

June 24, 2014

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**Attention: Mr. Michael Phillips**

**Attention: Ms. Crystal Norbeck**

Dear Madam and Sir:

**RE: LRB File No. 112 – 14**

**Background**

The Saskatchewan Government and General Employees' Union ("SGEU") applied for bargaining rights with respect to a group of ambulance workers working for Canora Ambulance Care (1996) Ltd. (the "Employer") in Canora, Saskatchewan. In its Decision dated June 2, 2014, the Board found the group of employees which SGEU wished to represent to be an appropriate unit of employees for the purposes of collective bargaining. The votes of employees in the appropriate unit were tabulated by the Board. That vote supported the granting of bargaining rights to SGEU. An Order of the Board certifying SGEU as the representative of the employees was granted by the Board on June 11, 2014.

Prior to, and following the issuance of our decision on June 2, 2014, events occurred in the workplace that lead to the termination of one (1) employee on May 23, 2014. This termination was in addition to a termination of another employee who had been terminated during the organizing drive by SGEU. SGEU filed unfair labour practice applications in respect to both of these terminations.

The Employer also made unilateral changes to the work schedules in Canora in April of 2014 that had the result of reducing work in Canora from two (2) shifts to one (1), while no reduction of work occurred in the Employer's other un-ionized location in Preeceville, Saskatchewan.

There were also allegations brought forward that other employees, who previously had unblemished records, were faced with discipline during the period

following the application for certification. Two (2) employees who were the subject of such discipline resigned their employment.

As a result of these activities, the Union filed an application with the Board for interim relief seeking

1. An Interim Order directing the Employer to maintain the *status quo* in respect of scheduling employees as it existed on February 18, 2014, the date the certification application was filed. In particular, the Employer shall immediately assign all vacant or extra shifts to employees based upon the start dates of their employment with Canora Ambulance.
2. An Interim Order directing the Employer to immediately cease and refrain from asking any employee if he or she has supported or supports the union and immediately cease discriminating against any employee in any manner whatsoever because of his or her support of the union.
3. An Interim Order directing the Employer to retract [*sic*] in writing all previous statements made concerning the payment of union dues only by employees who originally supported the union. This written statement shall first be approved by SGEU and then posted on the staff board in the Canora workplace.
4. An Interim Order directing that within twenty-four (24) hours, the Employer, Canora Ambulance Care Ltd., post at least one (1) copy of the Board's Order on the staff board in the Canora workplace.
5. An Interim Order that points 1-4 shall remain in effect until such time as the Board disposes of the application filed pursuant to Sections 6-62(1), 6-103 & 6-104 of *The Saskatchewan Employment Act* (the "Act") in relation to the Unfair Labour Practice.

**Facts:**

The Board received Affidavits from Mr. Wally Huebert, the owner of the Employer; from Matthew Tourand and Josh Humeniuk, both employees employed at Canora, Saskatchewan; and Don Regel, an employee of SGEU.

The Affidavits of Mr. Tourand and Mr. Humeniuk both provide details regarding the changes in shifts that occurred in April of 2014. Mr. Tourand also provided

evidence of being told by another employee that he would be “the only employee paying union dues”. In his Affidavit, he indicated that this information was given to the employee by Mr. Huebert.

Mr. Tourand also says in his Affidavit that he had been the subject of disciplinary reprimands since the union organizing drive in February of 2014.

Mr. Humeniuk says in his Affidavit that he was approached by an out-of-scope manager who tried to obtain information from him as to which employees in Canora had signed union cards. He was also asked by her if he had signed a union card.

Mr. Humeniuk also stated that he was a nine (9) year employee in Canora “and had a clean record but have been formally written up twice since the union organizing campaign drive and have received an informal unwritten warning”.

Both employees indicated that they feared further retaliation from the Employer and feared that they would be terminated.

Mr. Regal’s Affidavit, while confirming most of the facts set out in the Affidavit of Mr. Tourand and Mr. Humeniuk, was not based on his personal knowledge as required by Section 15(2) of the *Saskatchewan Employment Act* (Labour Relations Board) Regulations.<sup>1</sup> Apart from those matters, which are within Mr. Regal’s personal knowledge, we have disregarded the other portions of his Affidavit.

Mr. Huebert, in his Affidavit, says that the lay-off (as distinct from the termination of) one employee resulted from the change to have one (1) ambulance operate from Canora and two (2) ambulances operate from Preeceville. He also says that the changes in shifts were the result of changes imposed by “the terms of the agreement with Sunrise Health Region...”. However, he failed to append that agreement to his Affidavit in support.

Mr. Huebert also denies that he spoke to any employees about union dues and their operation. He does, however, acknowledge that the out-of-scope manager did speak to Mr. Humeniuk as alleged.

Mr. Huebert also stated in his Affidavit that two (2) employees resigned after discipline was imposed upon them.

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<sup>1</sup> R.R.S. c. S-15-1 Reg 1

**Test for Interim Relief:**

The parties were in agreement that the test established by the Board on applications for interim relief is as set out in *United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Works International Union v. Comfort Cabs Ltd.*<sup>2</sup>:

1. whether the main application raises an arguable case of a potential violation of 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.

**Decision and Reasons**

For the reasons that follow, we are of the opinion that the test for interim relief has been met in this case and we will issue an Order for relief in the following terms:

1. The Employer shall make no further changes to work schedules of employees working in Canora until a decision has been provided to the parties in respect to the alleged unfair labour practice applications currently before the Board in LRB File Nos. 027-14, 028-14, 029-14, 110-14 & 111-14 or until such changes are bargained collectively with SGEU;
2. All extra, additional, substitute or other non-regularly scheduled shifts that are posted or available in Canora, Saskatchewan shall be first offered to employees employed in Canora, Saskatchewan before such shifts are offered to employees employed elsewhere by the Employer until a decision has been provided to the parties in respect to the alleged unfair labour practice applications currently before the Board in LRB File Nos. 027-14, 028-14, 029-14, 110-14 & 111-14 or until such changes are bargained collectively with SGEU;
3. That the Employer or any agent of the Employer shall forthwith cease and desist from questioning or interrogating employees regarding their support or non-support of the union;
4. That the Employer or any agent of the Employer shall forthwith cease and desist from providing any information to any employee concerning the

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<sup>2</sup> [2013] CanLII 62414 at para. 39

methodology of calculation, implementation, quantum of union dues or the requirement of any employee to pay such dues;

5. That the Employer forthwith provide to SGEU, a copy of the current ambulance services contract between the Employer and Sunrise Health District;
6. That a copy of this interim Order shall be posted and remain posted in the staff room in both Canora and Preeceville until a decision has been provided to the parties in respect to the alleged unfair labour practice applications currently before the Board in LRB File Nos. 027-14, 028-14, 029-14, 110-14 & 111-14 or until its removal is bargained collectively with SGEU.

The application here raises significant issues of anti-union animus and employer interference in the right of employees “to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing.”<sup>3</sup> This is the fundamental right established by the *Act* for the protection of employees seeking to exercise their constitutional right to form, join or assist a trade union.

Furthermore, Section 6-5 and 6-6 of the *Act* reinforce this declaration of employee’s rights by prohibiting certain conduct against employees engaged in the exercise of this right. In particular, section 6-5 prohibits coercion and intimidation of any kind against employees “that could reasonably have the effect of compelling a person to become of to refrain from becoming or continue to be or to cease to be a member of a union”.

Section 6-6 prohibits certain actions against employees. That provision provides:

*6-6 (1) No person shall do any of the things mentioned in subsection (2) against another person:*

*(a) because of a belief that the other person may testify in a proceeding pursuant to this Part;*

*(b) because the person has made or is about to make a disclosure that may be required of the person in a proceeding pursuant to this Part;*

*(c) because the person has made an application, filed a complaint or otherwise exercised a right conferred pursuant to this Part; or*

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<sup>3</sup> *The Saskatchewan Employment Act* S.S. 2013 c. S-15.1 s. 6-4

*(d) because the person has participated or is about to participate in a proceeding pursuant to this Part.*

*(2) In the circumstances mentioned in subsection (1), no person shall do any of the following:*

*(a) refuse to employ or refuse to continue to employ a person;*

*(b) threaten termination of employment or otherwise threaten a person;*

*(c) discriminate against or threaten to discriminate against a person with respect to employment or a term or condition of employment or membership in a union;*

*(d) intimidate or coerce or impose a pecuniary or other penalty on a person.*

The main applications and the Affidavits filed on this application for interim relief certainly raise an arguable case of a potential violation of the *Act*.

Each side argued that the balance of convenience test favoured their respective clients. On balance, however, the potential interference with the employees rights to form, join or assist a trade union must trump any potential inconvenience or temporary disruption which may be caused by the issuance of an interim order in this matter.

SGEU argued that there was anti-union animus in the actions of the Employer which had a chilling effect on employees particularly those in Canora. The impact of that anti-union animus was, they submitted shown by the changing of ambulance schedules to favour the non-unionized employees in Preeceville over those in Canora, and by the change in allocation of available shifts in Canora from previous practice.

The arguments of the Employer, that all of these changes were necessitated by changes to the ambulance service contract with Sunrise Health District, stretches credulity. That is supported by the failure to file, with the Affidavit of Wally Huebert, a copy of that contract to support these allegations.

The Employer relied upon this Board's decision in *Re: Canadian Deafblind and Rubella Assn.*<sup>4</sup> That case dealt with what is commonly called the *statutory freeze* on working conditions imposed by (at that time) s. 11(1)(m) of *The Trade Union Act* and which is now contained in section 6-61(1)(n) of the *Act*.

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<sup>4</sup> [1999] S.L.R.B.D. No. 14, LRB File No. 095-98

With respect, we do not think that this case supports the Employer's argument that it can make any unilateral change to conditions of employment using an argument of "business as before". While the provision has been held not to protect employees from all change whatsoever, it would, in our opinion, clearly protect against the fundamental changes made here, particularly given the provisions of Sections 6-4, 6-5 and 6-6, where such changes could be viewed, as alleged by SGEU, that those changes are an attempt to coerce or intimidate employees in the exercise of their rights under the *Act*.

Accordingly, we accept that SGEU has made out a sufficient case for interim relief. Should the parties wish to have the hearing of this matter heard expeditiously, they should contact the registrar for available dates.

This panel will not remain seized of the matters raised in LRB File Nos. 027-14, 028-14, 029-14, 110-14 & 111-14.

This is a unanimous decision of the Board.

Yours truly,

Kenneth G. Love, Q.C.  
Chairperson