the Union's evidence in support of its application. We saw insufficient evidence to establish that the franchise owners who are associated with Comfort Cabs had delegated to it the kind of authority necessary to cancel and/or lease available taxi plates on behalf of franchise owners. In our opinion, it would not be an appropriate exercise of this Board's discretion to issue a remedial Order directing a party to take an action in circumstances where we had a reasonable doubt as to whether or not that party has sufficient authority to comply with our Order. As was noted by this Board in *United Food and Commercial Workers Union, Local 1400 v. Arch Transco Ltd. and Buffalo Cabs (1976) Ltd. (Regina Cabs)*, [2004] Sask. L.R.B.R. 347, 2004 CanLII 65604 (SK LRB), LRB File Nos. 241-04, 242-04 & 243-04, a practical consideration for the Board is the capacity of a taxi company (in this case, Comfort Cabs) to lease something that it does not own. We also note that the Union did not name any of the relevant franchise owners in its application; further limiting the scope of our remedial relief.

[45] On the other hand, we are satisfied that the Union has demonstrated an arguable case of a potential violation of the *Act* and that some remedial relief is necessary and appropriate pending a full hearing of the Union's allegations; although not the full scope of relief desired by the Union. Furthermore, we are satisfied that there is precedent for the granting of interim remedial relief in circumstances similar to this. See: *United Food and Commercial Workers Union, Local 1400 v. D & G Taxi Ltd. (Capital Cabs 2000)*, [2004] Sask. L.R.B.R. 427, 2004 CanLII65605 (Sk LRB), LRB File Nos. 244-04, 245-04 & 246-04.

[46] In our opinion, interim remedial relief should be granted with respect to Quisir Bhatti, Ahsan Kamboh and Shakeel Arif Muhammad; but not Nassir Bhatti.

[47] Interim applications are reserved for exigent circumstances where action is required by the Board for sound labour relations reasons in circumstances where serious or irreparable harm will occur if action is not taken prior to a full hearing of a pending application. Exigency is a necessary component of an interim application. However, in this case, the not-insignificant delay in bringing an application on behalf of Nassir Bhatti undermines the argument that his situation is urgent. Simply put, we are not satisfied that the circumstances associated with Nasir Bhatti's relationship with Comfort Cabs is sufficiently urgent that action must be taken by the Board prior to a full hearing of the Union's allegations. Furthermore, there was little

evidence to establish that he has a current relationship with Comfort Cabs that required preservation pending our hearing of the Union's allegations. As for the Union's reputation and the alleged impact on any current organizing drivers, with all due respect to the legitimate concerns of the Union, any injury to the Union's reputations would have occurred in January of 2013, when Nasir Bhatti's taxi plate was revoked.

[48] Having considered the evidence and the argument of the parties, we have determined that an Order shall issue for the immediate reinstatement of the privileges enjoyed by Quisir Bhatti, Ahsan Kamboh and Shakeel Arif Muhammad (if such privileges have been lost) to permit them to drive a taxi cab in affiliation with Comfort Cabs and to maintain said privileges on terms typical for the industry pending a hearing and determination of the Union's allegations; provided said individuals otherwise continue to qualify as taxi drivers under the City of Saskatoon's bylaw respecting same.

[49] While we were not satisfied that Comfort Cabs owns taxi plates to lease to the subject individuals or has the requisite authority to cause associated franchise owners to lease their plates to these individuals, there was evidence that Comfort Cabs acted as a broker for franchise owners and managed their taxi plates while in the hands of lessees. As a consequence, we have determined that the said Order shall also direct that Ahsan Kamboh, Quisir Bhatti and Shakeel Arif Muhammad shall have the right of first refusal for the first three (3) taxi plates that become available for lease through Comfort Cabs pending a hearing and determination of the Union's allegations. In the event that one (1) or more taxi plates become available during this period, Ahsan Kamboh, Quisir Bhatti and Shakeel Arif Muhammad, in that order, shall be notified by Comfort Cabs and granted the opportunity to lease same on terms and conditions typical for the industry. In the event that lease arrangements are agreed to, Comfort Cabs shall bear the cost of re-installing the requisite computers, taxi meters, radios, lights and other equipment in the affected vehicle.

[50] There shall be no Order with respect to monetary loss as there was insufficient evidence to determine same. To say the least, the taxi industry is an uncomfortable fit within the normal model of industrial relations and calculating income for lease operators is not as simple as examining payroll records for other employees. In light of this reality, a determination as to compensable monetary loss, if any, is not something that ought to be done without a full hearing.

[51] Finally, Comfort Cabs shall immediately post a copy of these Reasons for Decision and the Board's Order in a conspicuous location at its place of business where such may be read by other leased operators, by single car franchise owners and by taxi drivers for a period of twenty-one (21) days.

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

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson