



UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKS INTERNATIONAL UNION (UNITED STEELWORKERS), Applicant v. COMFORT CABS LTD., JG TAXIS LTD., PHYLLIS SCHLOSSER INVESTMENT LTD., KHODR BARDOUH, JAMES FRIE and PHYLLIS SCHLOSSER, Respondents

LRB File Nos. 240-13 to 248-13 & 328-13; April 22, 2014

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

For the Applicant Union:	Mr. Peter J. Barnacle.
For Comfort Cabs Ltd:	Mr. Javed Muhammad Mian.
For JG Taxis Ltd., Phyllis Schlosser Investment Ltd., Khodr Bardouh, James Frie and Phyllis Schlosser:	No one appearing.

Unfair Labour Practices – Dismissal for Union Activity – Taxi drivers were exploring the potential of forming an association or joining a trade union at the time when taxi plates that had been leased by certain taxi drivers were unilaterally cancelled and driving privileges were suspended for some of them – Board satisfied that taxi company and franchise owners were aware of organizing efforts of its drivers - Board concludes that respondents were not pleased that its taxi drivers wanted trade union in the workplace - Board concludes that decisions to cancel taxi plate leases were motivated, in part, by desire to punish organizers and/or discourage support of the trade union – Board finds that respondents violated s. 11(1)(a) and (e) of *Trade Union Act* – Board orders reinstatement of driving privileges to taxi drivers but declines to order reinstatement of terminated taxi plate leases - Board notes that taxi industry is uncomfortable fit within labour relations scheme of *Trade Union Act* – Board concludes that leasing a taxi plate is an entrepreneurial activity not necessarily falling within scope of employment relationship - Board orders payment of compensation to taxi drivers – Board appoints agent to assist party in determining appropriate quantum of monetary loss within parameters established by Board.

***The Trade Union Act*, s. 11(1)(a) and (e).**

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson:** On September 10, 2013, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International Union (United Steelworkers) (the “Union”) filed a series of applications with the Saskatchewan Labour Relations Board (the “Board”) alleging that Comfort Cabs Ltd. (“Comfort Cabs”) committed various violations of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the “Act”) with respect to certain individuals who previously drove taxis for them. The common theme of these allegations was that Comfort Cabs had effectively terminated the employment of several taxi drivers because of their involvement in, or support for, an organizing campaign in the workplace. The allegations are contained in ten (10) applications that have been filed with the Board, these included an application¹ alleging the commission of unfair labour practices by the Respondent, Comfort Cabs; four (4) applications² seeking reinstatement of certain named taxi drivers; four (4) concomitant applications³ seeking compensation for monetary loss for these same individuals; and another application⁴ alleging the commission of further unfair labour practices in the intervening period.

[2] Prior to a hearing of its allegations, the Union sought and obtained interim relief from this Board pursuant to s. 5.3 of the *Act*. In its interim application⁵, the Union sought an order directing Comfort Cabs to reinstate the driving privileges and taxi leases of the subject taxi drivers and to maintain those privileges and leases pending a determination on its applications. In Reasons for Decision dated September 30, 2013⁶, the Board concluded that the Union’s material raised an arguable case that a violation of *The Trade Union Act* has occurred and that the balance of labour relations harm favoured temporarily reinstating the driving privileges enjoyed by three (3) of the taxi drivers. However, in our interim determination, we were not satisfied that we had authority to direct the reinstatement of the subject taxi leases because those leases were owned by parties not named as respondents to the Union’s application. On or about October 16, 2013, the Union made an application to this Board to amend all of its pending applications to include five (5) additional respondents, being JG Taxis Ltd., Phyllis Schlosser

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.

⁴ See: LRB File No. 328-13.

⁵ See: LRB File No. 249-13.

⁶ See: *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International Union (United Steelworkers), Applicant v. Comfort Cabs Ltd.*, (2013) 235 C.L.R.B.R. (2nd) 128, 2013 CanLII 62414 (SK LRB), LRB File No. 249-13.

Investment Ltd., Khodr Bardouh, James Frie, and Phyllis Schlosser (hereinafter referred to as the “franchise owners”).

[3] The Union’s applications were heard concurrently in Saskatoon on March 4, 5 and 6, 2014. At the commencement of the hearing, the Union sought to add Mr. Imran Asif to its list of individuals whose driving privileges and lease rights had been unlawfully terminated by the respondents. Comfort Cabs did not object to this addition and leave was granted by the Board for the Union to amend its applications. As a consequence of the amendment, the Union seeks Orders from this Board directing reinstatement and compensation for monetary loss for five (5) individuals, namely, Nasir Bhatti, Qaisir Bhatti, Ashan Kamboh, Shakeel Arif Muhammad and Mr. Imran Asif.

[4] In support of their applications, the Union called Mr. Ronald St. Pierre, a long time member of the Union. The Union also called Mr. Nasir Bhatti, Mr. Haroon Intisham, Mr. Qaisir Bhatti, Mr. Shakeel Arif Muhammad and Mr. Ahsan Kamboh. Mr. Javed Mohammad Mian testified on behalf of Comfort Cabs. Comfort Cabs also called Mr. Shakil Khan and Mr. Humayun Malik. Although the franchise owners were served with the Union’s applications and materials, they elected not to participate in the proceedings before the Board. They neither appeared nor filed materials in response to the Union’s applications.

[5] In our opinion, the Union’s applications are well founded. We find that the taxi drivers of Comfort Cabs were exploring the potential of forming an association or joining a trade union in the fall of 2012 and winter of 2013. In our opinion, the decisions by Comfort Cabs and the franchise owners to terminate the driving privileges and taxi plate leases enjoyed by Nasir Bhatti, Qaisir Bhatti, Ashan Kamboh, and Shakeel Arif Muhammad (the “subject drivers”)⁷ were tainted by a desire on the part of Comfort Cabs and the franchise owners to discourage membership in or activities in support of forming a trade union. We therefore find that Comfort Cabs and the franchise owners have violated s. 11(1)(a) and (e) of *The Trade Union Act*.

[6] In our opinion, the driving privileges previously enjoyed by the subject drivers should be immediately reinstated and they are entitled to monetary compensation for the loss of the taxi plates that had been previously leased to them. On the other hand, we are not satisfied

⁷ In our opinion, we did not have sufficient evidence to make a determination as to whether or not the changes in Mr. Imran Asif’s driving privileges and/or his taxi plate lease were also tainted by an anti-union animus.

that it would be appropriate to order reinstatement of the taxi plates previously leased by the subject drivers. In our opinion, monetary compensation is a more appropriate remedy in the circumstances. To which end, we appoint an agent of the Board to work with the parties and/or assist the Board in determining the appropriate quantum of compensation in light of our determination that the leases and privileges previously enjoyed by the subject drivers were unlawfully terminated.

[7] These are our reasons for our determinations in these matters.

Facts:

[8] Some relevant background information, together with a description of the taxi industry in general, was set forth by the Board in its interim decision:

[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 driver 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 franchisee 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.

[9] Having now heard the evidence of the parties, we are satisfied that the above background information is accurate and we adopt the above as findings of fact in these proceedings.

[10] Comfort Cabs was formed in 2009 by Mr. Ken Yuzik, Mr. James Frie, Mr. Khodr Bardouh, and Mr. Marwan Mardouh. At that time, the founders of Comfort Cabs were all franchise owners of multiple taxi plates in the City of Saskatoon. Comfort Cabs was formed because these franchise owners were generally dissatisfied with the operation of the taxi company (or “taxi broker” as it is known in the industry) with whom they had been previously associated. At that time, these individuals owned approximately fifty-two (52) taxi plates. When these franchise owners decided to form Comfort Cabs, all of the lease operators who leased taxi plates from them were given the option of moving to the new taxi company and driving under the banner of “Comfort Cabs”. Some, such as Mr. Qaisir Bhatti, did move to Comfort Cabs; but others did not. Thus, the franchise owners that formed Comfort Cabs needed more lease operators (i.e.: taxi drivers who were willing to lease a taxi plate not just drive a taxi), as well as more taxi drivers. In addition, Comfort Cabs wanted to encourage other franchise owners to join their new taxi company and the founding franchise owners adopted a policy of leasing some of their taxi plates to new franchise owners as an incentive for them to move over to Comfort Cabs. While doing so was successful in encouraging some other franchise owners to join Comfort Cabs, the founding franchise owners still needed lease operators for many of their taxi plates. In addition, Comfort Cabs also needed to recruit new taxi drivers to support their new operations.

[11] As a consequence, the founders of Comfort Cabs held a meeting in July of 2009 to recruit both taxi drivers and individuals interested in leasing taxi plates (i.e.: lease operators). The meeting was attended by approximately 150 people, including Mr. Nasir Bhatti, Mr. Qaisir Bhatti and Mr. Muhammad Shakeel Arif. 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*

[12] At the time Comfort Cabs was formed, Mr. Ken Yusik was both a shareholder in, and the general manager of, Comfort Cabs. However, Mr. Yusik is no longer a shareholder, director or officer with Comfort Cabs. His shares were acquired by Mr. James Fries and he was replaced as general manager by Mr. Javed Mian in April of 2012.

[13] The subject drivers were either lease operators with the founding franchise owners when Comfort Cabs was formed or they entered into lease arrangements thereafter. Each of these individuals bought or acquired vehicles that met Comfort Cabs' specifications and agreed to operate their vehicles under Comfort Cabs banner. In doing so, the subject drivers agreed to comply with rules and regulations established by Comfort Cabs for the operation of their vehicles.

[14] The lease operators who moved over to Comfort Cabs, such as Mr. Qaiser Bhatti, already had vehicles with radios, dispatch computers, taxi meters and other equipment installed therein. However, their vehicles had to be repainted, the frequency of their radios had to be adjusted, and new signage had to be installed on their vehicles. Those individuals who leased taxi plates after Comfort Cabs was formed, such as Mr. Nasir Bhatti, Mr. Shakeel Arif Muhammad, and Mr. Ahsan Kamboh, paid the cost of having the radios, dispatch computers, taxi meters, and other equipment installed in their respective vehicles. While the ownership of this type of equipment rests with the franchise owners (not the lease operator), the cost to install this equipment was born by the lease operators.

[15] As indicated, the lease operators and taxi drivers who drive taxis under the Comfort Cabs banner agreed to comply with rules and regulations established by Comfort Cabs. The rules regulated the conduct of any taxi drivers, including guidelines related to clothing and driving habits. If a lease operator or driver violated a rule or regulation established by Comfort Cabs, their driving privileges could be suspended. By way of background, when a taxi driver's privileges are suspended, an entry is made into Comfort Cabs' dispatch computer that restricts the privileges enjoyed by that driver. When that driver attempts to log in, they are prevented from doing so and, thus, they are unable to accept fares or be dispatched on fares. A suspended driver is required to attend to the offices of Comfort Cabs to have their driving privileges re-activated. All decisions regarding the re-activation or re-instatement of driving privileges are made by the management of Comfort Cabs.

[16] When Mr. Nasir Bhatti first came to work for Comfort Cabs, he was a taxi driver. He drove a taxi belonging to his brother, Mr. Qaisir Bhatti, who was a lease operator having previously leased a taxi plate from Phyllis Schlosser Investment Ltd. In October of 2009, Mr. Nasir Bhatti was offered the opportunity to lease a taxi plate belonging to Mr. James Frie and he agreed to do so. Mr. Nasir Bhatti testified that he never met Mr. Frie prior to leasing his taxi plate. Rather, all of the lease and other arrangements were made through the management of Comfort Cabs. Mr. Nasir Bhatti bought a vehicle meeting Comfort Cabs' specifications and had that vehicle approved by Saskatchewan Government Insurance for use as a taxi.

[17] By way of further background, when a vehicle is registered with Saskatchewan Government Insurance for use as a taxi, that vehicle is not registered in the name of the owner of the vehicle but, rather, it is registered in the name of the owner of the taxi plate (i.e. the

franchise owner). The lease operator (the person who owns the vehicle) is only identified on the registration of that vehicle as a “secondary owner”. The taxi company with whom that vehicle will be associated is also identified as a secondary owner. In the case of the car that was purchased by Mr. Nasir Bhatti, it was registered with Saskatchewan Government Insurance in the name of “J G Taxis Ltd.” (the company owned by Mr. James Frie). Mr. Nasir Bhatti and Comfort Cabs were both identified as secondary owners.

[18] Comfort Cabs advertised heavily for new drivers when it was originally formed and does so, from time to time if, more drivers are required by its franchise owners and lease operators for their vehicles. In addition, existing taxi drivers are encouraged by Comfort Cabs to refer individuals who may be interested in driving taxi. Comfort Cabs maintains a list of eligible taxi drivers who are interested in and permitted to drive taxi for Comfort Cabs. In the event a franchise owner or lease operator requires someone to drive a taxi for them, they can contact Comfort Cabs and obtain the names of eligible and available drivers. To drive a taxi under the Comfort Cabs banner, taxi drivers must be entered into Comfort Cab’s dispatch computer. As each driver begins his/her shift driving a taxi, they log into the dispatch computer in that vehicle. The dispatch computer at Comfort Cabs records that the driver has logged in and begins dispatching fares to that vehicle. When that driver’s shift is over and the next driver logs in, Comfort Cabs’ computers records that a new driver is operating that particular taxi. Unless a driver logs in to the system using another driver’s name and password, Comfort Cabs is able to constantly monitor who is driving all taxis operating under its banner. By de-activating or suspending a driver’s name in their dispatch computer, Comfort Cabs can prevent an existing driver from driving any taxi operating under its banner. On the other hand, Comfort Cabs dispatch computer automatically suspends a drivers name if he/she has not logged into their system in the previous ninety (90) days.

[19] In the fall of 2012, a number of taxi drivers began discussing the potential of organizing an “association”. The original impetus for forming an association was fundraising and better communications between taxi drivers. The idea appears to have grown and taxi drivers from all of the tax companies in the City of Saskatoon began expressing an interest in creating some form of an association. In October of 2012, a meeting occurred involving approximately 50-60 taxi drivers, many of whom drove for Comfort Cabs. Mr. Nasir Bhatti assisted in organizing this meeting. Mr. St. Pierre, a long time member of the Union, was invited to attend this meeting and spoke to the assembled group. Mr. St. Pierre provided information to the group

of taxi drivers about a number of options, ranging from forming their own association up to and including the option of joining a trade union. Mr. St. Pierre testified that, at this point in time, the taxi drivers had not yet made any decisions whether they wanted to form an association or join a trade union but both options were being discussed by taxi drivers.

[20] Some time thereafter, approximately fifteen (15) taxi drivers from Comfort Cabs had a meeting in a parking lot. Mr. Nasir Bhatti was involved in organizing this meeting as well. At this meeting, the primary concern of the taxi drivers was the dispatch and other fees they were paying to Comfort Cabs. Some time thereafter, Mr. Bhatti was asked by a representative of Comfort Cabs if he had organized this meeting of taxi drivers; the term "riot" was used to describe the meeting. Mr. Bhatti denied that this meeting was a riot or any kind of a demonstration. Mr. Bhatti described the meeting to the management of Comfort Cabs as an informal gathering of drivers. Nonetheless, Mr. Bhatti was left with the impression during his conversation that the management of Comfort Cabs was aware that taxi drivers were meeting and that his involvement in attempting to organize taxi drivers was a concern to Comfort Cabs.

[21] On January 10, 2013, Mr. Nasir Bhatti was served with a notice that his lease of the taxi plate owned by Mr. Jim Frie had been unilaterally terminated. Notice was provided by Mr. Javed Mian, the then general manager of Comfort Cabs. On or about January 13, 2013, Mr. Nasir Bhatti met with Mr. Mian, Mr. Khodr Bardouh and Mr. Frie. During this meeting, Mr. Bhatti wanted to know why his taxi lease had been terminated. Mr. Bhatti was advised that his lease had been terminated because Mr. Frie wanted to "*take his business in another direction*". No further explanation was provided to Mr. Bhatti.

[22] On or about January 15, 2013, Mr. Bhatti returned to the offices of Comfort Cabs with Mr. St. Pierre to ask if he could have his taxi plate back (i.e.: if his taxi plate lease could be reinstated). Mr. Bhatti and Mr. Pierre met with Mr. Mian, Mr. Khodr Bardouh, and Mr. Cliff Kowbel. At some point during this meeting, Mr. Bhatti was told that the franchise owners were concerned that Mr. Bhatti was "*working against*" them. Mr. Bhatti denied that he was trying to form a trade union but his involvement in organizing an association of taxi drivers was discussed. Mr. Bhatti and Mr. St. Pierre were unsuccessful in convincing either Comfort Cabs or the franchise owners to reinstate Mr. Bhatti's lease of Mr. Frie's taxi plate. It was apparent to both Mr. St. Pierre and Mr. Nasir Bhatti that the management of Comfort Cabs and the franchise owners were aware of the fact that taxi drivers were interested in forming an employee

association and that Mr. Nasir Bhatti was directly involved in that organizing effort. Soon after this meeting, all signage, the radio, taxi meter, computer and other equipment were removed from Mr. Bhatti's vehicle.

[23] In January of 2013, Mr. Ahsan Kamboh was at the offices of Comfort Cabs and he met with Mr. Mian and Mr. Khodr Bardouh. Mr. Kamboh was advised that the lease of his taxi plate was at risk of being cancelled because of his support for, or involvement in, organizing taxi drivers. Mr. Kamboh told Mr. Mian and Mr. Bardouh that the drivers were not trying to organize a trade union; they were merely trying to form an association. During this meeting, Mr. Kamboh was cautioned by Mr. Mian to stay away from Mr. Nasir Bhatti, Mr. Qaisir Bhatti and other drivers interested in "unions". Mr. Kamboh was told by Mr. Bardouh that "*you have a family, you should keep away from the union*". Mr. Kamboh understood this comment to mean that his ability to earn a living as a taxi driver with Comfort Cabs could be at risk if he supported forming or joining a trade union.

[24] In March and April of 2013, Mr. Nasir Bhatti began gathering support from the taxi drivers and lease operators working for Comfort Cabs for a certification application on behalf of the Union. On or about May 31, 2013, the Union filed an application with the Board seeking to represent the taxi drivers and lease operators of Comfort Cabs. This application was later withdrawn by the Union and a new certification application was subsequently filed.

[25] On June 4, 2013, Mr. Ahsan Kamboh was served with notice that his lease of a taxi plate owned by Mr. Jim Frie was going to be terminated in the near future. Notice was provided by Mr. Javed Mian, the general manager of Comfort Cabs. The reason stated by Comfort Cabs that Mr. Kamboh's taxi plate lease was going to be cancelled was because his taxi plate had been sold by Mr. Frie to Mr. Jamal Bardouh (the brother of Mr. Khodr Bardouh). Mr. Kamboh was permitted to continuing leasing his taxi plate until July 28, 2013; at which time, the lease was terminated. Thereafter, the signage, taxi meter, computer and other equipment were removed from Mr. Kamboh's vehicle and his driving privileges were revoked. Mr. Kamboh testified that he had not driven taxi for Comfort Cabs since his lease was terminated on July 28, 2013. Mr. Kamboh testified that, for part of the time, he had been sick because of a car accident and unable to drive. On the other hand, Mr. Kamboh also testified that he asked a few lease operators if he could drive for them but did not receive a call back from anyone looking for a

driver. In cross-examination, Mr. Kamboh admitted that he had received several warnings from Comfort Cabs regarding his conduct as a driver before his lease was terminated.

[26] In response to a question from the Board, Mr. Kamboh testified that, as a taxi driver, he made approximately \$2,000 per month. However, as a lease operator, he could make between \$4,000 and \$5,000 per month. On the other hand, Mr. Kamboh readily admitted that a taxi driver takes a risk leasing a taxi plate. Although a driver can generally make more money through leasing a taxi plate, there is no guarantee that he/she will do so and, in fact, that driver could lose money through the arrangement.

[27] In July of 2013, Mr. Nasir Bhatti saw Mr. Frie in the parking lot of a local grocery store and spoke with him. During their conversation, Mr. Bhatti asked if his taxi plate could be returned to him or if another taxi plate be leased to him. In alternative, Mr. Bhatti asked if his driving privileges could be restored in Comfort Cabs dispatch computer so that he could, at least, drive for another lease operator. At this point in time, Mr. Nasir Bhatti understood that his privileges to drive a taxi with Comfort Cabs had been revoked or suspended. During this conversation, Mr. Frie said words to the effect that, the reason that Mr. Nasir Bhatti lost his taxi plate lease was, "*you are working against us*", which Mr. Bhatti understood to be a reference to his involvement in trying to gather support for the Union.

[28] In August of 2013, Mr. Qaisir Bhatti (Nasir Bhatti's brother) was at the offices of Comfort Cabs. While he was there, he was approached by Mr. Cliff Kowbel, a manager with Comfort Cabs. Mr. Bhatti was asked if he was organizing for the Union or if he had signed a card indicating his support for the Union. Mr. Bhatti indicated to Mr. Kowbel that he was not organizing for the Union and that he had not signed a support card for the Union. Mr. Kowbel responded by saying "*good*".

[29] On August 27, 2013, Mr. Qaisir Bhatti was served with notice that his lease of a taxi plate owned by Phyllis Schlosser Investment Ltd. had been unilaterally terminated. This notice was provided by Mr. Mian, as the general manager of Comfort Cabs. The radios, computers, signage and other equipment were removed by Comfort Cabs from Mr. Bhatti's vehicle that same day. Mr. Qaisir Bhatti testified as to his belief that the lease of his taxi plate was cancelled because Mr. Nasir Bhatti was his brother.

[30] After losing his taxi plate, Mr. Qaisir Bhatti contracted several other lease operators and asked if they needed a driver. Mr. Bhatti testified that the lease operators he contacted were unwilling to have him drive for them. In cross-examination, Mr. Bhatti testified that Cliff Kowbel phoned him and offered him a taxi to drive (not to lease; just to drive) but that he declined this opportunity. Mr. Bhatti testified that the cab Mr. Kowbel wanted him to drive was for a day shift and he only wanted to work night shifts. In cross-examination, Mr. Bhatti also admitted that, as far as he knew, his driving privileges in Comfort Cab's dispatch computer had not been cancelled or suspended.

[31] On August 27, 2013, Mr. Shakeel Arif Muhammad was also served notice that his lease of a taxi plate owned by J G Taxis Ltd. had been unilaterally terminated. This notice was provided by Mr. Mian, as the general manager of Comfort Cabs. The radios, computers, signage and other equipment were removed by Comfort Cabs from Mr. Muhammad's vehicle that same day. Mr. Muhammad testified he could not find another taxi to drive until October of 2013, when someone from Comfort Cabs called him and offered him a taxi to drive (not to lease; just to drive). Mr. Muhammad testified that he accepted this offer and was driving for Comfort Cabs at the time of the hearing. In cross-examination, Mr. Muhammad admitted that Mr. Mian had never discussed trade unions with him.

[32] Mr. Nassir Bhatti testified that Mr. Ahsan Kamboh, Mr. Qaisir Bhatti, and Mr. Shakeel Arif Muhammad were all friends of his and that they were all supporters of his effort to organize the taxi drivers and lease operators of Comfort Cabs. Mr. Bhatti testified (as did all of the witnesses) that most of the drivers working for Comfort Cabs were originally from Pakistan and that most of them tended to socialize outside of the workplace. Mr. Bhatti also testified that it would have been general knowledge among the drivers of Comfort Cabs that he, Qaisir Bhatti, Shakeel Arif Muhammad and Ahsan Kamboh were supporters of the Union.

[33] Mr. Haroon Intisham testified that he drove taxi for Mr. Nasir Bhatti for approximately nine (9) months prior to Mr. Bhatti losing the lease of his taxi plate. Mr. Intisham continued driving taxi with Comfort Cabs after Mr. Bhatti lost his lease. First he drove taxi for Mr. Qaisir Bhatti until he lost his taxi plate. Thereafter, Mr. Bhatti drove taxi for other lease operators and/or franchise owners. Mr. Intisham testified that it was general knowledge in the workplace that Mr. Nasir Bhatti was involved in organizing on behalf of, and trying to obtain support for, the

Union. In cross-examination, Mr. Intisham admitted that Mr. Mian had never spoken to him about trade unions.

[34] Mr. Imran Asif did not testify and this Board received no direct evidence as to the circumstances of his relationship with Comfort Cabs and/or the franchise owners. However, Mr. Mian admitted that Mr. Asif previously had a taxi plate lease for a vehicle operated under the Comfort Cabs banner and that this taxi plate lease had also been terminated.

[35] Mr. Mian testified that he became the general manager of Comfort Cabs on or about April 18, 2012. Mr. Mian testified that Comfort Cabs is a relatively new taxi company in the City of Saskatoon and, at the time he became general manager, its fleet was old and in very poor condition. He began working with the franchise owners, lease operators and taxi drivers to improve the quality of the vehicles operating under the Comfort Cabs banner and to generally improve the company's image in the taxi industry in Saskatoon.

[36] Mr. Mian testified that, since its inception, the biggest problem for Comfort Cabs has been its finances. Mr. Mian testified that the franchise owners had invested a great deal of their own money to establish Comfort Cabs and they had expectations regarding how the company would be operated. For example, the franchise owners did not want individuals leasing their taxi plates if they were not willing to personally drive taxi (i.e.: drive the vehicle on which their leased taxi plate had been placed). Mr. Mian testified that the franchise owners asked him to determine which of Comfort Cabs lease operators were driving their vehicle for at least some of the shifts and which of the lease operators were merely having other drivers operate their taxi most of the time. For example, Mr. Mian testified that his investigations revealed that Mr. Qaisir Bhatti was no longer driving his taxi. Rather, Mr. Mian concluded that Mr. Bhatti was spending the majority of his time farming and was having other drivers operate his vehicle most of the time. Mr. Mian testified that this is not how the franchise owners envisioned that their taxi plates would be operated when they leased those plates to lease operators, such as Mr. Bhatti.

[37] Mr. Mian also testified that Comfort Cabs and the franchise owners also wanted to ensure that its entire fleet of vehicles was on the road most of the time. For example, Mr. Mian's investigations revealed that Mr. Shakeel Arif Muhammad was only operating his taxi during peak hours and was not allowing any other drivers to operate his taxi during the remainder of day. Having its entire fleet of taxis on the road was desired because it would help reduce Comfort

Cabs' response time to calls. Mr. Mian testified that the way Mr. Muhammad was operating his taxi was undermining Comfort Cabs' ability to service its customers.

[38] Mr. Mian testified that the taxi plates that had been leased to Mr. Nasir Bhatti and Mr. Imran Asif were given to other franchise owners as incentives for them to come join Comfort Cabs.

[39] Finally, Mr. Mian testified that the taxi plate that had been leased by Mr. Ahsan Kamboh had been sold to another franchise owner and he decided to lease that plate to someone else. Mr. Mian testified that Comfort Cabs had received a number of complaints regarding Mr. Kamboh's conduct. Mr. Mian testified that, because of the nature and number of these complaints, the franchise owner lost confidence in Mr. Kamboh's suitability to operate a taxi for him.

[40] Mr. Mian testified that Comfort Cabs has recently stopped acting as a broker of taxi plates for franchise owners.

[41] On November 21, 2013, the Union filed a second certification application with the Board. Mr. Nasir Bhatti testified that he was the lead organizer on this application and he was active in obtaining support for this application from the taxi drivers and lease operators working for Comfort Cabs. Mr. Bhatti testified that, on several occasions, drivers indicated they did not want to be seen talking to Mr. Bhatti about trade unions. A representational vote was conducted of taxi drivers and lease operators working for Comfort Cabs in May of 2014. On April 3, 2014, the Board certified the Union to represent all taxi drivers employed by Comfort Cabs on the basis that the Union enjoyed the support of the majority of employees in the workplace. The unit described in the Union's certification Order includes lease operators who lease one (1) taxi plate. In other words, each of the subject drivers fall within scope of the Union's bargaining unit.

Relevant statutory provision:

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

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:*

(a) *to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Act, but nothing in*

this Act precludes an employer from communicating facts and its opinions to its employees;

...
 (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 argument:

[43] The Union takes the position that Comfort Cabs has effectively terminated its employment relationship with five (5) of its taxi drivers because of their involvement in, or support for, an organizing campaign on behalf of the Union in the workplace. The Union argues that the evidence demonstrates that taxi drivers were exploring the potential of joining a trade union and that this information became known to Comfort Cabs and the franchise owners. The Union argues that, in response to an organizing campaign by taxi drivers in the workplace, Comfort Cabs, either on its own authority, or in concert with the franchise owners, revoked the taxi plates that had been leased to five (5) of its taxi drivers and stripped their vehicles of the taxi equipment located therein, thus restricting their capacity to make a living as a lease operator or even as a taxi driver. The Union argues that the effect (if not the goal) of the respondent's actions was to punish those taxi drivers whom Comfort Cabs believed were directly responsible for the attempts to organize the workplace and to discourage other taxi drivers from supporting the Union.

[44] Counsel on behalf of the Union notes that the reasons given by Comfort Cabs for the termination of the taxi plate leases were neither good nor sufficient for any of the drivers. Furthermore, in light of the fact that Mr. Mian did not contradict the evidence given by witnesses for the Union regarding the statements made by himself, by Mr. Kowbel, Mr. Frie or Mr. Bardouh,

the Board ought to conclude that each of the decisions made by either Comfort Cabs or the franchise owners to terminate the leases of these five (5) drivers was tainted by an anti-union animus.

[45] For these reasons, the Union seeks an order from this Board determining that Comfort Cabs and/or the franchise owners have violated s. 11(1)(a) and (e) of *the Trade Union Act*. The Union also seeks an Order from this Board directing Comfort Cabs and/or the franchise owners to reinstate the driving privileges previously enjoyed by Nasir Bhatti, Qaisir Bhatti, Ashan Kamboh, Shakeel Arif Muhammad, and Imran Asif. In addition, the Union seeks an Order that the taxi plate leases that were unlawfully terminated be immediately reinstated to each of the subject drivers. The Union asks that Comfort Cabs and/or the franchise owners be directed to re-install, at their cost, the radios, computers and other taxi equipment that was removed from each of the subject drivers' vehicles by Comfort Cabs. The Union also seeks an Order that the named taxi drivers are entitled to monetary compensation and that an agent be appointed to work with the parties to determine the quantum of appropriate compensation. Finally, the Union seeks an Order that all lease operators and taxi drivers receive notice of the Board's determinations.

[46] In support of its application, the Union relies upon the decisions of this Board in *Retail Wholesale Canada, A Division of the United Steelworkers of America v. United Cabs Ltd, et.al*, [1996] Sask. L.R.B.R. 337, LRB File No. 115-96; *National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) v. United Cabs Limited (Blue Line Cabs)*, (2002) 73 C.L.R.B.R. (2nd) 48, [2001] Sask. L.R.B.R. 108, LRB File No. 236-00; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Sakundiak Equipment*, [2011] 205 C.L.R.B.R. (2d) 139, 2011 CanLII 72774 (SK LRB), LRB File No. 107-11 to 109-11 & 128-11 to 133-11; and *United Food and Commercial Workers, Local 1400 v. 303567 Saskatchewan Ltd. (Handy Special Events Centre)*, [2013] 225 C.L.R.B.R. (2nd) 111, LRB File Nos. 064-12, 075-12 & 081-12. In addition, the Union also relies upon the interim decision of this Board in these proceedings, reported as *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International Union (United Steelworkers) v. Comfort Cabs Ltd*. [2013] 235 C.L.R.B.R. (2nd) 128, 2013 CanLII 62414 (SK LRB), LRB File No. 249-13.

Argument on behalf of Comfort Cabs:

[47] Comfort Cabs argues that it had good and sufficient reasons for terminating each of the taxi plate leases previously held by all five (5) of the taxi drivers for whom the Union makes application. Comfort Cabs takes the position that these leases were terminated because the lease operators were not following the rules and regulations established by Comfort Cabs or because those leases were needed by the franchise owners to satisfy obligations to other parties. Furthermore, Comfort Cabs argues that it is just a dispatch company and that it has no control over the decisions made by the franchise owner regarding the lease of their taxi plates. Finally, Comfort Cabs cautioned the Board that any significant award of monetary compensation to the subject drivers could financially cripple Comfort Cabs.

[48] Comfort Cabs relies on the decision of this Board in *National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) v. United Cabs Limited (Blue Line Cabs)*, [2001] Sask. L.R.B.R. 863, LRB File No. 194-01, in support of its position that no remedial relief ought to be granted against it.

Analysis:

Did an Employment relationship exist between the subject drivers and the respondent?:

[49] In its Reply and in argument on its behalf, Comfort Cabs took the position that there was no employment relationship between it and any of the taxi drivers that were the subject matter of the Union's applications. On April 3, 2014, this Board granted an application by the Union to represent a unit of taxi drivers employed by Comfort Cabs. See: LRB File No. 327-13. In our opinion, the certification Order granted by this Board is a complete answer to the assertion that an employment relationship did not exist between the subject drivers and Comfort Cabs at all times relevant to these proceedings. We further note that all of the taxi drivers that are the subject matter of the Union's application fall within the scope of the Union's certification Order.

Were the Subject Drivers Wrongfully Terminated?

[50] 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)*, [2013] 225 C.L.R.B.R. (2nd) 111, LRB File Nos. 064-12, 075-12 & 081-12.

[51] 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.

[52] 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 File Nos. 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 File Nos. 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 File Nos. 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.

[53] 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.

[54] 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 sometimes subtle indications that improper motives have influenced an employer’s actions. See: *Saskatchewan Government & General Employees’ Union v. Valley Hill Youth Treatment Centre Inc.*, [2013] 235 C.L.R.B.R. (2nd) 160, LRB File Nos. 024-13, 029-13, 030-13 & 031-13.

[55] Having considered the evidence in these proceedings, we have concluded that Comfort Cabs and the franchise owners violated s. 11(1)(e) of *The Trade Union Act* in their decisions to terminate the taxi plate leases and driving privileges enjoyed by Nasir Bhatti, Qaisir Bhatti, Ashan Kamboh, and Shakeel Arif Muhammad. On the other hand, we have insufficient evidence to make a similar finding with respect to Mr. Imran Asif.

[56] In an application alleging a violation of s. 11(1)(e), the impugned actions of an employer are examined in an attempts to ascertain the motives that went into those actions (as difficult as that task may be). Having considered the evidence in these proceedings, we are inescapably drawn to the conclusion that the decisions by Comfort Cabs and the franchise owners (to terminate the driving privileges and taxi plate leases enjoyed by the said drivers) were tainted by a desire to discourage membership in or activities in support of forming a trade union. While Comfort Cabs identified a number of reasons why each of the leases were terminated, we find that a component (if not the primary motivation) of Comfort Cabs and/or the franchise owners was a desire to discourage support for, or membership in, a trade union. Certainly, some of the reasons given by Comfort Cabs were stronger than others. However, in our opinion, the facts in these proceedings raise a compelling inference that the decisions taken by Comfort Cabs and the franchise owners were tainted by an anti-union animus.

[57] For example, the evidence in these proceedings established that the taxi drivers of Comfort Cabs were exploring the potential of forming an association or joining a trade union in the fall of 2012 and winter of 2013. We are satisfied that this knowledge came to the attention of the management of Comfort Cabs and the franchise owners. We are also satisfied that the management of Comfort Cabs and the franchise owners did not want their drivers to form a trade union and that they actively took steps to discourage this potential. Our findings in this regard are supported by a number of conversations that took place between taxi drivers and either the management of Comfort Cabs or one or more of the franchise owners. Comfort Cabs did not attempt to contradict or explain these conversations; conversations that were indicative of a clear and palpable desire on the part of the management of Comfort Cabs and/or the franchise owners to discourage their drivers from forming an association or joining a trade union. Furthermore, they declined to call Mr. Kowbel, Mr. Frie or Mr. Bardouh; the very people who could have contradicted or otherwise explained these impugned statements.

[58] With all due respect, the reasons given for the actions taken by the respondents in relation to Nasir Bhatti, Qaisir Bhatti, Ashan Kamboh, and Shakeel Arif Muhammad were not particularly compelling. However, even if Comfort Cabs and the franchise owners had valid reasons for each of the actions they took in relation to the subject drivers, we note that they only took their actions against these individuals when their involvement in supporting the Union became known. In our opinion, the relatively weak foundation for the decisions to terminate the driving and/or taxi plate leases previously enjoyed by Nasir Bhatti, Qaisir Bhatti, Ashan Kamboh,

and Shakeel Arif Muhammad, coupled with the coincidence of timing and the palpable displeasure on the part of the management of Comfort Cabs and the franchise owners that an organizing effort was taking place among its drivers, raises a compelling inference that the decisions taken by the respondents were motivated by desire to discourage taxi drivers for exercising rights protected under *The Trade Union Act*. In fact, an inference of anti-union animus on the part of the management of Comfort Cabs and the franchise owners is not particularly difficult to draw under these circumstances. We, therefore, find that Comfort Cabs and the franchise owners have violated s. 11(1)(e) of *The Trade Union Act*.

[59] In our opinion, the driving privileges previously enjoyed by Nasir Bhatti, Qaisir Bhatti, Ashan Kamboh, and Shakeel Arif Muhammad ought to be reinstated by Comfort Cabs, if they have not already done so. With respect to further remedial relief, we are not satisfied that it would be appropriate to order reinstatement of the taxi plates previously leased by Nasir Bhatti, Qaisir Bhatti, Ashan Kamboh, and Shakeel Arif Muhammad. In our opinion, monetary compensation for the unlawful termination and loss of privileges associated with their taxi plates leases is a more appropriate remedy.

[60] As we noted in our interim decision, the taxi industry is an imperfect fit within the normal model of industrial relations anticipated by *The Trade Union Act*. While driving a taxi under the banner of a taxi company bears many of the indicia of a traditional employment relationship for taxi drivers (as dependent contractors or otherwise), the lease of a taxi plate by a taxi driver from a franchise owner is an even more awkward fit. Leasing a taxi plate is largely an act of entrepreneurialism; it is not the same thing as a job promotion within a workplace. While lease operators have the potential to make more money than a taxi driver and have more control over their work environment, they also bear a non-trivial risk that they could lose money through those arrangements. Furthermore, while Comfort Cabs has (or at least had) a role in bringing lease operators and franchise owners together, a taxi plate lease is a contractual relationship between lease operators and franchise owners. While Comfort Cabs certainly played a role as agents for some franchise owners, the taxi plates that were leased by the subject drivers were never owned by Comfort Cabs. In our opinion, the relationship between lease operators and franchise owners is a matter not necessarily falling within the employment relationship between the subject drivers and Comfort Cabs. While the contractual relationship between lease operators and franchise owners is adjunct to the employment relationship between lease operators and taxi companies, one is not necessarily a corollary of the other.

[61] In coming to this conclusion, we note that the subject drivers made significant capital investments in vehicles on the strength of taxi plate leases that were never distilled to writing. Furthermore, these taxi plate leases (such as they were) were understood **not** to contain a provision providing for reasonable notice prior to termination. In other words, the subject drivers entered into lease agreements wherein the franchise owners were entitled to unilaterally terminate these leases without notice. Whether or not such arrangements are indicative of a general vulnerability on the part of lease operators, or merely imprudence on the part of the subject drivers, is difficult to assess. However, we are not satisfied that restoring the taxi plate leases, even if unlawfully terminated, falls within the scope of this Board's jurisdiction or is otherwise an appropriate exercise of this Board's remedial authority if this Board has jurisdiction over such matters.

[62] For the foregoing reasons, we are not satisfied that an Order directing either Comfort Cabs or the franchise owners to reinstate the taxi plate leases previously held by Nasir Bhatti, Qaisir Bhatti, Ashan Kamboh, and Shakeel Arif Muhammad is appropriate. On the other hand, we find that the taxi plate leases these individuals previously enjoyed were terminated in contravention of *The Trade Union Act* and for the purpose of infringing upon protected rights. In our opinion, the subject drivers are entitled to monetary compensation for the unlawful termination of their taxi plate leases.

[63] To which end, we appoint an agent of the Board to work with the parties and/or to assist the Board in determining the appropriate quantum of compensation. Without making a specific determination, we provide the following guidance to the parties with respect to quantification of such compensation:

1. Compensation should be retroactive to the date the taxi plate leases were unlawfully terminated.
2. The onus rests upon each of the subject drivers to demonstrate the remuneration they each received from their respective taxi plate leases. An examination of the revenue each earned (less expenses) in the six (6) month period immediately prior to their termination ought to provide a reasonable reference point from which to calculate the monthly net

remuneration enjoyed by the subject drivers prior to the unlawful termination of their taxi plate leases.

3. Compensation for monetary losses ought to continue until such time as the subject drivers enter into new lease arrangements for taxi plates through Comfort Cabs or with the franchise owners or for a period not exceeding six (6) months from the date of these Reasons for Decision. In our opinion, six (6) months is equivalent to a reasonable period of notice for termination of a taxi plate lease.
4. The usual rules regarding the duty to mitigate damages ought to apply.

Did the Respondents also violate s. 11(1)(a)?

[64] The legislative purpose of s. 11(1)(a) is to regulate the conduct and actions of employers. It must be noted that s. 11(1)(a) does not enumerate specific actions or conduct that is prohibited. Rather, the section prohibits any actions by an employer that has a particular effect. Simply put, s. 11(1)(a) prohibits any conduct, by communication or otherwise, that would have the effect of interfering with, restraining, intimidating, threatening or coercing an employee in the exercise of the rights they enjoy under *The Trade Union Act*. The legislative goal of the provision is to prevent employers from compromising or expropriating the free will of employees in the exercise of their protected rights. While employers are free to run their own business and to communicate with their employees, that freedom may not be used to deter, intimidate or deceive their employees. See: *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, et. al*, 2014 CanLII 17405 (SK LRB), LRB File Nos. 092-10, 099-10 & 105-10.

[65] The substantive test for determining whether or not impugned conduct of an employer represents a violation of s. 11(1)(a) involve a contextualized analysis of the probable consequences of impugned conduct on employees of reasonable intelligence and fortitude. In other words, if this Board is satisfied that the probable effect of the employer's conduct would have been to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of protected rights, a violation of the *Act* will be sustained. This test is an objective one. The Board's approach is to determine the likely or probably effect of an impugned conduct upon the affected employees. In doing so, we assume those employees are reasonable; that they are intelligent; and that they are possessed of some resilience and fortitude. See: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Sakundiak Equipment*, [2012] 205

C.L.R.B.R. (2nd) 139, 2011 CanLII 72774 (SK LRB), LRB File Nos. 107-11 to 109-11 & 128-11 to 133-11. In our opinion, the kind of prohibited effect which s. 11(1)(a) seeks to avoid is conduct by an employer that would compromise or expropriate the free will of employees in the exercise of their rights under *The Trade Union Act*. See: *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, et.al., supra*.

[66] Having reviewed the evidence in these proceedings, we are inescapably drawn to conclusion that a component of the decisions made by Comfort Cabs and the franchise owners in terminating the taxi plate leases of the subject drivers was a desire to discourage other taxi drivers from pursuing unionization. As this Board has noted, 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. In our opinion, that is precisely what happened at Comfort Cabs. Mr. Nasir Bhatti and the other lease operators who were directly involved in organizing the workplace had their driving privileges and the taxi plate leases terminated. In our opinion, these actions would have sent a clear message to the other taxi drivers in the workplace. While some may have rallied to the Union because of these actions, other may well have recoiled in fear of retaliation. As indicated, the purpose of s. 11(1)(a) of *The Trade Union Act* is to prevent an employer from using its superior economic position, its capacity to influence the economic lives of its employees, and its control over work conditions, to compromise or expropriate the free will of employees. In our opinion, Comfort Cabs and the franchise owners violated s. 11(1)(a) through their conduct in terminating the driving privileges and taxi plate leases of Nasir Bhatti, Qaisir Bhatti, Ashan Kamboh, and Shakeel Arif Muhammad.

Conclusions:

[67] For the foregoing reasons, we find that Comfort Cabs and the franchise owners have violated s. 11(1)(a) and (e) of *The Trade Union Act*. In our opinion, the driving privileges previously enjoyed by Nasir Bhatti, Qaisir Bhatti, Ashan Kamboh, and Shakeel Arif Muhammad should be immediately reinstated. In addition, these individuals are entitled to monetary compensation for the unlawful termination of the taxi plates leases they previously enjoyed. To which end, we appoint an agent of the Board to work with the parties and/or to assist the Board in determining the appropriate quantum of compensation in light of our determination that the leases previously enjoyed by the subject drivers were terminated in contravention of *The Trade*

Union Act. An Order shall also be issued that these Reasons for Decisions be posted in the workplace and that all taxi drivers operating under the Comfort Cabs banner be notified through Comfort Cabs' dispatch computer that a decision of this Board has been posted at the offices of Comfort Cabs.

[68] Board members Duane Siemens and Brenda Cuthbert both concur with these Reasons for Decision.

[69] We remain seized with respect to the implementation of these Orders.

DATED at Regina, Saskatchewan, this **22nd** day of **April, 2014**.

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson