Saskatchewan
Labour Relations Board

SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, Applicant v. 101109823 SASKATCHEWAN LTD. (O/A THE HOWARD JONSON INN – YORKTON), Respondent

LRB File No. 265-13, 317-13, 318-13 & 044-14 to 059-14; May 2, 2014
Vice-Chairperson, Steven D. Schiefner.; Members: Bert Ottenson and Greg Trew

For the Applicant: Mr. Larry Kowalchuk and Ms. Cara Banks
For the Respondent: Ms. Kara Bashutski

Technological Change - Employer operates hotel in Yorkton, Saskatchewan – Employer closes restaurant in hotel – Approximately 9 of 30 employees affected by closure - Trade union alleges that employer implemented technological change in the workplace in contravention of s. 43 of *Trade Union Act* - Board finds that employer did not remove or relocate work outside the bargaining unit – Board finds that employer merely ceased providing food services at its hotel - Board not satisfied that closure of restaurant was technological changes without active steps to transfer work elsewhere.

Unfair Labour Practice – Communication – New owner of hotel meets with all staff and discusses future of hotel – During meeting, new owner mentions high wages and financial problems at hotel – In addition, manager at hotel discusses high cost of wages and benefits with some employees during meeting in the workplace – Employer closes restaurant - Trade union alleges that communications by employer interfered with, threatened and/or coerced employees – Board finds that communications were factual and that most of information provided by employer would have been known or should have been obvious to employees - Board not satisfied that employer violated s. 11(1)(a) of *Trade Union Act*.

Unfair Labour Practice – Direct Bargaining – New owner of hotel meets with all staff and discusses future of hotel – During meeting, new owner mentions high wages and financial problems at hotel – In addition, manager at hotel discusses high cost of wages and benefits with some employees during meeting in the workplace - Trade union alleges that employer attempted to circumvent it and to bargain directly with employees regarding terms and conditions of employment - Board concludes that information provided to employees was factual and that most of information provided by employer would have been known or should have been obvious to

employees – Board not satisfied that employer attempted to negotiate or bargain directly with employees.

Unfair Labour Practice – Dismissal for Union Activities - Employer operates hotel in Yorkton, Saskatchewan – New owner of hotel meets with all staff and discusses future of hotel – During meeting, new owner mentions high wages and financial problems at hotel – In addition, manager at hotel discusses high cost of wages and benefits with some employees during meeting in the workplace - Employer closes restaurant and staff are laid-off – Trade union alleges that employer's decision to closure restaurant was tainted by anti-union animus – Board finds that restaurant had been unprofitable for years and notes that previous owners had unsuccessfully attempted to improve financial performance of restaurant - Board concludes that employer had good and sufficient reasons for dismissing staff – Board not satisfied that employer's decision to close restaurant was tainted by anti-union animus.

***The Trade Union Act*, ss. 11(1)(a), (c) and (e) and s. 43**

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson:** These proceedings involve the employees working at a hotel in Yorkton, Saskatchewan, commonly known as the "Howard-Johnson Inn" (the "Hotel"). The current owner of this facility is the respondent corporation, 101109823 Saskatchewan Ltd. (the "Employer"). The respondent corporation is owned by Mr. John Kim. The Saskatchewan Joint Board, Retail, Wholesale and Department Store Union (the "Union") was certified by the Saskatchewan Labour Relations Board (the "Board") to represent the employees working at the Hotel when this property was owned by another party. There was no dispute that the Employer is the successor to those obligations.

[2] In total, the Union filed nineteen (19) applications with this Board on behalf of the employees working at the Hotel. The first application was filed on October 1, 2013 and, in this application, the Union alleged that the Employer violated s. 11(1)(c) and s. 43 of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "*Act*") following a decision made or continued by the Employer to close the restaurant located in the Hotel. In this application, the Union alleged that the Employer failed to comply with the notice requirements set forth in s. 43 of the *Act* and/or that the Employer was refusing to bargain collective with the Union with respect to a workplace adjustment plan. The second application was filed on November 13, 2013 and in this application

the Union alleged that the Employer violated ss. 11(1)(a), (b), (c), (e) and (f) of the *Act* during a meeting that the Owner had with his employees. The Union alleged that the Owner threatened the employees and/or attempted to bargain directly with them with respect to wage rates, hours of work, job classifications and job duties. The Union's third application was also filed on November 13, 2013 and, in this application, the Union alleged that the Employer violated s. 11(1)(c) of the *Act* when it refused to disclose information requested by the Union and/or refused to respond to proposals made by the Union regarding a workplace adjustment plan. On March 19, 2014, the Union filed sixteen (16) more applications with the Board. In these applications, the Union seeks reinstatement and compensation for monetary loss on behalf of eight (8) employees, namely Ms. Jocelyn Gibler, Ms. Judy Burak, Ms. Sheri Coutts, Ms. Darlene Dubas, Ms. Liz Walker, Ms. Donna Kowchowski, Ms. Lorrie Kabon and Ms. Arlene Goode. These applications stem from the Union's belief that each of these employees was unlawfully terminated by the Employer in contravention of *The Trade Union Act*.

[3] The Board began hearing the first three (3) of the Union's application on February 10 and 11, 2014. When the hearing reconvened again on March 20, 2014, the Union sought leave to add LRB File Nos. 044-14 to 059-14 to the proceedings and to have these additional applications determined concomitant with LRB Files No. 265-13, 317-13 and 318-13. The Employer did not object and leave was granted. The hearing concluded on March 21, 2014.

[4] The Union called Mr. Mark Hollyoak, Ms. Sheri Coutts, and Ms. Elizabeth Woloschuk to testify. The Employer called Ms. Rhonda Lea Tide and Mr. John Kim.

[5] Having considered the evidence in these proceedings, we were not satisfied that the Employer's decision to close the restaurant at the Hotel represented a "technological change" within the meaning of s. 43 of *The Trade Union Act*. However, even if we had found that these actions represented a technological change, we were satisfied that the notice provided by the Employer regarding the closure of the restaurant satisfied the obligations imposed upon it pursuant to s. 43 of the *Act*. Finally, even if we had found that the Employer's decision to closure the restaurant had represented a technological changes, we were not satisfied that the Employer violated s. 11(1)(c) in refusing to disclose the information sought by the Union. On the other hand, the Employer would have been subject to a duty to bargain collectively with the Union regarding a workplace adjustment plan; a duty which would not appear to have been satisfied by

the Employer. On the other hand, we would not have prevented the Employer from implementing the subject change or otherwise order the restaurant to be re-opened.

[6] In our opinion, the Employer had good and sufficient reasons for the decision to lay-off the restaurant staff and we were not satisfied that the Employer's actions were tainted by an anti-union animus. We were also not satisfied that the Employer communicated with its employees in a manner contrary to s. 11(1)(a) or that it attempt to circumvent the Union and bargain directly with employees contrary to s. 11(1)(c).

[7] These are our reasons for these determinations.

Facts:

[8] As indicated, the current owner of the Hotel is Mr. John Kim. He took possession on or about October 16, 2013, approximately two (2) weeks after the first application in these proceedings was filed with this Board. Prior to Mr. Kim, the Hotel was owned by Mr. Karl Lee.

[9] A decision was made by the management of the Hotel to close the restaurant portion of the hotel at a time when Mr. Karl Lee was the owner. Mr. Kim became the owner approximately six (6) weeks before the restaurant closed in December of 2013. Prior to the closure of the restaurant, the Hotel had approximately thirty (30) employees. The decision to close the restaurant affected approximately nine (9) employees, two (2) of which were on disability at the time.

[10] The Hotel is not new and the evidence demonstrated that the restaurant portion of the Hotel had struggled financially for a number of years. Originally (in the late 1980's), the restaurant operated daily from 8am until 8pm. However, in 2011, the afternoon shift was eliminated and the hours at the restaurant were changed to 6:00am until 2:00pm. The first active steps to close the restaurant were undertaken by Mr. Karl Lee in 2012. On or about April 11, 2012, Mr. Lee provided lay-off notices to the restaurant staff. This notice read as follows:

> *Re: Lay-Off Notification – effective June 11th, 2012*
>
> *Due to the lack of the business our management finds it necessary to close Restaurant. Unfortunately, your position is affected. Your last day of employment will be June 10th, 2012. Please come in for any schedules shifts until June 10th, 2012.*

Thank you for your work at Howard Johnson Inn Yorkton

Sincerely,

Karl Lee
General Manager
Howard Johnson Inn Yorkton

[11] The Union responded by advising Mr. Lee as to its belief that the closure of the restaurant represented a technological change within the meaning of s. 43 of *The Trade Union Act*. Discussions occurred between the Union and Mr. Lee that culminated in May of 2012, when Mr. Lee rescinded his earlier layoff notices to the restaurant staff. However, the hours of operations of the restaurant were again reduced; this time from 6:00am until 10:30 am.

[12] In the spring of 2013, the decision was again made to close the restaurant by Mr. Lee. On or about April 15, 2013, notices were sent to the Union, to the Minister of Labour Relations and Workplace Safety, and to affected employees that the restaurant would be closing on July 15, 2013. The letter to the employees read as follows:

Re: Group Termination Notification

This is a formal notification for a Lay-Off for the above mentioned employee at the Howard Johnson Inn-Yorkton. This lay-off takes effect July 15, 2013.

The Howard Johnson regrets to inform you of this lay-off as the Dining room will close to the General Public. It is strictly a business decision due to lack of business, however the hotel will continue to offer a Complimentary Breakfast to the Hotel Room Guests. This Breakfast will be a Continental Breakfast available from 6AM to 10AM daily. A new Breakfast Attendant position will be announced with more details in the future.

This closure of the Restaurant will decrease the number of staff needed to accommodate the Hotel Room Guests for the Continental Breakfast. The last day of work will be July 14, 2013.

Sincerely,

Nancy Zdan
Rhonda Tide
Assistant Managers
As per Jesse Park
General Manager

[13] The letter to the Minister of Labour Relations and Workplace Safety read as follows:

April 15, 2013

Mr. Don Morgan
Labour Relations and Workplace Safety
300 1870 Albert Street
Regina, Saskatchewan
S4P 4W1

Re: 101109823 Saskatchewan Ltd
Howard Johnson Inn
207 Broadway Stre East
Yorkton, Saskatchewan
S3N 3K7

Subject: Closure of Restaurant

Mr. Don Morgan

We as Management in Accordance with the Saskatchewan Labour Standards are giving 90 days formal notice of Group Termination for the above business the Howard Johnson Inn-Yorkton, this will result in closure of our restaurant. The reason for closure of the restaurant is due to lack of business. Management regrets it has come to this conclusion however this is strictly a business decision.

This comes in effect as of April 15, 2013, last working day will be July 14, 2013. Lay-off to come into effect as of July 15, 2013. This lay-off will include the following seven employees at the Howard Johnson Inn-Yorkton.:

Judy Burak (Restaurant)
Donna Korchowski (Kitchen)
Darlene Dubas (Kitchen)
Lorrie Kaban (Restaurant)
Sheri Coutts (Restaurant)
Arlene Good (Kitchen)
Tammy Mitchell (Kitchen)

Each staff involved in this Termination will be informed through a formal written Lay-off Notification. We have send a letter as well as a fax to inform the Union RWDSU of the Company's decision in regards to this closure.

The restaurant will be closed to the General Public, however it will be available only to Hotel room Guests for a Complimentary Breakfast. This Complimentary Breakfast will be available from 6:00AM-10:00 AM daily. This will reduce the number of staff needed to operate this Complimentary Breakfast. A new position will be created, A Breakfast Attendant to meet the demands of the Hotel Guests. Posting of this newly created position(s) will be available to the staff mentioned above to bid on these job(s).

In Hospitality

Nancy Zdan
Rhonda Tide

Assistant Managers
Jesse Park
General Manager

[14] Upon receiving the said notices, the Union served a request to commence collective bargaining with Mr. Lee, and/or the then manager Mr. Jesse Park. On or about May 13, 2013, the Employer agreed to meet with the Union to discuss a workplace adjustment plan. The parties met for purposes of collective bargaining on July 2, 2013. At this meeting, the Employer's representative told the Union that it felt that restaurant was not profitable. The Employer wanted to close the restaurant and start providing a free continental breakfast to Hotel guests. To which end, the Employer presented a proposal respecting a "Breakfast Attendant Position". The Union doubted the Employer's position that the restaurant was unprofitable and presented the following request for information and proposal to the Employer:

> *The Union members have the right to propose alternatives to the employers plan to close the restaurant therefore for us to make an assessment and for us to make recommendations we need the following information.*
>
> 1. *All revenue and expenditures for the restaurant for the past five years to date.*
> 2. *The number of free breakfast vouchers handed out each month since February 1st 2013.*
> 3. *Any written report compiled to support the closure of the restaurant.*
> 4. *Any internal communication discussing the closure of the restaurant.*
> 5. *The cost per month of providing a free continental breakfast to the hotel guests.*
>
> *In order for the affected employees to make decisions with respect to their future we need the following information.*
>
> 1. *The number of employees needed to run the continental breakfast.*
> 2. *Proposed job descriptions, including qualifications and duties, for the new positions.*
> 3. *Proposed wage rates for the new positions.*
> 4. *A copy of the proposed schedule of hours for the new positions.*
>
> *In order to allow for an easier transition should an employee choose to sever their employement we propose the following.*
>
> 1. *Two weeks severance for each year of service for each employee who is laid off and chooses to sever their employement. Layed off employees shall have the option of severing their employement and receiving severance within the first fifty two weeks of lay off*
> 2. *Vocational testing and counseling paid by the employer.*
> 3. *Vocational retraining for up to one year paid by the employer.*
> 4. *Continuation of employee benefits while employees are on lay off and/or being retrained paid by the employer.*

> 5. *Employees will be entitled to be paid out what ever sick leave is in their sick leave account upon request within the first fifty two weeks of layoff.*
>
> *Employees affected who choose to remain on the Layoff/Recall list will be entitled to stay on the Layoff/Recall list for up to five years.*

[15] The Employer neither agreed to the Union's workplace adjustment plan nor provided the information requested by the Union. The parties did not meet again for purpose of collective bargaining. However, a number of informal meetings and communications took place between the parties. As a result of these discussions, a new menu was developed for the restaurant, the parties agreed to new operating proceedings (regarding completion of bills), and the Employer agreed to keep the restaurant open for another three (3) months on a trial basis. On July 15, 2013, the Employer rescinded the lay-off notices that had been provided to the restaurant staff.

[16] The restaurant operated for a period of time with the new menu and on the basis of the new operating procedures. However, Ms. Tide testified that the revenue at the restaurant did not increase as expected and the staff was not complying with the new operating procedures. On or about August 21, 2013, the Employer again gave notice to the Union and the Minister of Labour Relations and Workplace Safety. The letter to the Minster contained the following information.

> *August 21, 2013*
>
> *Mr. Don Morgan*
> *Labour Relations and Workplace Safety*
> *300 1870 Albert Street*
> *Regina, Saskatchewan*
> *S4P 4W1*
>
> *Re: 101109823 Saskatchewan Ltd*
> *Howard Johnson Inn*
> *207 Broadway Street East*
> *Yorkton, Saskatchewan*
> *S3N 3K7*
>
> *Subject: Closure of Restaurant*
>
> *Mr. Don Morgan;*
>
> *We as Management in Accordance with the Saskatchewan Labour Standards are giving 90 days formal notice of Group Termination for the above business the Howard Johnson Inn-Yorkton, this will result in closure of our restaurant. The*

reason for closure of the restaurant is due to lack of business. Management regrets it has come to this conclusion however this is strictly a business decision.

This comes in effect as of December 1, 2013; last working day will be November 30, 2013. Lay-off will include the following nine employees at the Howard Johnson Inn-Yorkton.:

Judy Burak (Restaurant)
Donna Korchowski (Kitchen)
Darlene Dubas (Kitchen)
Lorrie Kaban (Restaurant)
Sheri Coutts (Restaurant)
Arlene Good (Kitchen)
Liz Walker (Restaurant)
Gary Perepeluk (Kitchen) Long Term Disablity
Dianne Butz (Kitchen) Long Term Disability

Each staff involved in this Termination will be informed through a formal written Lay-off Notification. We have send a letter as well as a fax to inform the Union RWDSU of the Company's decision in regards to this closure.

In Hospitality

Nancy Zdan
Rhonda Tide
Assistant Managers
Jesse Park
General Manager

[17] On or about August 22, 2013, the Employer gave notice to the restaurant staff that it intended to close the restaurant effective December 1, 2013. At this time, the restaurant was being operated from 6:00am to 2:00pm. The letters to the nine (9) affected employees read as follows:

Re: Group Termination Notification

This is a formal notification for a Lay-Off for the above mentioned employee at the Howard Johnson Inn-Yorkton. This lay-off takes effect December 1, 2013.

The Howard Johnson regrets to inform you of this lay-off as the Dining room will close to the General Public. It is strictly a business decision due to lack of business.

The last day of work will be November 30, 2013.

Sincerely,

Nancy Zdan
Rhonda Tide

Assistant Managers
As per Jesse Park
General Manager

[18] Sometime after these letters were sent out, a meeting took place in the lounge at the Hotel between Mr. Jesse Park and Ms. Rhonda Tide, both of whom were managers at the Hotel, and two (2) restaurant staff, namely; Ms. Sheri Coutts and Ms. Lorrie Kaban. During this meeting, the closure of the restaurant was discussed. Ms. Coutts testified that during this meeting, Mr. Park identified two (2) factors that were contributing to the closure of the restaurant. Firstly, he indicated that the cost of benefits for restaurant staff was too high and he suggested that one option would be for employees to change the type of benefits they were receiving. Second, Mr. Park said words to the effect the hours of operations of the restaurant and the wages of staff were too high and would have to be reduced for the restaurant to be viable. Ms. Coutts testified that she thought it was unfair that restaurant staff would have to take a pay cut for the restaurant to remain open.

[19] Several witnesses testified that business at the Hotel was seasonal and that it was not unusual for the restaurant to increase it hours during the summer months and then to reduce its hours of operation after the busy summer season had concluded. In the fall of 2013, the Hotel again reduced the hours of operation for the restaurant from 6:00am to 10:00am. As a result of this change, only two (2) of the restaurant employees continued to work full-time hours. All other restaurant staff saw a reduction in their shifts.

[20] Mr. John Kim took possession of the Hotel on October 16, 2013. At the time Mr. Kim became the owner of the Hotel, the hours of operation at the restaurant had been reduced, the restaurant was scheduled to close in the near future, and affected staff had received lay-off notices. Mr. Kim testified that, at the time he took over the Hotel, the rooms were making a profit but the restaurant was not. On the other hand, the Hotel was giving free breakfast to guests but not accounting for that revenue in the restaurant's budget. The evidence tended to indicate that the Hotel was not functioning particularly efficiently when Mr. Kim became the owner. At times the restaurant was understaffed and management was required to step in and to do work of the bargaining unit. In addition, the Hotel had received numerous complaints from customers about the operation of the restaurant.

[21] The Union and the Employer met on October 24, 2013 to again bargain a workplace adjustment plan. During this meeting, the Union presented the Employer with the same request for information and the same proposal that it had presented to Mr. Lee on July 2, 2013. The Union argued that the reason the restaurant was losing money was because the Hotel was giving free breakfasts to guests of the Hotel but not including the value of those meals in the revenue for the restaurant. The Employer did not provide the information sought by the Union nor did it agree to the Union's proposed workplace adjustment plan. The Employer did not make a counter-proposal to the Union. At the time of the hearing, the parties have not returned to the bargaining table following their meeting on October 24, 2013, although the Union had previously indicated to the Employer that it was willing to do so.

[22] On November 4, 2013, Mr. Kim held a meeting at the Hotel and asked all staff to attend. During this meeting, Mr. Kim wanted to introduce himself as the new owner. Mr. Kim testified that it was his standard practice to introduce himself to the staff whenever he took over a new business. During this meeting, Mr. Kim commented on the fact that the wages being paid at the Hotel were higher than other hotels in the area. He also told the staff that the hotel business was very competitive and that he would be looking for ideas from the staff as to how to operate the Hotel more efficiency and more profitably. Soon thereafter, Mr. Kim received a letter from the Union indicating its belief that Mr. Kim's meeting with the staff at the Hotel represented a violation of *The Trade Union Act* and discouraged Mr. Kim from meeting with staff without a representative from the Union being present. The Union indicated its willingness to meet with the Employer to continue negotiating a workplace adjustment plan.

[23] Mr. Kim testified that the restaurant at the Hotel was old and not particularly efficient. Mr. Tide testified that the profitability of the restaurant fluctuated seasonally, with periods where the restaurant met its revenue objectives and other periods when it did not. Ms. Tide also confirmed that previous owners had tried various means to reduce costs and increase the restaurant's profitability, with little success.

[24] On November 29, 2013, the Employer wrote to and advised the Minister of Labour Relations and Workplace Safety that the parties had failed to develop a workplace adjustment plan.

[25] November 30, 2013 was the final day of operating the restaurant, which closed permanently on December 9, 2013. For a period of time following the closure of the restaurant, the hotel provided a continental breakfast to guests at the Hotel. However, this practice was discontinued soon after it began. While the Owner was exploring the potential for renovating the restaurant, it remained closed at the time of the hearing.

Union's arguments:

[26] The Union takes the position that the closure of the restaurant at the Hotel was a "technological change" within the meaning of s. 43 of *The Trade Union Act*. The Union relied upon the decision of this Board in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Loraas Disposal Services Ltd.*, (1989) 43 C.L.R.B.R. (2nd) 227, [1998] Sask. L.R.B.R. 1, LRB File Nos. 207-97 to 227-97, 234-97 to 239-97 as standing for the proposition that the closure of portion of a business is a technological change within the meaning of s. 43 because it involved the removal or relocation of work outside the appropriate unit. The Union notes that this Board's decision in the *Loraas Disposal* case was upheld by the Saskatchewan Court of Appeal in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Loraas Disposal Services Ltd.*, [1998] S.J. No. 783, (1999) 48 C.L.R.B.R. (2nd) 219, 172 Sask. R. 227, 1998 CanLII 12407 (SK CA).

[27] The Union also argues that the change affected a significant number of employees and, thus, the Employer was obligated to give notice to the Union and to the Minister of Labour Relations and Workplace Safety (the "Minister") in accordance with s. 43 of *The Trade Union Act*. To which end, the Union takes the position that the notices given by the Employer were defective. The Union argues that the notices given by the Employer were notices pursuant to s. 44.1 of *The Labour Standards Act*, R.S.S. 1978, c.L-1; not s. 43 of *The Trade Union Act*.

[28] In addition (or potentially in the alternative), the Union argues that the Employer failed to bargain collectively with respect to the development of a workplace adjustment plan as required pursuant to s. 43(8.1) of the *Act*. In this regard, the Union points to the evidence that the Employer provided no counter-proposal or any other response to the Union's proposed workplace adjustment plan, other than saying "no" to the Union. The Union takes the position that the Employer simply made no reasonable effort to bargain a workplace adjustment plan. Thus, the Union argues that the Employer violated s. 11(1)(c) of the *Act*.

[29] The Union also argues that the Employer violated s. 11(1)(c) when it refused to disclose the information sought by the Union when they were at the bargaining table, including the revenues and expenditures for the restaurant, the number of free breakfast vouchers, and the cost each month to provide free continental breakfast to hotel guests. The Union relies upon the decision of this Board in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Regina Exhibition Association Limited*, [1997] Sask. L.R.B.R. 787, (1998) 43 C.L.R.B.R. (2nd) 175, LRB File Nos. 256-97, 266-97, 279-97, 308-97 & 321-97, for the proposition that the Employer was obligated to provide this information to the Union to enable it to adequately comprehend and respond to the technological change being proposed by the Employer (i.e.: the closure of the restaurant). The Union also relies upon the decision of this Board in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Temple Gardens Mineral Spa Inc.*, [2002] Sask. L.R.B.R. 235, (2003) 87 C.L.R.B.R. (2nd) 147, LRB File No. 172-00, in asserting that the Employer violated s. 11(1)(c) by refusing to provide the requested information.

[30] The Union also argues that the Employer violated s. 11(1)(c) when it circumvent the Union and attempted to bargain directly with employees regarding the terms and conditions of their employment. The Union argues that the meeting that Mr. Jesse Park held with two (2) staff in the summer/fall of 2013 was evidence of a desire on the part of the Employer to encourage staff to agree to a reduction in their wages and benefits. The Union also points to the meeting that Mr. Kim had with all staff in October of 2013, whereat he implied that the restaurant would close if the staff did not agree to a reduction in their wages. The Union argues that both of these meetings were improper because Union representatives were neither invited nor present and because both meetings created an atmosphere of intimidation and coercion. The Union argues that these actions by the Employer were outside the sphere of permissible communication. In this regard, the Union relies upon the decisions of this Board in *Retail, Wholesale and Department Store Union, Local 558 v. Canadian Linen Supply Company Limited*, [1991] 1st Quarter Sask. Labour Rep. 63, LRB File No. 029-90; *Canadian Union of Public Employees, Local 1594 and Regina Public Library*, [2001] Sask. L.R.B.R. 834, LRB File No. 096-01; *Canadian Union of Public Employees, Local 2128 v. Board of Education of Bigger School Division*, [2002] Sask. L.R.B.R. 497, LRB File Nos. 069-02 and 070-02; and *Trent Lasko v. International Union of Painters and Allied Trades, Local 739 and L.C.M. Sandblasting and Painting Ltd.*, [2003] Sask. L.R.B.R. 82, (2004) 96 C.L.R.B.R. (2nd) 68, LRB File No. 234-02.

[31] Finally, the Union argues that the Employer's decision to close the restaurant and its actions in laying-off the restaurant staff represented a violation of s. 11(1)(e) of the *Act*. Firstly, the Union argues that the Employer's evidence did not demonstrate good and sufficient reason for its decision to closure the restaurant. The Union notes that the Employer did not provide financial statements or other evidence to demonstrate the poor financial performance of the restaurant. Secondly, the Union argues that there was evidence from which this Board could infer that the Employer's decisions/actions were tainted by an anti-union animus. The Union argues that the actions of the Employer is refusing to give proper notice pursuant to s. 43; in refusing to bargain a workplace adjustment plan; in refusing to disclosure the information needed by the Union; and its attempts to bargain directly with employees are all indicative of an anti-union animus on the part of the Employer. The Union also points to evidence of an exchange between Mr. Kim's son and the Union's chief shop steward as to her duties as a shop steward wherein Mr. Kim described the two (2) as "fighting".

[32] The Union asks this Board to infer that the motives behind the Employer's actions were not financial but rather represented an effort to discourage union activity and a desire on the part of the Employer to break the Union. The Union notes that all these events took place at a time when lay-off notices had been issued and the Union had filed applications with this Board alleging the Employer had committed a variety of unfair labour practices. The Union relies upon the decisions of this Board 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; *Canadian Union of Public Employees v. Del Enterprises Ltd. (o/a 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; *Saskatchewan Government & General Employees' Union v. Valley Hill Youth Treatment Centre Inc.*, (2014) 235 C.L.R.B.R. (2nd) 160, LRB File Nos. 024-13, 029-13, 030-13 & 031-13; and *International Brotherhood of Electrical Workers, Local 2038 v. Magna Electric Corporation*, (2014) 236 C.L.R.B.R. (2nd) 85, 2013 CanLII 74458 (SK LRB), LRB File Nos. 162-13 to 166-13, in arguing that the Employer violated s. 11(1)(e) of *The Trade Union Act*.

[33] By way of remedy, the Union seeks an Order requiring the Employer to re-open the restaurant and to keep the restaurant open and to not implement this technological change until the Employer has satisfied the requirements of s. 43 of the *Act*, including proper notices to the Union and the Minister. The Union also seeks an Order requiring the Employer to disclosure the information sought by the Union and to bargain with the Union with respect to a workplace

adjustment plan. The Union also seeks an Order reinstating the restaurant staff and compensating them for monetary loss. Finally, the Union seeks an Order declaring that the Employer has violated ss. 11(1)(a), (c) and (e) and s. 43 of *The Trade Union Act*.

[34] The Union filed written submissions and a book of authorities, which we have read and for which we are thankful.

Employer's arguments:

[35] The Employer argues that the closure of the restaurant was not "technological change" within the meaning of s. 43 of *The Trade Union Act* because it did not involve the "*removal or relocation outside of the appropriate unit*" of the Employer's work. Rather, the Employer argues that the closure of the restaurant was merely a decision to cease doing a particular kind of business and that actions of this type have not historically been considered to be technological change within the meaning of s. 43. The Employer relies upon the decision of the Saskatchewan Court of Queen's Bench in *Regina Exhibition Association v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union*, (1998) 43 C.L.R.B.R. (2nd) 213, 1998 CanLII 13912 (SK QB), wherein Geotros J. overturned a decision[1] of the Board that the permanent closure of the Silver Sage Casino represented a technological change within the meaning of s. 43 of the *Act*. The Court concluded that it was patently unreasonable for the Board to find that a permanent closure of a business, without a corresponding transfer of the work elsewhere, was a technological change within the meaning of s. 43.

[36] In the alternative, the Employer argues that it complied with the obligations imposed upon it pursuant to s. 43 of the *Act*. The Employer notes that it provided in excess of the required ninety (90) days notice of the intended closure and that it bargained with the Union with respect to a workplace adjustment plan. The Employer argues that s. 43 does not prevent it from implementing technological change; nor does this section require the Employer to justify its decision to implement that change. The Employer acknowledges that its notices did not specifically cite s. 43 of *The Trade Union Act*. In this regard, the Employer relies upon the decision of this Board in *United Brotherhood of Carpenters and Joiners of America, Local 1985 v. Con-Force Structures Limited*, [1999] Sask. L.R.B.R. 599, (2000) 61 C.L.R.B.R. (2nd) 108, LRB File No. 248-99, as standing for the proposition that an employer need not reference s. 43 in its

---

[1] See: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Regina Exhibition Association Limited*, [1997] Sask. L.R.B.R. 749, (1998) 43 C.L.R.B.R. (2nd) 161, LRB File No. 266-97.

notice provided the information provided to the Union otherwise satisfied the requirements of the section.

[37] The Employer argues that its decision to close the restaurant was wholly motivated by financial considerations. In this regard, the Employer notes that the restaurant had been struggling financially for years and that two (2) previous notices of lay-off had been issued to the restaurant staff dating as far back as April of 2012. The Employer also argues that the notice that was provided by the Employer in August of 2013 substantively complied with all of the requirements imposed by s. 43 of the *Act*. Simply put, the Employer argues that it is disingenuous for the Union to argue that it did not have proper notice of the intended closure of the restaurant in light of the fact that the Union and the Employer engaged in mid-term collective bargaining regarding that very matter.

[38] The Employer also notes that, while *The Trade Union Act* requires the parties to bargain collectively regarding a workplace adjustment plan, it does not require the parties to reach an agreement on that plan before implementation of the subject technological change. The Employer takes that position that the parties engaged in collective bargaining regarding a workplace adjustment plan but came to impasse as to the content of that plan. While the Employer acknowledges that it took a hard position at collective bargaining, it notes that the Union did the same thing; presenting one (1) proposal and then neither wavering nor modifying its position. Furthermore, the Employer argues that the information sought by the Union regarding its technological change was confidential and, in any event, not relevant to negotiating a workplace adjustment plan. The Employer argues that it is not required to justify its decision to implement technological change; only to give notice of that change and then bargain collectively with respect to a plan intended to mitigate the anticipated consequences of those changes for affected employees.

[39] With respect to the alleged violations of s. 11(1), the Employer argues that at no time did it attempt to circumvent the Union and bargain directly with employees. The Employer argues that it was entitled to communicate facts and its opinions to employees. The Employer notes that both of the impugned communications, firstly by Mr. Park and then by Mr. Kim, were merely expressions of commonly known facts; that the restaurant was not performing well, that revenue was down, that expenses were up, and that the wages paid at the Hotel were high relative to other employers in the area. The Employer notes that there was no evidence that it

proposed a specific wage or benefit reduction; only that conversation took place that the cost of operating the restaurant exceeded the revenue it generated and that, unless improvements could be made, the restaurant would have to close.

[40] The Employer takes the position that none of its impugned communications could reasonably have been perceived as intimidating or threatening by an employee of reasonable fortitude. The Employer also argues that the closure of the restaurant provided good and sufficient reasons for laying-off the restaurant staff. Simply put, the Employer denies that its decision to close the restaurant was motivated by any desire other than financial. To which end, the Employer points to the evidence of both Ms. Tide and Mr. Kim that the restaurant had been losing money for years.

[41] The Employer asks that the Union's applications be dismissed. The Employer filed a brief of law and book of authorities, which we have read and for which we are thankful.

Relevant statutory provision:

[42] The relevant provisions of *The Trade Union Act* are as follows:

> *11(1) It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer:*
>
> > *(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;*
> >
> > . . .
> >
> > *(c) to fail or refuse to bargain collectively with representatives elected or appointed, not necessarily being the employees of the employer, by a trade union representing the majority of the employees in an appropriate unit;*
> >
> > . . .
> >
> > *(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;

. . .

43(1) In this section "technological change" means:

(a) the introduction by an employer into the employer's work, undertaking or business of equipment or material of a different nature or kind than previously utilized by the employer in the operation of the work, undertaking or business;

(b) a change in the manner in which the employer carries on the work, undertaking or business that is directly related to the introduction of that equipment or material; or

(c) the removal or relocation outside of the appropriate unit by an employer of any part of the employer's work, undertaking or business.

(1.1) Nothing in this section limits the application of clause 2(f) and sections 37, 37.1, 37.2 and 37.3 or the scope of the obligations imposed by those provisions.

(2) An employer whose employees are represented by a trade union and who proposes to effect a technological change that is likely to affect the terms, conditions or tenure of employment of a significant number of such employees shall give notice of the technological change to the trade union and to the minister at least ninety days prior to the date on which the technological change is to be effected.

(3) The notice mentioned in subsection (2) shall be in writing and shall state:

(a) the nature of the technological change;

(b) the date upon which the employer proposes to effect the technological change;

(c) the number and type of employees likely to be affected by the technological change;

(d) the effect that the technological change is likely to have on the terms and conditions or tenure of employment of the employees affected; and

(e) such other information as the minister may by regulation require.

(4) The minister may by regulation specify the number of employees or the method of determining the number of employees that shall be deemed to be "significant" for the purpose of subsection (2).

(5) Where a trade union alleges that an employer has failed to comply with subsection (2), and the allegation is made not later than thirty days after the trade union knew, or in the opinion of the board ought to have known, of the failure of the employer to comply with that subsection, the board may, after affording an opportunity to the parties to be heard, by order:

(a) direct the employer not to proceed with the technological change for such period not exceeding ninety days as the board considers appropriate;

(b) require the reinstatement of any employee displaced by the employer as a result of the technological change; and

(c) where an employee is reinstated pursuant to clause (b), require the employer to reimburse the employee for any loss of pay suffered by the employee as a result of his displacement.

(6) Where a trade union makes an allegation pursuant to subsection (5), the board may, after consultation with the employer and the trade union, make such interim orders under subsection (5) as the board considers appropriate.

(7) An order of the board made under clause (a) of subsection (5) is deemed to be a notice of technological change given pursuant to subsection (2).

(8) Where a trade union receives notice of a technological change given, or deemed to have been given, by an employer pursuant to subsection (2), the trade union may, within thirty days from the date on which the trade union received the notice, serve notice on the employer in writing to commence collective bargaining for the purpose of developing a workplace adjustment plan.

(8.1) On receipt of a notice pursuant to subsection (8), the employer and the trade union shall meet for the purpose of bargaining collectively with respect to a workplace adjustment plan.

(8.2) A workplace adjustment plan may include provisions with respect to any of the following:

(a) consideration of alternatives to the proposed technological change, including amendment of provisions in the collective bargaining agreement;

(b) human resource planning and employee counselling and retraining;

(c) notice of termination;

(d) severance pay;

(e) entitlement to pension and other benefits, including early retirement benefits;

> *(f) a bipartite process for overseeing the implementation of the workplace adjustment plan.*
>
> *(8.3) Not later than 45 days after receipt by the trade union of a notice pursuant to subsection (2), the employer or the trade union may request the minister to appoint a conciliator to assist the parties in bargaining collectively with respect to a workplace adjustment plan.*
>
> *(10) Where a trade union has served notice to commence collective bargaining under subsection (8), the employer shall not effect the technological change in respect of which the notice has been served unless:*
>
> > *(a) a workplace adjustment plan has been developed as a result of bargaining collectively; or*
> >
> > *(b) the minister has been served with a notice in writing informing the minister that the parties have bargained collectively and have failed to develop a workplace adjustment plant.*
>
> *(11) This section does not apply where a collective bargaining agreement contains provisions that specify procedures by which any matter with respect to the terms and conditions or tenure of employment that are likely to be affected by a technological change may be negotiated and settled during the term of the agreement.*
>
> *(12) On application by an employer, the board may make an order relieving the employer from complying with this section if the board is satisfied that the technological change must be implemented promptly to prevent permanent damage to the employer's operations.*

Analysis:

Implications of Proclamation of The Saskatchewan Employment Act on the Union's applications:

[43] At the time the Union's applications were filed and at the time evidence was presented and arguments heard with respect to the Union's applications before this Board, *The Trade Union Act* was the relevant legislative authority. Prior to the completion of these Reasons for Decision, *The Saskatchewan Employment Act*, S.S. 2013, c.S-15.1, was proclaimed. With the proclamation of this new legislation, *The Trade Union Act* was repealed. Because this legislative changed occurred prior to rendering these Reasons for Decision, we must consider the temporal application of the new legislation.

[44] The Saskatchewan Court of Appeal addressed a similar situation in *United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp. et. al.*, 2010 SKCA 123 (CanLII). In that decision, the Court of Appeal was called upon to review a decision[2] of this

---

[2] See: *United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp. et. al.*, [2009] 162 C.L.R.B.R. (2nd) 1, 2008 CanLII 64399 (SK LRB), LRB File No. 069-04, upheld on reconsideration by the Board in

Board involving a certification application. The subject certification application had been filed and a hearing on the merits of that application had occurred at a time when *The Trade Union Act* did not require mandatory votes for certification applications. After the hearing had concluded, but before the Board had rendered its Reasons for Decision, *The Trade Union Act* was amended to require mandatory votes in all certification applications. In granting the trade union's certification application, the Board did not apply the amendment and did not order that a representational vote be conducted. The issue before the Court of Appeal in the *Wal-Mart Canada* case was whether the Board ought to have applied the amendment and ordered a representational vote.

[45] The Court of Appeal considered both *The Interpretation Act, 1995*, S.S. 1995, c.L-11.2 and the common law presumptions with respect to statutory interpretation. In doing so, the Court quoted from R. Sullivan, Sullivan on the Construction of Statutes, 5th ed (Markham: LexisNexis, 2008) at pp. 705-706:

> *When a provision is found to be purely procedural, it is given immediate effect. It is not given retroactive (or retrospective) effect. The presumption against the retroactive application of legislation applies to procedural provisions as it does to all legislation, without exception. Thus, any attempt to apply a procedural provision to a stage in a proceeding that was completed before the provision came into force would be refused, subject to a legislative direction to the contrary.*

[46] The Court of Appeal in the *Wal-Mart Canada* case agreed with the decision of this Board that the amendment to *The Trade Union Act* to introduce mandatory votes was not the type of change that ought to be given immediate (or retroactive) effect because the change in legislation was not "purely procedural". However, the Court also concluded that, even if the amendment had been only procedural, it would have been inappropriate for the Board to apply the new provision to matters that had been heard and were essentially "wrapped up" by the Board before the amendment came into force. In other words, the Court of Appeal concluded that legislative changes (whether procedural or substantive) should not be applied to applications that have been already been heard by the Board unless the governing legislation contains express statutory direction to do so. In our opinion, no such provision exists in *The Saskatchewan Employment Act*.

United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp. et. al., [2010] 173 C.L.R.B.R. (2nd) 171, 2009 CanLII 13640 (SK LRB), LRB File No. 069-04.

[47] For purposes of determining the Union's applications, we have relied upon the provisions of *The Trade Union Act* as that statute existed at the relevant times. We will, however, rely upon the provisions of *The Saskatchewan Employment Act* in disposing of the Union's applications. We would also have relied upon the new legislation for granting any remedial relief had we found in favour of the Union.

Was the Closure of the Restaurant at the Hotel a Technological Change?

[48] The general purpose of s. 43 of *The Trade Union Act* was canvassed by the Board in *Saskatchewan Government and General Employees' Union v. The Government of Saskatchewan*, 2010 CanLII 81339, LRB File No. 150-10, and described as follows:

> ***[35]*** *Turning to the case at hand, the policy objective of s. 43 of the Act is to ensure that members of organized bargaining units receive prior notice of a technological change intended to be implemented by an employer that is anticipated to affect the terms and conditions (and/or tenure of employment) of a significant number of employees in the workplace. The provision requires employers to enter into discussions with the bargaining agent for the affected employees about the impacts that are anticipated or likely to arise upon implementation of the proposed technological change. Employers have a variety of reasons for implementing operational changes in the workplace, including the introduction of new equipment, new materials and new operational practices. Section 43 does not prevent an employer from implementing technological change. However, should an operational change be of the* ***type*** *and of the* ***magnitude*** *prescribed by the Act, new obligations arise for an employer, including notice requirements and an obligation to engage in collective bargaining with respect to a workplace adjustment plan.*
>
> ***[36]*** *It should be noted, however, that s. 43 does not provide a general basis for compelling mid-contract bargaining unless the particular change is of both the type and the magnitude prescribed by the Act. Similarly, s. 43 is not applicable if the parties have already negotiated procedures by which workplace issues associated with technological change may be negotiated and settled. In addition, an employer may apply to the Board for relief from compliance with s. 43 to prevent permanent damage to the employer's operation.*
>
> ***[37]*** *An examination of s. 43 of the Act reveals that it is nuanced and policy-laden. It imposes ancillary collective bargaining responsibilities upon the occurrence of particular circumstances; circumstances specifically defined by the legislature. To which end, the starting point for a determination as to whether or not this provision is applicable to a particular fact situation involves three (3) substantive questions:*
>
> 1. *Is the employer implementing (or about to implement) a "technological change" within the meaning of the Act?*
>
> 2. *Will that technology change affect the terms, conditions and tenure of employment of a "significant" number of employees as defined by Saskatchewan Regulations 171/72?*

> 3. *Does the collective agreement between the parties contain provisions that specify procedures by which the workplace issues associated with technological change may be negotiated and settled by the parties?*
>
> ***[38]*** *This Board has supervisory jurisdiction with respect to the application of s. 43 and, thus, to the determination of these threshold questions in the event of a dispute. . .*
>
> ***(Emphasis in original)***

[49] The parties agree that the decision to close the restaurant at the Hotel affected a significant number of employees within the meaning of Saskatchewan Regulations 171/72 and that their collective agreement does not specify procedures for the implementation of technological changes. Thus, the penultimate issue to be determined by the Board is whether or not the decision by the Employer to close the restaurant was "technological change" within the meaning of s. 43 of the *Act.* In this regard, there appeared to be no dispute that the closure of the restaurant was not an action falling within the meaning of either s. 43(1)(a) or (b). Rather, the dispute in these proceedings was focused on whether or not the change implemented by the Employer was the type of change falling within the meaning of s. 43(1)(c).

[50] The Union argues that the decision of this Board in the *Lorass Disposal* case, a decision which was upheld by the Court of Appeal, is authority for the proposition that a partial closure of a business is technological change within the meaning of the *Act.* The Employer, on the other hand, argues that the decision of the Court of Queen's Bench in the *Regina Exhibition Association* case is the controlling authority and that this case stands for the proposition that the closure of an employer business is not a technological change, without a corresponding transfer of work elsewhere.

[51] This Board jurisprudence in applying s. 43(1)(c) to the closure of a business was recently canvassed by this Board in *United Food and Commercial Workers, Local 1400 v. Sobeys Capital Incorporated*, (Dated March 25, 2014 – unreported), LRB File No. 024-14. In that decision, the Board considered the decisions of both Geotros J. in the *Lorass Disposal* case and of the Court of Appeal in the *Regina Exhibition Association* case:

> ***[36]*** *The Union argued that the Saskatchewan Court of Appeal in Loraas, supra, overruled lower court decisions, particularly the Court of Queen's Bench decision in Regina Exhibition Assn. Ltd. v. Saskatchewan Joint Board Retail, Wholesale and Department Store Union where Mr. Justice Geatros, speaking to*

a situation involving a complete closure, overruled the Board in the following terms:

> *I have difficulty in accepting the notion that if "removal" can be interpreted to mean a "relocation", but not "the total cessation of work", as the Board points out it has found in the past, the addition of the words "or relocation outside of the appropriate unit" now serve to include closure or cessation as a "removal". Again I say that at the time of the amendment the legislature would have been aware of the past rulings of the Board. It follows, in the words of Chairman Sherstobitoff in Sunshine Uniform Supply Services, "If the legislature had intended s. 42(1)(c) to cover closure it would have said so in clear, express and unambiguous terms."*
>
> *The Board says, "...there is no labour relations rationale for distinguishing between a closure caused by a relocation of work outside the bargaining unit and a total closure." For present purposes it is of no moment whether that is so. It is my view that the legislature in its wisdom has seen fit to make that distinction.*
>
> ...
>
> *Not only do I merely disagree with the result by the Board, but I find there is no rational basis for its conclusion that the decision by REAL to permanently close the Silver Sage Casino was a technological change within the meaning of s. 43(1)(c) of the Act. To look upon the 1994 amendment as overriding a consensus held by the Board for twenty years lacks the faculty of reason. The Board, in my judgment, made a patently unreasonable error in the performance of its function. The "severe test" alluded to has been met. It follows that I am unable to defer to the decision of the Board on its interpretation of "technological change" in s. 43(1)(c) of the Act.*

[37] *We do not agree with Union counsel that the Court of Appeal overruled Mr. Justice Geatros in Loraas, supra. At paragraph 10 of the Court of Appeal's decision, they made it clear that "it is neither necessary nor desirable for us to express any opinion about "the Acme Video Case and the Silver Sage Casino Case. It is important to note, as well, that the Court was not speaking of the Court of Queen's Bench decision, but rather, the Board decisions.*

[38] *Loraas, as noted above, was not a situation which arose from a fact situation where a complete business closure had occurred. Additionally, the Court of Appeal in Loraas overturned the decision of the Court of Queen's Bench based solely upon its review of the decision based upon the standard, as it was then, of patent unreasonableness. At paragraph 17, the Court says:*

> *Based on the standard of review and on the facts as found by the Board, we cannot say that the Board's application of s. 43(1)(c) in the instance before us is patently unreasonable.*

[39] *Since the Culinar, supra, decision there has been little jurisprudence from the Board regarding Section 43. In Off the Wall Productions Ltd., the Board determined that a layoff of employees in the absence of evidence that the employer had determined to close part of the business or relocate that business was not a "technological change". Other decisions, as noted above, involved applications for interim relief without substantive findings concerning the applicability of Section 43.*

[40] *The Union argues that the Board's decision in Loraas, supra, and the Court of Appeal decision supporting that decision, shows that the Board has changed its interpretation of the provision so as to include a complete closure of a work, undertaking or business. As noted above, that proposition is not*

> *supported by the facts of the Loraas case, supra, which involved only a partial closure and transfer of business.*

[52] The Board in the *Sobeys Capital Incorporated* case applied the test [for determining whether or not a particular action by an employers is of the "type" anticipated by s. 43(1)(c)] set forth by this Board in *United Food and Commercial Workers, Local 1400 v. Culinar Inc.*, [1999] Sask. L.R.B.R. 97, LRB File No. 038-98. In the *Culinar* case, the Board concluded that the application of s. 43(1)(c) depended on three (3) key factual findings. These factual findings were set forth at paragraph 55 as follows:

> *...The key factual findings that are common among these cases are (1) the work continues to be performed; (2) the location of the work is moved outside the bargaining unit; and (3) the work is now performed by employees of the Employer in a different work location or by employees of a third party.*

[53] As indicated, the Board in the *Sobeys Capital Incorporated* case concluded that the test described by the Board in the *Culinar* case continues to be the appropriate means of determining the application of s. 43(1)(c). We agree with that conclusion. On the other hand, we note that the *Sobeys Capital Incorporated* case involved the complete closure of a business; whereas the closure of the restaurant at the Hotel involve only a partial closure of the business conducted by the Employer. In our opinion, the test described by this Board in the *Culinar* case is also the appropriate test when a closure involves only a portion of a business.

[54] The determining factors in the application of s. 43(1)(c) is not whether there has been a full or partial closure; the determining factor is whether or not there has been a transfer of work previously done by employees of the bargaining unit to another location or to another party. A decision to merely cease providing a service (as was the case with Sobey's grocery store in Yorkton and at the Silver Sage Casino) is not technological change within the meaning of s. 43(1)(c) unless the employer takes active steps to remove or relocate the work outside the bargaining unit. The employers in both the *Sobeys Capital* case and the *Regina* Exhibition case merely abandoned the market leaving its previous customers to find their groceries and gaming opportunities elsewhere. Neither employer made any effort or arrangements to transfer the work to another of its locations or retain the services of a third party to perform that work.

[55] In the present case, the Employer made a decision to closure the restaurant portion of its Hotel. It did not sell this portion of its business to a third party, as was the

circumstances in the *Loraas Disposal* case. The Employer did not transfer the work to another of its divisions or contract with a third party for the operation of the restaurant. Rather, it merely came to the conclusion that this aspect of its operations was no longer profitable and ceased providing food services to its customers. In our opinion, the actions of the Employer in this case are analogous to the decision of the Regina Exhibition Association to close the Silver Sage Casino and the decision of Sobey's Capital Incorporated to close their grocery store in Yorkton. In the present case, the customers of the Hotel must now make their own arrangements for food services. Because the Employer took no active steps to transfer the work elsewhere, the decision of this Board in the *Loraas Disposal* case is distinguishable. In our opinion, the closure of the restaurant portion of the Hotel was not a "technological change" within the meaning of the *Act*. The employer merely stopped providing food services to its customers and abandoned the market, so to speak. Under these circumstances, we are not satisfied that the type of change implemented by the Employer triggered the application of s. 43(1) of *The Trade Union Act.*

Did the Employer comply with the obligations imposed by s. 43 of The Trade Union Act?

[56] Even if we had found that the Employer's decision to close the restaurant had represented a technological change, we would not have granted the remedies sought by the Union other than an Order directing the Employer to bargain collectively with the Union regarding the terms of a workplace adjustment plan. In our opinion, the notices provided by the Employer satisfied that obligations imposed upon it pursuant to s. 43. We agree with the position advanced by the Employer that it can not seriously be argued that the Union did not have notice of the nature of the change the Employer intended to implement; or the date upon which the Employer intended to implement that change; or the number of employees that would be affected; or the impact the change would have on those employees. The Employer's notice in August of 2013 (as had its notice in July of 2013) identified that it was planning to close the restaurant on or about December 1, 2013 and that all of the restaurant staff would be laid-off as of that date. These notices were provided in excess of ninety (90) days prior to the implementation of the subject change. More importantly, the notices performed the function intended by the Legislature; namely, the notices triggered the right of the Union to seek mid-term collective bargaining with respect to the intended change. While the Union had a valid reason to dispute the Employer's engagement in the process of collective bargaining, the fact that there was a process undermines the Union's argument that the Employer's notices were defective.

[57] In its applications, the Union alleged that the Employer failed to actively engage in the process of collective bargaining. If we had found that the closure of the restaurant had represented a technological change (which we did not), this allegation would have been well-founded. In our opinion, the evidence did not demonstrate engagement by the Employer in a process of collective bargaining. The Employer's representatives met with the Union but essentially abandoned the process upon seeing that the Union's position. The Union offered to continue bargaining with the Employer but it declined to do so. If we have found the closure of the restaurant to be technological change, the Employer's conduct would not have satisfied the duty to bargain collectively with the Union. On the other hand, because we were not satisfied that the closure of the Employer's restaurant triggered the application of s. 43, the Employer was under no duty to bargain collectively with the Union. As a consequence, no violation can be found against it for failing to do so.

[58] In its applications, the Union also alleged that the Employer failed to disclose information the Union believed was necessary for it to adequately comprehend and respond to the technological change being proposed by the Employer. If we had found that the closure of the restaurant had represented a technological change, this allegation would not have been well-founded for two (2) reasons. Firstly, as this Board has noted on several occasions, s. 43 of *The Trade Union Act* does not prevent employers from implementing technological change. This provision merely requires that, should an operational change be of the type and of the magnitude prescribed by the *Act*, certain obligations arise for the employer, including notice requirements and an obligation to engage in collective bargaining with respect to a workplace adjustment plan. While a workplace adjustment plan may include "alternatives" to the proposed technological change, section 43 of the *Act* does not require an employer to justify its decision to implement its desired changes; nor is the employer required to obtain the consent of its employees. For this reason, we would not have found that the duty to bargain in good faith required the Employer to disclosure much of the information sought by the Union, including the information sought with respect to the revenues and expenditures for the restaurant, the number of free vouchers, reports compiled to support closure of the restaurant, and internal communications discussing the closure of the restaurant is not relevant to the workplace adjustment plan. Secondly, the evidence in these proceedings was unclear as to whether or not the Employer had refused to disclose the information sought by the Union or whether it had merely abandoned the process of collective bargaining, *in toto*. In our opinion, under these circumstances, it would not have been

appropriate to also find the Employer guilty of refusing to disclose the information desired by the Union if we had found it guilty of failing to bargain collectively.

Did the Employer violate s. 11(1)(a) of The Trade Union Act?

[59] In its applications, the Union also alleged that the Employer violated s. 11(1)(a) of the *Act* by communicating with its employees with a view to interfering with, threatening and/or coercing those employees to accept lower wages and/or otherwise agree to terms of employment more advantageous to the Employer. The Union points to two (2) interactions between management and the staff. Firstly, the Union argues that the meeting Mr. Park had with two (2) staff in the lounge in the summer/fall of 2013 was threatening and intimidating for those employees. The Union argues that those employees walked away form that meeting fearing for their jobs and thinking that they had been asked to accept a reduction in wages and/or inferior benefits. Secondly, the Union argues that Mr. Kim's meeting with all staff in October of 2013 left the same impression with staff. The Union argues that these communications fell outside the sphere of permissible communications by an employer within the meaning of s. 11(1)(a).

[60] 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 using its 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 the exercise of their protected rights. While employers are free to run their own business and to communicate with their employees in the ordinary course, 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.

[61] 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 probable effect of impugned conduct upon the affected employees. In doing so, we assume the 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. 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*. In our words, to sustain a violation in the present case, we must be satisfied that the statements made by Mr. Park and/or Mr. Kim would have been sufficient to strip the subject employees of their ability to make rational decisions about the exercise of their rights under the *Act*.

[62] As this Board noted in *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, et.al., supra*, the mere fact that an employer has communicated facts and opinions to its employees and those employees may have been influenced by those views and opinions (whether they agree with those views or become annoyed) should not automatically lead to a finding of interference, let alone employer coercion or intimidation. The prohibited effect that s. 11(1)(a) seeks to avoid targets a higher threshold than merely influencing employees in the exercise of their rights or the communication of factual information intended to inform a debate. Absent evidence of an unusual power imbalance in the workplace, we start from the presumption that employees are capable of receiving a variety of information from their employers; of evaluating that information, even being aided or influenced by that information; without necessarily being improperly influenced, threatened, intimidated or coerced by that information. Absent evidence of a particular vulnerability of employees, we start from the presumption that employees are capable of weighing most information they receive, including information from their employer, and making rational decisions in response to that information.

[63] As this Board has noted, the context within which a communication occurs is important to understand the probably affect of that communication on the subject employees. In this regard, we note that both of the Employer's impugned communications occurred after the Employer had issued lay-off notices to the restaurant staff. In light of the fact that there had

been two (2) previous lay-off notices issued in the workplace; that the hours of operations for the restaurant had been progressively reduced over the years; and that numerous meetings had taken place to discuss how to improve the financial performance of the restaurant; the reasonable assumption is that the subject employees were well aware that the reason the restaurant was closing was because of its poor financial performance. We also noted that none of the witnesses for the Union disputed the accuracy of the statements that the wages at the restaurant were higher than other similar employers in the area. While the restaurant staff was understandably fearful of being laid-off and/or losing their jobs, the genesis of this fear ought to have been the poor financial performance of the restaurant. In our opinion, both Mr. Park and Mr. Kim communicated factual information to the employees of the workplace; namely, that unless the restaurant was able to generate more revenue or the Hotel could reduce its expenses, the restaurant would have to close. It is not apparent that either Mr. Park or Mr. Kim misrepresented the information they provided to employees. With all due respect, the information they provided should have been readily apparent to any employee of reasonable intelligence. Simply put, the restaurant was going to close unless a means could be found to increase revenue or reduce expenses. It was not a complicated formula. In the end, nothing changed and the restaurant did, in fact, close.

[64] Simply put, the Employer had the right to communicate factual information about the general health and viability of the business. Factual statements, including comments about an employer's ability to remain competitive and/or pending future plans, are not by themselves contrary to *The Trade Union Act*, unless there was something in the context within which that information was communicated somehow changes the ordinary meaning of that information for employees. Having considered the evidence in these proceedings, we were not satisfied that the context that could have changed the meaning of the information that was provided by either Mr. Park or Mr. Kim. The employees may not have liked the information they received from the Employer. However, the information they received was factual and should not have compromised or expropriated their capacity to exercise their rights under the *Act*.

Did the Employer violate s. 11(1)(c) of The Trade Union Act?

[65] In its applications, the Union alleged that the Employer violated s. 11(1)(c) of the *Act* by attempting to circumvent the Union and to bargain directly with employees. The Union points to the same two (2) interactions between management and the staff; namely, Mr. Park's meeting with two (2) staff in the summer/fall of 2013 and Mr. Kim's meeting with all staff in

October of 2013. The Union argues that both of these meetings were improper because the Union was not invited and because the goal of the communications that occurred at these meetings was to encourage employees to agree to a reduction in their wages and benefits.

[66] Together, s. 11(1)(c) and s. 11(2)(c) impose companion obligation on both employers and trade unions in organized workplaces to bargain in good faith and to make reasonable effort to conclude a collective agreement. A secondary (but not less important) purpose of s. 11(1)(c) is to secure the union's position as the exclusive bargaining agent for organized workers and to compel the employer to negotiate with the union (as opposed to directly with the employees) in good faith for the purpose of concluding a collective agreement.

[67] In 2008, the Legislature amended s. 11(1)(a) of *The Trade Union Act* and, in doing so, expanded the scope of permissible employer communications. As this Board noted in *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, et.al., supra*, with this amendment, the legislature confirmed that trade unions are not the only permissible source of information for certified employees. Although the amendment did not change the description of prohibited conduct in s. 11(1)(c), it undoubtedly signaled a greater tolerance by the Legislature for the capacity of employees to receive information and views from their employer. While an employer continues to be prohibited from coercing or intimidating their employees in the exercise of protected rights; from interfering in administration of a labour organization; and from circumventing the union and attempting to bargain directly with employees with respect to the terms and conditions of their employment; the provision of facts and opinions to employees, *simpliciter*, can not now represent a violation of *The Trade Union Act*. In evaluating the impugned conduct of an employer, the Board must now be more restrained in the inferences it takes as to the probable effect of impugned communications if those communications merely involve the reasonable expressions of facts or opinions.

[68] Having considered the evidence in these proceedings, we are not satisfied that Employer's conduct was indicative of direct bargaining. At the time of the impugned communications, much of the information that was communicated by both Mr. Park and Mr. Kim would have been known, or should have been obvious, to employees in the workplace. In our opinion, the fact that the Employer mentioned the poor financial performance of the restaurant; the relative high wages enjoyed by employees; and the need to promote more efficiency in the workplace; does not support the conclusion that the Employer was attempting to circumvent the

Union and bargain directly with employees. Firstly, much of this information would have been known or should have been obvious to employees. The restaurant was scheduled to close in the near future. Previous owners had tried to improve the financial viability of the restaurant and had failed. Wages were high and revenues were inconsistent. Absent intervention or change, the closure of the restaurant was highly predictable. Secondly, even if this information was not known or obvious to staff, the Employer had the right to communicate factual information about the general health and viability of the business. As indicated, factual statements, including comments about an employer's ability to remain competitive or about its future plans, are not by themselves contrary to *The Trade Union Act*. Having considered the evidence in these proceedings, it is not apparent that either Mr. Park or Mr. Kim misrepresented the information they provided to employees. Furthermore, we were not satisfied that the statements were intended to convey, or could reasonably have conveyed, a desire on the part of the Employer circumvent the Union and bargain directly with employees or to otherwise undermine the administration of the Union.

[69] The Union argues that Mr. Park proposed specific reductions in both the wages and benefits enjoyed by restaurant staff; proposals that were not made to the Union at the bargaining table. Having considered the evidence, we were not satisfied that Mr. Park was attempting to "negotiate" with Ms. Coutts and/or Ms. Kaban when they met in the lounge to discuss the closure of the restaurant. The more reasonable assumption is that Mr. Park was explaining the problems that the Employer was experiencing in the operation of the Hotel. Revenues were inconsistent and expenses were high; the restaurant was going to close if something didn't change. Under these circumstances, the more logical conclusion is that Mr. Park was attempting to explain why the restaurant was closing to the subject employees. In our opinion, the tenor of the evidence did not support the assertion that the goal of Mr. Park was to surreptitiously make a collectively bargaining proposal directly to employees.

[70] For these reasons, we were not satisfied that Employer attempted to circumvent the Union and bargain directly with employees contrary to s. 11(1)(c) of the *Act*.

Did the Employer violate s. 11(1)(e) of The Trade Union Act?

[71] The final allegation in the Union's applications was that the Employer violated s. 11(1)(e) of the *Act* when it closed the restaurant and laid-off the restaurant staff. The Union bases this allegation on two (2) footings. Firstly, the Union argues that the Employer did not

have good and sufficient reasons for terminating the employment of the restaurant staff. Secondly, the Union argues that, even if the Employer had a reason for closing the restaurant, the Employer's decision to do so was tainted by an anti-union animus.

[72] Section 11(1)(e) represents an important safety net for employees interested or involved 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.

[73] 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.*

[74] 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.

[75] 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. See: *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International Union (United Steelworkers) v. Comfort Cabs Ltd., et.al.*, (Dated April 22, 2014 – unreported), LRB File Nos.

240-13 to 248-13 & 328-13. 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.

[76] Having considered the evidence in these proceedings, we were not satisfied that the Employer's conduct was tainted by an anti-union animus for any of the reasons suggested by the Union. Firstly, the Employer provided notice to the Union and to all affected staff of its decision to close the restaurant and that notice was given months before the lay-offs took place. These notices were given long before any applications were filed with this Board or grievance filed under the collective agreement. Secondly, in light of our finding that the closure of the restaurant did not represent a technological change, the Employer can hardly be faulted for refusing to bargain a workplace adjustment plan or for refusing to disclosure the information desired by the Union. Finally, for the reasons already stated, we were not satisfied that the Employer's communications were threatening or coercive or that it otherwise attempted to bargain directly with employees or undermine the administration of the Union.

[77] In our opinion, the Employer had good and sufficient reason for laying-off the restaurant staff; namely, the closure of the restaurant. The restaurant was old and had been performing poorly for years. Previous owners had unsuccessfully tried to improve the financial performance of the restaurant and had failed. In our opinion, the evidence in these proceedings does not reasonably lead to the conclusion that an anti-union animus on the part of the Employer had anything to do with the decision to close the restaurant. To the contrary, the more reasonable conclusion is that the Employer's motivation was financial and that the decision to close the restaurant was inevitable.

Conclusions:

[78] In our opinion, the Union's applications must be dismissed. Having considered the evidence in these proceedings, we were not satisfied that the Employer's decision to close the restaurant at the Hotel represented a "technological change" within the meaning of s. 43 of *The Trade Union Act*. Furthermore, we find that the Employer had good and sufficient reasons for the decision to lay-off the restaurant staff and we were not satisfied that this decision was tainted, even in part, by an anti-union animus. We were also not satisfied that the Employer

communicated with its employees in a manner contrary to s. 11(1)(a) or that it attempted to circumvent the Union and bargain directly with employees contrary to s. 11(1)(c).

[79] Even if we had found that the Employer's decision to close the restaurant had represented a technological change (which we did not), we were satisfied that the notice provided by the Employer complied with the obligations imposed upon it pursuant to s. 43 of the *Act*. On the other hand, if we had found that the Employer's decision to close the restaurant had triggered the application of s. 43 of the *Act*, the Employer would have been subject to a duty to bargain collectively with the Union regarding a workplace adjustment plan; a duty which would not appear to have been satisfied by the Employer. If we had found that the restaurant closure had represented a technological changes (which we did not), the only remedial relief we would have granted would been declaratory relief, including an Order directing the Employer to bargain collective with the Union with respect to a workplace adjustment plan. We would not have ordered the restaurant to be re-opened or otherwise prevented the Employer from implementing the subject change.

[80] Board members Greg Trew and Bert Ottenson both concur with these Reasons for Decision.

DATED at Regina, Saskatchewan, this 2nd day of May, 2014.

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson