CANADIAN UNION OF PUBLIC EMPLOYEES, Applicant v. THE CITY OF WARMAN, Respondent

LRB File No. 283-16; May 4, 2017

Chairperson, Kenneth G. Love, Q.C.; Members: Don Ewart and Maurice Werezak

For the Applicant: Juliana Saxberg
For the Respondent: Candice Grant

Termination of Employee during organizing campaign by Union – City terminates employee engaged in assisting union in organizing employees of City of Warman – Union files Unfair Labour Practice Application under section 6-62(1)(g) of *The Saskatchewan Employment Act*.

Section 6-62(4) of *The Saskatchewan Employment Act* – Board finds that employee was terminated while engaging in protected activity – Section 6-62(4) creates reverse onus on Employer to justify termination.

Reverse Onus – Board reviews requirements for justification for termination while employee is engaged in protected activity – Board finds that reasons provided by Employer were neither coherent nor credible. City found not to have satisfied reverse onus and found guilty of an unfair labour practice.

Other Statutory Provisions – Board considers other provisions of section 6-62(1) of *The Saskatchewan Employment Act* – Board reviews provisions and evidence and finds that Union did not provide sufficient evidence to support allegations.

REASONS FOR DECISION

Background:

[1] Kenneth G. Love, Q.C., Chairperson: This is an application by the Canadian Union of Public Employees ("CUPE") on behalf of a former employee of The City of Warman ("City"). CUPE asserts that Mr. Grant Goerzen ("Goerzen") was terminated by the City while he

was engaged in assisting CUPE to organize employees of the City contrary to the provisions of section 6-62(1)(g) of *The Saskatchewan Employment Act* (the "*SEA*"). Where an employee is terminated, section 6-62(4) of the *SEA* provides for a shifting of the onus of proof to the City to justify the termination if the conditions set out in that section are met.

Facts:

[2] The Board heard evidence from eight (8) witnesses for CUPE and three (3) witnesses for the City. We do not intend to refer to each witnesses testimony in this summary of the facts distilled from that evidence, but will identify particular testimony of witnesses as necessary.

Mr. Goerzen's Work History

[3] Goerzen was hired by the City in late April, 2013 as a Public Works Equipment Operator, Level II. At the time of his hire, the Public Works Department was not separated into distinct units for utilities and transportation as it was at the time of his termination. As such, he reported to Mr. Jason Wiebe ("Wiebe") as his supervisor. Wiebe's direct report was to Mr. Randy Fehr ("Fehr"), the Public Works and Utilities Manager. Fehr, in turn, reported to the City Manager. At the time of Goerzen's termination, that position was held by Mr. Bradly Toth ("Toth") in an acting capacity. Sometime later, the department was bifurcated into two (2) distinct units. Wiebe continued as the supervisor for utilities and another supervisor, Jason Robson ("Robson") was appointed as the supervisor of transportation. Both of these supervisors reported to Fehr.

[4] Goerzen was involved in an incident on January 13, 2014 while operating a dump truck hauling snow. He left his PTO engaged while driving out of the snow dump with his box raised and pulled down a telephone line. He was given a verbal reprimand for this incident.

[5] During his employment, Goerzen received performance appraisals, the first of which was in June, 2014. His performance was rated as either "Expectations Met" or "Needs Improvement". His overall rating was "Needs Improvement". In his testimony, Goerzen acknowledged that this was not a positive evaluation.

[6] Goerzen took a nine (9) month "Parental Leave" from his employment and returned to his employment shortly before undergoing another performance evaluation. In fairness, the supervisor making the evaluation noted that the evaluation was based upon "*prior incidents and well as the short time he has been back from leave*". Again, his performance was rated as either "Expectations Met" or "Needs Improvement". Attached to this evaluation was a listing of various examples of where his performance was lacking. The first of these examples was the incident while hauling snow referenced above.

[7] The second example was that on one occasion he had left the City's gas monitor in the dry well of lift [station] #3. It was finally located by another employee who had discovered it to be missing from its storage location.

[8] The third example was that he had returned a truck and painter back to the shop, but had left the lights flashing, door open and the shop unsupervised.

[9] The fourth example was that after returning the tractor to the shop, he failed to park in a safe manner which resulted in the tractor rolling into the street.

[10] The fifth example was that he was noted by the City Manager operating a lawn mower in an unsafe manner, racing between trees on N. Railway.

[11] The final comment was "*Grant is anxious to take courses but fails to act on them*".

[12] On August 12, 2015, Goerzen was trimming weeds at the City Lagoon when the blade on the trimmer he was using hit a piece of rebar. A piece of metal was dislodged and became embedded in his arm. He received treatment for his injuries at the City Public Works shop. It was determined that the accident was the result of him utilizing the wrong blade in the trimmer when cutting around areas where rebar may be present. No discipline was given, but an "Incident Log Sheet" was placed in his file.

[13] On October 5, 2015, Goerzen left a City truck on the street over the weekend with the keys in the ignition and the window open. In his testimony, Goerzen testified that he had left the truck on Friday, and recovered it on Saturday so that it had not sat the whole weekend. His explanation was that he "simply forgot".

[14] On May 4, 2016, Goerzen was again injured while tightening barbed wire at the City lagoon. He was again given treatment for his injuries and returned to work. An "Incident Log Sheet" was prepared regarding this incident as well.

[15] On July 21, 2016, Goerzen left a City truck running with the keys in the ignition before he left for his lunch break. A "Corrective Action" form was completed which was indicated as a "Written – 1st Warning".

[16] Goerzen received another performance evaluation in 2016. This evaluation was performed by Wiebe following the split of the Public Works department into two divisions. That evaluation was better, but numerous categories were still noted as needing improvement. In the review, Goerzen undertook to "work on the issues brought up i.e.:) chatting while working, proper vehicle parking and safe practices to improve his reviews in the future."

[17] A culminating incident occurred on December 15, 2016 when Goerzen was followed by Wiebe. Goerzen had been given a specific task that morning by Wiebe, which was to prepare the City's shop floor for painting. Goerzen testified that he was then asked by Robson to go to City Hall to see if there was any ice that needed to be removed. Goerzen drove a City truck to City Hall, followed by Wiebe. He did not stop at City Hall and continued to drive around the City for around ½ hour before returning to the City shop. Wiebe contacted Robson who agreed to talk to Goerzen. Wiebe also advised Fehr of the incident.

[18] Goerzen claimed that he was driving around checking the City's sewage lift stations for ice. This explanation was discounted as not being truthful as he had been driving down streets where there were no lift stations at all. Additionally, Mr. Wiebe testified that it was his responsibility that day to check on the lift stations, which he did after he discontinued his following of Goerzen.

[19] There was also evidence heard of a similar incident which had occurred in the summer of 2016 when Goerzen was noted to be driving around the City. He claimed to be searching for a lost lawn mower blade, but was not seen to have gotten out of his truck and was noted to be driving in a normal manner, not as if he was searching for something he had lost.

The Union Organizing Drive

[20] Andrew Loewen ("Loewen"), an organizer with the Union testified regarding the Union's organizing drive. He testified that the City had been targeted because it was the largest unorganized municipality in the Province.

[21] The drive began with Loewen meeting with a non-public works employee in September of 2016. However, that person declined to become an inside organizer for the Union. He met with Goerzen and another employee on October 21, 2016. He testified that both Goerzen and the other employee agreed that they would talk to other employees. Goerzen agreed to be an inside organizer for the Union.

[22] Loewen also testified concerning an incident on November 21, 2016 when he went to the City Recreation Centre to leave some union literature for employees at that site. He approached a person who he thought was an employee to give them the literature he wished to have distributed. That person turned out to be Mr. Paul McGonigal ("McGonigal"), the Manager of Parks and Recreation Department of the City. He testified that McGonigal was cordial in his response to the request, offering to allow him to go into a staff room to speak to employees. Loewen testified that he declined to do so.

[23] As things progressed in the organizing drive, the Union determined that it would hold a public meeting for employees regarding unionization on December 14, 2016. The meeting was held in a nearby community centre in the City of Martensville. Employees of the City of Martensville were already represented by the Union and were assisting the Union with its drive in the City.

[24] Events began to intersect at that meeting. Attendance was not high at the meeting. Some employees, had, however, asked for information to be sent to them by mail. Goerzen attended the meeting and spoke in favour of the union drive. Another employee, who was taking notes at the meeting, spoke against the unionization.

[25] Goerzen's attendance at the meeting caused some concern as he was to have attended a hockey game in Saskatoon with his son along with Jason Wiebe and his child. They had both won tickets in a draw sponsored by the City. On the evening of the game (and the

Union meeting), Goerzen contacted Wiebe to advise that he wouldn't be able to attend the game as his furnace wasn't working properly.

[26] Wiebe testified in cross-examination that Fehr asked on December 14, 2016, if he had heard anything about a union drive. He also testified that on December 15, 2016, at between 2:50 – 3:00 PM that he was telephoned by McGonigal and told that Goerzen was involved in the unionization effort. He testified that he advised both Fehr and Robson of this conversation.

[27] Logan Clark ("Clark"), another public works employee testified that on December 15, 2016 he was asked by Fehr if Goerzen had talked to him about joining a union. This conversation apparently took place while the two of them were driving in a City truck. He testified that he told Fehr that he hadn't heard anything concerning unionization. In his testimony, Fehr was unable to recall anything about this conversation.

[28] Fehr testified that he had had discussions concerning termination of Goerzen as early as Monday, December 2, 2016. He testified that he had been made aware by a City Hall employee on December 14, 2016 that she had been in receipt of emails concerning unionization and a meeting to be held that evening. He testified that he thought that employees of the Parks and Recreation Department were the ones engaged in the union drive.

[29] He also testified that he did mention unionization to his employees at the morning meeting on December 14, 2016. He told them of the information he had obtained from the City Hall employee. He testified that he did not ask any of them if they were involved in the union drive. He also testified that he was unaware that Goerzen was involved in the unionization effort.

[30] He testified that he had determined that it was time to move on with termination of Goerzen on December 14, 2016 due to his work ethic and safety concerns. Bradley Toth ("Toth"), the acting City Manager testified that he was approached by Fehr on December 14, 2016 regarding termination of Goerzen. Mr. Weibe testified that he spoke to Fehr about termination of Goerzen on December 15, 2016 after having followed him around the City.

[31] Goerzen was terminated[1] on December 16, 2016.

[1] His termination letter, however, is dated December 15, 2016.

Relevant statutory provision:

[32] Relevant statutory provisions are as follows:

> ***Unfair labour practices – employers***
>
> ***6-62****(1)It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*
>
> > *(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Part;*
> >
> > *(b) subject to subsection (3), to discriminate respecting or interfere with the formation or administration of any labour organization or to contribute financial or other support to it;*
> >
> > *. . .*
> >
> > *(g) to discriminate with respect to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including termination or suspension or threat of termination 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 pursuant to this Part;*
> >
> > *(h) to require as a condition of employment that any person shall abstain from joining or assisting or being active in any union or from exercising any right provided by this Part, except as permitted by this Part;*
> >
> > *(i) to interfere in the selection of a union;*
> >
> > *(j) to maintain a system of industrial espionage or to employ or direct any person to spy on a union member or on the proceedings of a labour organization or its offices or on the exercise by any employee of any right provided by this Part;*
> >
> > . . .
> >
> > *(p) to question employees as to whether they or any of them have exercised, or are exercising or attempting to exercise, any right conferred by this Part;*
>
> . . .
>
> *(4) For the purposes of clause (1)(g), there is a presumption in favour of an employee that the employee was terminated or suspended contrary to this Part if:*
>
> > *(a) an employer or person acting on behalf of the employer terminates or suspends an employee from employment; and*
> >
> > *(b) it is shown to the satisfaction of the board or the court that employees of the employer or any of them had exercised or were exercising or attempting to exercise a right pursuant to this Part.*

> *(5) For the purposes of subsection (4), the burden of proof that the employee was terminated or suspended for good and sufficient reason is on the employer.*

Union's arguments:

[33] The Union's application referenced numerous unfair labour practices alleged to have been committed by the City in respect of this organizing drive. It did not, in its written argument, seriously pursue the application pursuant to subsections 6-62(1)(a), (b), (h) and (i). With respect to subsection 6-62(1)(g), the Union argued that the City had breached section 6-62(1)(g) of the *SEA* by terminating Goerzen and thereby intimidating other employees of the City from the exercise of their right to join a union. It argued that Goerzen was engaged in a protected activity (union organization) and the termination was designed to intimidate employees who sought to exercise their right to "organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing".[2]

[34] The Union also argued that the reverse onus provisions of section 6-62(4) were engaged and that the Employer had failed to satisfy the onus to proving that Goerzen was not terminated for other good and sufficient reason.

[35] Insofar as subsections 6-62(j) & (p) are concerned, the Union argued that the questioning of employees as to whether they are exercising or attempting to exercise their rights to join a trade union, as evidenced by the conversation between Fehr and Clark is sufficient to trigger a violation of these provisions. Additionally, they argued that the termination had put a chill into the workplace and that the organizing drive was effectively blocked.

Employer's arguments:

[36] The City argued that it had not engaged in a violation of any of subsections 6-62(1)(a), (b), (g) (h), (i) or (p). It argued that there was no evidence provided to show any breach of these provisions.

[37] The City also argued that it had not breached the provisions of section 6-62(1)(g) of the *SEA*. It argued that there was no evidence provided to support such a breach. Furthermore, it argued that, in any event, it had satisfied the onus placed upon it by section 6-62(4) to show that the termination of Goerzen was justified.

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[2] Section 6-4(1) of the *SEA*

Analysis:

Subsections 6-62(1)(a), (b), (h) & (i)

[38] As noted above, the Union did not actively pursue any claim under these provisions. Subsection 6-62(1)(a) deals with interference with, restraint of, intimidation of, threatening of or coercion of an employee "in the exercise of any right conferred by this part". That would include interference with the right to "organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing".

[39] In *SGEU v. Lac La Ronge Indian and Child Services Agency Inc*.[3], the Board noted that cases like the one here are normally brought under section 6-62(1)(g) because of the reverse onus provision of section 6-62(4) and the specific references to both termination or suspension and to the pursuit of a right under Part VI of the *SEA.*

[40] Subsection 6-62(1)(b) deals with discrimination respecting or interference with the formation or administration of a trade union. Again, this provision is not particularly relevant in cases of this nature which deal with a discharge and a request for the Board to order re-instatement of that employee under subsection 6-62(1)(g).

[41] Subsection 6-62(1)(h) deals with requiring an employee "as a condition of employment" abstain from joining a trade union. This provision is, again, not particularly relevant in this fact situation.

[42] Subsection 6-62(1)(i) deals with interference in the selection of a trade union. Given this factual situation, there is little relevance for an application under this provision.

[43] Accordingly, the Union's applications under subsections 6-62(1)(a), (b), (h) & (i) are dismissed. There is no factual basis for any claim to be made under these provisions which cannot be dealt with under sections 6-62(1)(g) and 6-62(4).

[3] [2015] CanLII 80539 (SKLRB)

Subsections 6-62(1)(j) & (p)

[44] Subsection 6-62(1)(j) deals with maintenance of a system of industrial espionage or spying on a trade union. We heard some evidence respecting a person taking notes at the union meeting on December 14, 2016, who also spoke against unionization. However, there was no evidence linking this person to the City or to show any connection to the City's management.

[45] This provision is not normally utilized in cases of this nature. As pointed out by the Union in its written brief, there is little Board jurisprudence with respect to this provision. This provision is a holdover from *The Trade Union Act* and was included in that *Act* when it was first promulgated in 1946. Perhaps such activity was common then, but it is certainly not common now. We can find no evidence to support a claim under this provision. The Union's claim under section 6-62(1)(j) is dismissed.

[46] Section 6-62(1)(p) deals with employers questioning employees as to whether they or any of them have exercised or are exercising their rights under Part VI of the *SEA*. The evidence in support of this purported breach is the conversation between Fehr and Clark concerning Goerzen's involvement with the Union. Additionally, there was a second episode on December 15, 2016 wherein Fehr reportedly provided his employees with advice that they had looked into unionization and it wasn't a good option[4]. Again, however, this is not the central issue in this case and the evidence, such that it is, is not, in our opinion, sufficient to support an allegation under this provision. The Union's application under section 6-62(1)(p) is dismissed.

Subsections 6-62(1)(g) and 6-62(4)

[47] The Board recently summarized and reviewed its jurisprudence under the former *Trade Union Act*[5] and it applicability under the provisions of the *SEA* in the case of *SGEU v. Lac La Ronge Indian and Child Services Agency Inc.*[6] In that case, as here, an employee who was an inside organizer for a union organizing campaign was terminated. For the reasons expressed in that case, the Board found that the employee had been improperly terminated as a result of her union activity.

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[4] This is not a direct quote as to what was said as the evidence on the point was mixed. However, this is our paraphrase of what we believe was communicated.

[5] R.S.S. 1978 c T-17

[48] In that decision, the Board referred to its earlier decision in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Sakundiak Equipment*[7] where it summarized its former jurisprudence. At paragraphs [100] – [103] the Board says:

> ***[100]*** *The Board has recently outlined its jurisprudence with respect to the application of s. 11(1)(e) of the Canadian Union of Public Employees v. Del Enterprises Ltd. o/s St. Anne's Christian Centre. That decision referenced the Board's decision in Canadian Union of Public Employees, Local 3990 v. Core Community Group Inc., which decision referenced the Board's decision in Saskatchewan Joint Board, Retail Wholesale and Department Store Union v. Moose Jaw Exhibition Co. Ltd.*
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> ***[101]*** *In the Moose Jaw Exhibition case, supra, the Board quoted from para. 123 of its decision in Saskatchewan Government Employees Union v. Regina Native Youth and Community Services Inc. as follows:*
>
> > *It is clear from the terms of Section 11(1)(e) of the Act that any decision to dismiss or suspend an employee which is influenced by the presence of trade union activity must be regarded as a very serious matter. If an employer is inclined to discourage activity in support of a trade union, there are few signals which can be sent to employees more powerful than those which suggest that their employment may be in jeopardy. The seriousness with which the legislature regards conduct of this kind is indicated by the fact that the onus rests on the employer to show that trade union activity played no part in the decision to discharge or suspend an employee.*
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> ***[102]*** *In United Steelworkers of America v. Eisbrenner Pontiac Asuna Buick Cadillac GMC Ltd. the Board made this observation about the significance of the reverse onus found in s. 11(1)(e) of the Act. In that decision, the Board outlined two elements that the Board must consider as follows**:***
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> > *When it is alleged that what purports to be a layoff or dismissal of an employee is tainted by anti-union sentiment on the part of an employer, this Board has consistently held, as have tribunals in other jurisdictions, that it is not sufficient for that employer to show that there is a plausible reason for the decision. Even if the employer is able to establish a coherent and credible reason for dismissing or laying off the employee…those reasons will only be acceptable as a defence to an unfair labour practice charge under Section 11(1)(e) if it can be shown that they are not accompanied by anything that indicates that anti-union feeling was a factor in the decision.*
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> ***[103]*** *Also, in The Newspaper Guild v. The Leader-Post, a Division of Armadale Co. Ltd., the Board noted that in making its analysis of the decision, it would not enter directly into an evaluation of the merits of the decision**.***

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[6] [2015] CanLII 80539 (SKLRB), LRB File No. 267-14
[7] [2011] CanLII 75157 (SKLRB), LRB File No(s) 107-11 108-11,109-11,128-11 through 133-11

> *For our purposes, however, the motivation of the Employer is the central issue and in this connection the credibility and coherence of the explanation for the dismissal put forward by the Employer is, of course, a relevant consideration. We are not required, as an arbitrator is, to decide whether a particular cause for dismissal has been established. … Our task is to consider whether the explanation given by an employer holds up when the dismissal of an employee and some steps taken in exercise of rights under The Trade Union Act coincide. The strength or weakness of the case an employer offers in defence of the termination is one indicator of whether union activity may also have entered into the mind of the Employer.*

[49] In the *Lac La Ronge* decision, the Board continued this approach to formulating its jurisdiction with respect to section 6-62(1)(g). However, the Board also noted that while the termination of an employee during an organizing campaign was a very powerful signal to employees, an employer could, if the employer could establish "a coherent and credible reason for the dismissal or discharge", dismiss an employee and such discharge would not be considered to be a breach of section 6-64(1)(g).

[50] Subsection 6-64(1)(g) requires that the Board must first determine if the provisions of section 6-62(4) will be engaged. There are two pre-conditions. Firstly, there must have been an employee terminated or suspended. Secondly, it must be 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 pursuant to this Part.

[51] The evidence is contradicted with respect to these two points. Firstly, Goerzen, an employee of the City, was terminated on December 16, 2016. At that time, he, along with other employees of the City, were engaged in the exercise of rights also under section 6-4 of the *SEA* to "organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing". In addition, he was one of the inside organizers for the Union in the workplace. It has been shown, to the satisfaction of the Board that Goerzen was exercising or attempting to exercise his right to join a trade union and to be represented by that union for the purposes of collective bargaining.

[52] Determinations under section 6-62(1)(g) and 6-62(4) are factually driven. Once the onus is shifted to the employer, as is the case here, the onus falls upon the employer to show a credible or coherent reason for dismissing an employee other than his or her union

activity. This onus, as noted by the Board in *SGEU v. Saskatoon Food Bank*[8] at paragraph 52a, "while extremely heavy – the Employer must satisfy the Board that trade union activity played no part in the decision to discharge the employee – is not impossible to satisfy." As noted by the Board in both *Sakundiak*[9] and *SEIU v. Chinook School Division No. 211*[10], such explanation must be credible and coherent.

[53] For the reasons that follow, we are of the view that the City has failed to discharge this onus and that its explanation was neither coherent nor credible.

[54] It was clear from the evidence that Goerzen was not the best employee. His performance reviews were not totally satisfactory. His first review was poor. His second review can be forgiven somewhat since it was performed just following a return to work from a parenting leave and was based primarily on his performance from the previous year which was poor. His third review was better, but marginally so.

[55] However, these reviews did not lead to his dismissal. What lead to his dismissal was the culminating incident where he was found to be driving around the City rather than performing the work he had been directed to do.[11] Based on this incident, and a number of other past incidents, the City determined to terminate his job based upon four (4) incidents outlined in his termination letter. These were:

> 1. *Leaving a City owned truck running with keys in the ignition while leaving for your lunch break;*
>
> 2. *Leaving the keys in the ignition of a City owned truck left on the street over the weekend with the window open;*
>
> 3. *Numerous other safety concerns noted in his file; and*
>
> 4. *The inappropriate use of time on December 15, 2016.*

[8] [1999] Sask. L.R.B.R. 497
[9] Supra note 6
[10] [2008] CanLII 47045 (SKLRB)
[11] The evidence seemed to suggest that there was no ice to remove at City Hall, but the evidence wasn't totally clear.

[56] While these matters were serious, they were not treated as such by the City at the time they occurred. The first item was the subject of a Corrective Action Form and was issued on July 21, 2016. That Corrective Action Form specified that this was a **1st written warning.**

[57] The second concern was also the subject of a Corrective Action Form issued on October 15, 2015. That Corrective Action Form specified that this was a **Verbal Warning.**

[58] There were no other Corrective Action Forms in Goerzen's file. There were a number of Incident Log Sheets as follows:

1. *January 13, 2014 – Leaving the PTO engaged while leaving the snow dump.*
2. *August 12, 2015 – Injury while trimming weeds at the lagoon and striking a piece of rebar.*
3. *May 4, 2016 – Injury while tightening barbwire at the lagoon*.

[59] While the three safety concerns were in his file, and the two Corrective Action Forms were in his file, there was also evidence presented by Weibe of other issues, none of which were in the personnel file, which was relied upon as the basis of his termination. In addition, Fehr provided a memorandum[12], prepared following the termination as justification for the termination which made further allegations, none of which was in the personnel file to which reference was made in the termination letter.

[60] Looking at this record, we see that Goerzen was given discipline as a part of the progressive discipline policy of the City to the level of a 1st written warning. The Corrective Action Form provides the following levels:

1. *Verbal Warning*
2. *Written – 1st Warning*
3. *Written – 2nd Warning*
4. *Suspension with Pay*
5. *Suspension without Pay*
6. *Termination*

[12] Exhibit C-8

[61] No evidence or argument was made out that the culminating incident was sufficiently egregious that it justified jumping from #2 above all the way to #6. Instead, the City chose to rely upon previous minor discipline and safety concerns. With respect, we are not satisfied that this explanation is in any way coherent.

[62] Nor do we find that the explanation proffered is at all credible when the evidence concerning Goerzen's union activity coupled with the knowledge of the City with respect to the organizing campaign. It is clear that the City was aware, or should have been aware, that an organizing campaign was in progress as early as when Loewen encountered McGonigal at the Recreation Centre on November 21, 2016. The City witnesses did acknowledge that they were aware an organizing campaign was underway, but expressed the belief that the campaign was being orchestrated by the Parks and Recreation Department.

[63] Nevertheless, Fehr took it upon himself to determine if Goerzen was involved in the campaign. To that end, Fehr took Clark aside and asked him if Goerzen was involved in organizing. Clark gave clear evidence of this encounter. Fehr was evasive and testified that he could not recall. As such, we are left with the contradicted evidence of Clark that the conversation did, in fact, occur. That conversation took place prior to Fehr going to City Hall and advocating to the acting City Manager for Goerzen's dismissal. Mr. Toth testified that he was unaware of Goerzen being involved in the union organizing drive. However, it is clear that Fehr was aware, and we find it difficult to believe that that information was withheld from Mr. Toth. This also brings us to conclude that the explanation offered was also not credible.

Decision:

[64] Accordingly, this Board finds that the City has failed to satisfy the onus placed upon it by section 6-62(4) and that the City is guilty of an unfair labour practice under section 6-62(1)(g) of the *SEA.*

[65] This is a unanimous decision of the Board.

Remedy and Order

[66] An Order outlining the following will accompany these reasons:

1. The City of Warman shall immediately cease and desist from any breach of section 6-62(1)(g) of the *SEA*.

2. Grant Goerzen shall be immediately re-instated with pay to his position within the Public Works Branch of the City of Warman.

3. That Grant Goerzen shall be responsible for mitigation of his claim for back pay and shall have deducted from any amount found due to him as a result of his improper termination the following:

   (a) Any Employment Insurance benefits received while unemployed;

   (b) Any monies earned by him from December 16, 2016 to the date he is re-instated.

4. That a copy of the Reasons for Decision in this matter be posted for a period of 120 days in all workplaces of the City of Warman in locations where they will be visible to all employees of the City of Warman.

5. That this panel of the Board shall remain seized of this matter should the parties not be able to agree on the amount payable to Grant Goerzen under 3 above.

DATED at Regina, Saskatchewan, this **4th** day of **May, 2017.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson