UNITED FOOD AND COMMERCIAL WORKERS LOCAL 1400, Applicant v AAA SECURITY GROUP LTD., Respondent

LRB File No. 133-17; June 11, 2018

Vice-Chairperson, Graeme G. Mitchell, Q.C.; Members: Mike Wainwright and Aina Kagis

For the Applicant: Adam R. W. North
For the Respondent: Sabrina Lacasse and Milton Ramirez as agents

Unfair Labour Practice – Union alleged that during its organizing drive a representative of the Employer contacted two (2) employees to inquire whether they supported the union – Union alleged these communications violated clauses 6-62(1)(a) and 6-62(1)(p) of *The Saskatchewan Employment Act*.

Unfair Labour Practice – Board concludes that the Employer's representative committed an unfair labour practice when he asked employees about their support for the union – Board determined that it was not necessary to analyze the nature of those communications.

Unfair Labour Practice – Board directed that its Reasons for Decision and its Order should be posted in the Employer's workplace for a period of not less than 60 days as authorized by clause 6-111(1) of *The Saskatchewan Employment Act*.

REASONS FOR DECISION

OVERVIEW

[1] **Graeme G. Mitchell, Q.C., Vice-Chairperson:** On June 29, 2017, the United Food and Commercial Workers Local 1400 [Union] pursuant to clause 6-104(2)(b) of *The Saskatchewan Employment Act*, SS 2013, cS-15.1 [*SEA*] filed with this Board an application alleging that AAA Security Group Ltd. [Employer] committed unfair labour practices during the Union's on-going organizing drive of the Employer's workers.

[2] Prior to commencing this application, the Union had filed an Application for Bargaining Rights – LRB File No. 131-17 – on June 28, 2017. In that application, the Union

sought to be certified as the exclusive bargaining agent for all the Employer's employees. The description of the proposed bargaining unit set out in that application reads as follows:

> *All employees employed by AAA Security Group Ltd., in or in connection with the Canadian Blood Donor Clinic located at 2571 Broad Street in Regina, Saskatchewan; the Northgate Mall located at 3C4, 489 Albert Street North in Regina, Saskatchewan; Normanview Liquor Store in Normanview Mall located at 490 McCarthy Boulevard in Regina, Saskatchewan; the Victoria Square Mall located at 2223 Victoria Avenue East in Regina Saskatchewan; the Impark Parking lot located at 102-1800 11th Avenue in Regina and SGI located at 2260 11th Ave. in Regina, Saskatchewan, except all those holding positions of equal or higher rank than Manager.*

[3] Although it is not entirely relevant for purposes of this application, the Union withdrew its initial certification application, and re-applied for certification on July 24, 2017[1]. That application was designated as LRB File No. 152-17. It contained a modified description of the proposed bargaining unit from the description reproduced above.

[4] The claims in the Union's unfair labour practice application relate to communications which Mr. Milton Ramirez, the Employer's agent, is alleged to have had with some his employees shortly after receiving formal notification of the Union's initial certification application. It asserts that he spoke to at least two (2) of his employees and discouraged them from voting in favour of unionization. The Union asserts that these communications violated clauses 6-62(1)(a), (g), (k), (n) and (p) of the *SEA*.

[5] For reasons set out below, the Board has concluded that the Union's application should be allowed, and the Employer found to have committed an unfair labour practice.

FACTUAL BACKGROUND

[6] The hearing of the Union's unfair labour practice application took place on January 22, 2018. Three (3) witnesses testified at this hearing. An employee whom the Union requested to be identified as "Employee X" testified on behalf of the Union. As the Employer did not oppose this request, the Board acceded to it and we refer to this individual in these Reasons for Decision as Employee X. Mr. Trevor Morin, a Union service representative, also testified on behalf of the Union. Mr. Milton Ramirez was the only witness testifying for the Employer.

A. Union's Evidence

1. Employee X's Evidence

[7] Employee X commenced work with the Employer in September 2016. Most recently, Employee X worked as a security officer at the head office of SGI located in down-town Regina. Employee X testified that they had signed a card in support of the Union and its certification drive.

[8] On June 28, 2017, the day the Employer received formal notification of the Union's certification application, Employee X received a text message from Mr. Ramirez at approximately 10:16 p.m. Mr. Ramirez inquired: "Did you sign something for the site to be part of the union?"

[9] The next day at approximately 8:58 a.m., Employee X replied: "Yes I did."

[10] Mr. Ramirez promptly responded at 9:09 a.m. as follows: "OK. Todd George [a facility manager at SGI Head Office] won't agree to that. We will probably be losing the contract to a nonunion company. I will keep you posted."

[11] Alarmed by this response, Employee X texted Mr. Ramirez, as follows: "Can you explain me more about situation. Thank you." To which Mr. Ramirez replied: "Give me a call".[2]

[12] Employee X testified that they then contacted Mr. Ramirez who essentially repeated the same message. Employee X stated that the Employer had secured the security contract with SGI after Garda, the previous security company that held the contract, had unionized. As a result, Employee X explained they were concerned about losing their job if the Union was successful in unionizing the Employer's employees.

[13] Employee X testified that they never spoke to Mr. Ramirez again after their telephone conversation on June 29, 2017.

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[1] Exhibit U-4.
[2] Exhibit U-1, E-mail exchange between Milton Ramirez and Employee X on June 28 and June 29, 2017.

[14] On cross-examination by Ms. Lacasse, Employee X stated that prior to these events they had submitted a letter of resignation to Mr. Ramirez. Rather than accept the resignation, Mr. Ramirez persuaded Employee X to take a leave of absence instead. Employee X returned to work after this leave of absence. Employee X acknowledged that Mr. Ramirez was a good employer who accommodated Employee X's familial obligations.

2. Mr. Morin's Evidence

[15] Mr. Morin testified that he has been a service representative with the Union for approximately the past four (4) years. He has had responsibility for the Employer's workplaces only for the past year or so. He indicated that the Union had recently completed an organizing drive at those workplaces but he had only limited involvement in it.

[16] Mr. Morin explained that further to a Direction for Vote dated August 10, 2017[3], a vote by way of secret ballot was completed. The Board's files disclose that this vote was successful, and a certification Order was issued on December 20, 2017 certifying the Union as the exclusive bargaining agent for the Employer's employees.[4]

[17] On cross-examination by Ms. Lacasse, Mr. Morin explained how the Union conducts an organizing drive. He explained that the central focus is whether the employees wish to unionize. The Union advises employees about the benefits of unionization and emphasizes it is not mandatory to join a union. He stated that the Union had not received any complaints from the Employer or its employees about how it conducted the organizing drive.

[18] He noted that the organizing drive in question had been successful and that negotiations towards a first collective agreement had already begun.

B. Employer's Evidence

[19] Mr. Ramirez who is the Employer's general manager was the only witness to testify on behalf of the Employer. He has worked for the Employer since approximately 2009. He advised the Board that he is also a transit bus driver and, as such, was a member of the

[3] Direction For Vote dated August 10, 2017 – LRB File No. 152-17.
[4] Certification Order dated December 20, 2017 – LRB File No. 152-17.

Amalgamated Transit Union on and off for the past five (5) years. He also stated that had been a member of that union's local executive.

[20] He testified that he was concerned the employees had not received complete information from the Union. He acknowledged that he had sent the various texts to Employee X, and that he had not sought legal advice respecting the appropriateness of those communications prior to sending them.

[21] Mr. Ramirez testified that he had asked other employees whether they too had signed a union card. He was concerned that if the Employer was unionized this would jeopardize its contract with SGI and other companies. He stated that he simply wanted to make sure the employees received the most complete information available before deciding whether it was in their best interests to unionize.

[22] On cross-examination, Mr. Ramirez testified that he contacted the Union's President about his concerns regarding how the Union was conducting its organizing drive. However, when pressed he could not recall the dates when he made that communication.

ISSUES

[23] The Union asserts it application raises two (2) issues:

1. Did the actions of Mr. Ramirez on behalf of the Employer constitute unfair labour practices?

2. If so, what is the appropriate remedy?

RELEVANT STATUTORY PROVISIONS

[24] The Union invokes the following provisions of the *SEA* in support of its unfair practice application:

> ***6-4****(1) Employees have 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.*
>
> *. . .*
>
> ***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 to by this Part;*
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> *. . .*
>
> *(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;*
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> *. . .*
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> *(k) to threaten to shut down or move a plant, business or enterprise of any part of a plant, business of enterprise in the course of a labour-management dispute;*
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> *. . .*
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> *(n) before a first collective agreement is entered into or after the expiry of the term of a collective agreement, to unilaterally change rates of pay, hours of work or other conditions of employment of employees in a bargaining unit without engaging in collective bargaining respecting the change with the union representing the employees in the bargaining unit;*
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> *. . .*
>
> *(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[.]*
>
> *. . .*
>
> *(2) Clause (1)(a) does not permit an employer from communicating facts and its opinions to its employees.*

[25] The following provisions of the *SEA* are relevant on this matter:

> ***6-103****(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.*
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> *. . ..*
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> ***6-104****(2) In addition to any other powers given to the board pursuant to this Part, the board may make orders:*
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> *. . .*
>
> *(b) determining whether an unfair labour practice or a contravention of this Part, the regulations made pursuant to*

> *this Part or an order or decision of the board is being or has been engaged in;*
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> *(c) requiring any person to do any of the following:*
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> *(i) to refrain from contravening this Part, the regulations made pursuant to this Part or an order or decision of the board or from engaging in any unfair labour practice;*
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> *(ii) to do anything for the purpose of rectifying a contravention of this Part, the regulations made pursuant to this Part or an order or decision of this board[.]*
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> *. . .*
>
> ***6-111**(1) with respect to any matter before it, the board has the power:*
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> *. . .*
>
> *(s) to require any person, union or employer to post and keep posted in a place determined by the board, or to send by any means that the board determines, any notice that the board considers necessary to bring to the attention of any employee[.]*

POSITION OF THE PARTIES

1. The Union's Position

[26] The Union bases its unfair labour practice claim on two (2) grounds. First, it asserts that texting Employee X and asking if they had signed a union card directly contravenes the prohibition contained in clause 6-62(1)(p) of the *SEA*. On this aspect of the application, the Union relies upon this Board's decision in *International Brotherhood of Electrical Workers, Local 2038 v JLB Electric Ltd.*, 2015 CanLII 90527 [*JLB Electric*]. This case involved an organizing drive occurring at a local electrical business carried on in the City of Regina. During this drive, JLB Electric, the employer, terminated three (3) employees who were identified as union supporters, one (1) of whom was subsequently re-hired. The Union filed its certification application and this Board issued a Direction to Vote. The Union also filed a number of unfair labour practice applications asserting that JLB Electric had displayed anti-union animus, and illegally terminated three (3) union sympathizers. As a remedy, the Union requested that the Board, among other things, issue a second Direction to Vote.

[27] The Board declined this request. While it acknowledged that JLB Electric conceded it had committed unfair labour practices in terminating those employees and

interfering in the Union's organization, the Board concluded that a second vote was not warranted. The Board explained:

> ***[26]*** *Nevertheless, the Board would not be fulfilling its role in being vigilant that employees' rights are not trampled, if it was to assume that there was no impact on employees from the conduct of the Employer. The remedies chosen by the Board reflect its desire to ensure that employees are not restrained, intimidated, threatened or coerced with respect to the rights granted to them under the SEA and the Canadian Charter of Rights and Freedoms.*
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> ***[27]*** *We have determined that we will not order a second vote, but will direct that the current vote be tabulated with the included of the votes by Mr. Lysack and Mr. Neumann, but without including the vote of Mr. Nykiforuk's as agreed between the parties.*

[28] The Union's second claim is that the content of Mr. Ramirez's texts to Employee X exceeded permissible Employer communication and thus violated clause 6-62(1)(a) of the *SEA*. Respecting this claim, the Union relied on the decision of the Ontario Labour Relations Board in *United Steels Workers of America v Wal-Mart Canada Inc.*, [1997] OLRBD No. 207, 1997 CanLII 15529. This case, the Union asserts, stands for the proposition, that the failure to answer employees' questions about the effect unionization may have on the continuing operation of a business, in a candid and forthright manner, could constitute an unfair labour practice as particularized in Ontario's *Labour Relations Code*. The Union submitted that Mr. Ramirez's comments implying the Employer would lose the security contract if the employees unionized fell into this category.

2. <u>The Employer's Position</u>

[29] The Employer filed a brief written argument which put forward a succinct response to the Union's allegations. It did not deny that Mr. Ramirez contacted at least two (2) of its employees to inquire whether they had signed cards supporting the union. However, the agent for the Employer, Ms. Lacasse, submitted that these communications were not motivated by anti-union animus. Rather, Mr. Ramirez was concerned that because many of its employees were immigrants and had limited facility in English, they would not understand the information provided to them by union representatives. In particular, she pointed to the fact that employees remained with the company.

[30] Alternatively, the Employer argued that Mr. Ramirez's communications had no negative effect on the Union's organizing drive. The Union succeeded in being certified as the employees' exclusive bargaining agent, and negotiations towards a first collective agreement were on-going.

ANALYSIS AND DECISION

[31] The context underlying the Union's unfair labour practice application is important. It pertains to a union's organizing drive. Recently in *International Brotherhood of Electrical Workers, Local 2038 v Active Electric Ltd.*, LRB File No. 008-18, 2018 CanLII 38245 [*Active Electric*], the Board underscored the significance of organizing drives in industrial relations matters as follows:

> *[40] It cannot be denied that the right of employees to organize and to choose their collective bargaining agent without fear of interference from, or intimidation by, their employer is a central precept of the Wagner model of industrial relations. This precept now has both a statutory and constitutional source. Very recently in Workers United Canada Council v Amenity Health Care LP and/or 7169320 Manitoba Ltd. operating as Tim Hortons [Amenity Health], the Board underscored the significance of those sources as follows:*
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> > *[84] [I]t is important to underscore that a central objective of the SEA as set out in subsection 6-4(1) is to ensure that all employees "have 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".*
> >
> > *[85] This statutory statement of public policy is reinforced by the constitutional guarantee of freedom of association found in section 2(d) of the Canadian Charter of Rights and Freedoms. In Mounted Police Association of Ontario v Canada (Attorney General), relying on its prior jurisprudence, most notably Health Services and Support — Facilities Subsector Bargaining Assn. v. British Columbia, a majority of the Supreme Court of Canada stated:*
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> > > *[66] In summary, s. 2(d), viewed purposively, protects three classes of activities: (1) the right to join with others and form associations; (2) the right to join with others in the pursuit of other constitutional rights; and (3) the right to join with others to meet on more equal terms the power and strength of other groups or entities.*
> > >
> > > *C. The Right to a Meaningful Collective Bargaining Process*
> > >
> > > *[67] Applying the purposive approach just discussed to the domain of labour relations, we conclude that s. 2(d) guarantees the right of employees to meaningfully*

> *associate in the pursuit of collective workplace goals. This guarantee includes a right to collective bargaining. However, that right is one that guarantees a process rather than an outcome or access to a particular model of labour relations. [Emphasis added.]*
>
> *[86] These important public and constitutional values must inform this Board's analysis of the issues presented on this application, most notably whether the proposed unit which the Union seeks to have certified under the SEA is an appropriate one for purposes of collective bargaining. [Emphasis in original, citations omitted.]*

[32] In keeping with these fundamental principles, the Board has concluded the Union has demonstrated the Employer engaged in an unfair labour practice when Mr. Ramirez asked at least two (2) of the employees whether they had signed union cards. As noted above, Mr. Ramirez admitted to doing this and stated that he had not sought legal advice prior to making these inquiries. These actions plainly contravene the prohibition found in clause 6-62(1)(p) of the *SEA*, namely that an employer shall not "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".

[33] In making this finding, the Board does not believe that Mr. Ramirez was in any way motivated by anti-union animus. Yet even accepting that Mr. Ramirez's inquiries were made out of a genuine concern for his employees, his motivation is irrelevant. The *SEA* is explicit: no employer shall inquire of an employee whether he or she has exercised rights under Part VI. This prohibition has particular resonance in the context of a union's organizing drive. As the Board observed in *Active Electric*, *supra*, at paragraph 60:

> *The initial stages of such a drive are delicate, and a precipitous event such as the termination of known union members or supporters during that time could wholly derail the union's efforts. The Board's concern about the "chilling effect" such an event may have on other employees is not triggered only when the union has filed a formal certification Order. It pertains to the entire organizing process.*

[34] To be sure, the factual circumstances of this matter differ greatly from those which formed the basis for this Board's ruling in *Active Electric*, *i.e.* no employee was terminated, let alone terminated for being a union sympathizer. However, the underlying concern remains the same, namely, inquiries by an employer about whether a particular employee supports an union's organizing efforts may have a detrimental or chilling effect upon an employee who wishes to exercise their rights under Part VI of the *SEA*, not to mention the fundamental freedom of association guaranteed by section 2(*d*) of the *Canadian Charter of*

Rights and Freedoms. The statutory objective of clause 6-62(1)(p) is to prevent such a situation from occurring.

[35] Accordingly, for these reasons, the Board finds that the Union has demonstrated on a balance of probabilities that the Employer committed an unfair labour practice contrary to clause 6-62(1)(p) of the *SEA*, and we make a declaration to this effect.

[36] In light of our holding on the first aspect of the Union's unfair labour application, we do not find it necessary to consider the Union's second claim relating to improper employer communication contrary to clause 6-62(1)(a) of the *SEA*. As a result, it not necessary for the Board to interpret and to apply the legal principles respecting employer communication that emerge from *Cypress (Regional Health Authority) v Service Employees' International Union-West*, 2016 SKCA 161, leave to appeal dismissed: 2017 CanLII 32938 (SCC).

[37] One final matter. The Union has requested an Order from this Board directing the Employer to post these Reasons for Decision and the Board's Order in a conspicuous place so that employees may have access to them. In *CB, HK & RD v Canadian Union of Public Employees, Local No. 21 et al.*, 2017 CanLII 68786, 298 CLRBR (2d) 14 (SK LRB), this Board commented on its authority to make such an Order at paragraphs 247 as follows:

> *[247] The SEA, in subsection 6-111(1)(s), authorizes the Board to direct a union to "post and keep posted in a place determined by the board, or to send by any means that the board determines, any notice that the board considers necessary to bring to the attention of any employee". The obvious purpose behind this statutory authority is an educational one, namely, "it is the most convenient method of ensuring that affected employees are aware of both the conclusion of the Board and its reasons for making the order(s) it has." See: Saskatchewan Insurance, Office and Professional Employees' Union (COPE), Local 397 v Saskatchewan Government Insurance, LRB File No. 003-07, 2007 CanLII 68752 (SK LRB) at paragraph 71.*

[38] The Board is persuaded that such an Order should issue here. While we reiterate that Mr. Ramirez's actions were not motivated by anti-union animus, we believe that the employees, many of whom by the Employer's own admission are immigrants and unfamiliar with Canadian labour law, should clearly understand that they are free to exercise rights granted to them under the *SEA*, and the *Canadian Charter of Rights and Freedoms*, without fear of being interrogated by their Employer's representatives. Directing that the Board's Reasons for Decision and its Order be posted in the workplace will go some distance in achieving this laudable goal.

ORDERS

[39] The Board pursuant to subsection 6-103(1), clauses 6-104(2)(b),(c) and 6-111(1)(s) of the *SEA* makes the following Orders:

1. **THAT** the Employer committed an unfair labour practice contrary to clause 6-62(1)(p) of the *SEA* by questioning employees as to whether they had exercised their rights under Part VI of the *SEA*;

2. **THAT** within 48 hours of receipt of the Board's Reasons for Decision and Order, the Employer shall post a copy of those documents in it workplaces in a location where they will be visible and can be read by as many employees as possible, such posting to remain for 60 days from the date of posting.

[40] An appropriate Board Order will accompany these Reasons for Decision.

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

DATED at Regina, Saskatchewan, this **11th** day of **June, 2018**.

LABOUR RELATIONS BOARD

Graeme G. Mitchell, Q.C.
Vice-Chairperson