SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant v QUINT DEVELOPMENT CORP., Respondent

LRB File No. 216-17; August 21, 2019
Vice-Chairperson, Barbara Mysko; Board Members: Maurice Werezak and Steven Seiferling

For the Applicant Union:	Samuel Schonhoffer
For the Respondent Employer:	Gordon D. Hamilton and Karyn Kowalski

Unfair Labour Practice Application – Termination of employee during organizing campaign – Casual employee allegedly omitted from schedule – Clause 6-62(1)(g) of the Act.

Reverse onus does not apply to circumstances involving casual employee – Employee was not suspended or terminated – Circumstances involve alleged discrimination, coercion, or intimidation – Board finds that the Union has not met its onus to demonstrate, on a balance of probabilities that the Employer committed an unfair labour practice pursuant to clause 6-62(1)(g) of the Act.

Subsections 6-62(4) and 6-62(5) of the Act – Reverse onus applies to termination – No dispute as to whether employee was terminated or whether employees engaged in exercising rights pursuant to Part VI – Employer has met its onus.

REASONS FOR DECISION

Background:

[1] Barbara Mysko, Vice-Chairperson: On October 26, 2017, the Saskatchewan Government and General Employees' Union ["Union"] brought an unfair labour practice application against Quint Development Corp. ["Employer" or "Quint"]. These are the Board's Reasons in relation to that Application.

[2] The hearing of the Application took place on April 4, 5, and 9, 2018, before then Vice-Chairperson Graeme Mitchell, Q.C. and panelists Maurice Werezak and Steven Seiferling. Vice-Chairperson Mitchell was appointed as a Judge of the Court of Queen's Bench on September 21, 2018. The parties agreed that this matter could be concluded by either the Chairperson or the

incoming Vice-Chairperson listening to the recording of the hearing and then issuing this decision in conjunction with the other members of the panel.

[3] In its Application, the Union alleges that the Employer took various actions against employees in the course of organizing, in an effort to prevent the certification of the Union. The Union summarizes its allegations, as follows:

> *During SGEU's organizing campaign the Employer became aware of the fact that Pleasant Hill Place employees Char Cote, Jacey Hull, Heather Findlay and Rhian Watkins were responsible for trying to bring in the union. The employer knew that the vote tabulation done August 28th of 2017 had resulted with a 9 to 9 tie and that the employees of Pleasant Hill Place were not successful in bringing in the union. The Employer became aware that SGEU was still looking into organizing as they schedule a follow-up meeting on Sept.14th of 2017. The employer began taking various sanctions against those employees ranging from shift schedule changes of Rhian Watkins and Heather Findlay, Jacey Hull not being scheduled to work at all, accusations of "bullying" and termination as a ways and means of intimidating these employees to keep the union out. The Employer began unjustly disciplining Char Cote who was then subsequently terminated from her employment as a result of Union involvement. …*

[4] At the outset of the hearing, the Union indicated that it was limiting its Application to clause 6-62(1)(g) of the Act, and to the issues involving Charleen Cote ["Cote"] and Jacey Hull ["Hull"].

[5] The Employer suggests that its actions were justified, denies that it acted out of anti-union animus, and requests that the Application be dismissed.

[6] By way of further background, on July 20, 2017, the Union filed an application for bargaining rights on behalf of the employees of Quint. The Board issued a Direction for Vote on July 27, 2017, and an Order to Tabulate on August 24, 2017. The Report of the Agent of the Board was provided on August 28, 2017, communicating the result of the vote. Following the Report of the Agent, the Union withdrew its application and proceeded to file a second application for bargaining rights, on December 15, 2017.

[7] In reply, on January 5, 2018, the Employer filed an application for summary dismissal objecting to the second representational vote within 12 months. The Board dismissed the second certification application on January 9, 2018. The Union applied for reconsideration of this decision, which application was dismissed by the Board in *Saskatchewan Government and General Employees' Union v Quint Development Corporation*, 2018 CanLII 68440 (SK LRB).

Argument on Behalf of the Parties:

[8] The Employer concedes that both Cote and Hull were exercising or attempting to exercise a right pursuant to Part VI at the material times. It also concedes that it was aware of organizing activities in the workplace during the material times. As far as Cote was concerned, the Employer admits that it is faced with the reverse onus set out at subsection 6-62(4) of the Act. The Employer does not concede that it bears the onus with respect to Hull.

[9] The Employer argues that it has met the onus in relation to Cote. Cote inappropriately challenged others' decisions, and as a result of her approach, irreparably damaged the employment relationship. As for Hull, the reverse onus does not apply, as she was neither suspended or terminated. Hull was and is a casual employee with no guarantee of hours, who had sought a reduction in her scheduled shifts, a reduction which was subsequently granted.

[10] The Union seems to suggest that the reverse onus applies to the circumstances involving both Cote and Hull, and that the Employer has failed to meet that onus in either case. As for Cote, her initial actions were well-intentioned, professional, and aimed at addressing a serious problem in the workplace. She was later accused of misreporting an absence from the workplace, for which she had found coverage and had followed what she understood to be the practice.

[11] The Union says that Quint is a sophisticated employer with a concealed anti-union attitude. Cote was a lead organizer. She disclosed her involvement hardly a week before the suspension that led to her termination. She was terminated at the first possible opportunity following her disclosure.

[12] As for Hull, there is good reason to believe that her supervisor was aware of her involvement in the organizing drive in 2007. Her omission from the September schedule represented a dramatic change from the norm. It was only after this turn of events that she sought a change to her schedule, not before.

Evidence:

Len Usiskin ["Usiskin"]

[13] Usiskin testified on behalf of the Employer. He has been the manager of Quint for 20 years, and currently manages three direct reports and 35 staff. Due to the uncertainty of funding from year to year, the Employer hires staff on an annual contract basis.

[14] Laverne Szejvolt ["Szejvolt"] is an Assistant Manager at Quint, and was personally involved at significant points throughout the chronology of events. Much of Usiskin's involvement overlaps with that of Szejvolt.

[15] Quint is a not-for-profit organization with a mandate to enhance the social and economic wellbeing of the west side neighbourhoods in Saskatoon. Quint runs an affordable housing program, including two supportive transitional homes, for which it receives block funding. One of these homes, Pleasant Hill Place ["PHP"], provides supportive lodging for at-risk mothers. The second home is referred to as the Male Youth Lodge.

[16] According to Usiskin, he is supportive of the union movement. While Quint does not have a policy "for or against unions", Usiskin has explained to Quint managers that he has no issue with unionization. He understands the prohibition against interference with the employees' right to organize. He denied having made any inquiries as to who was involved in the organizing drive.

[17] Usiskin believes that Quint has had good partnerships with unions over the years, and pointed in particular to the development of Station 20 West, which benefited from union support. Quint has presented at a number of union conventions and has participated in union workshops to describe the work that they do. On cross, he declined to comment on whether the support from the unions comes from a social justice, union movement, or other motivation.

[18] In the 1980s, Usiskin worked for the provincial Government and was a member of SGEU in Prince Albert, serving as a shop steward and then the Vice-Chair of the Prince Albert local for a few years. He was active with the Union and with the Saskatchewan Federation of Labour. He credits the development of Station West, in part, to the relationships that he developed during that time.

[19] There is one program manager in charge of both the Male Youth Lodge and PHP, and her name is Reagan Conway ["Conway"]. Conway played a central role in the events that are the focus of the Union's Application.

[20] Usiskin described pertinent aspects of the Employee Policy Manual. First, there is the issue of confidentiality, which is significant due to the sensitive nature of the work. All employees sign a mandatory confidentiality agreement. The policy manual contains a confidentiality clause in relation to fellow employees and those who access Quint's programs.

[21] Second is the issue of Health and Wellness days. Health and Wellness days are allotted to full-time and part time employees to be used for a variety of circumstances. According to Usiskin, employees are required to make arrangements in advance with their immediate supervisor in order to benefit from the time off. For an illness or leave over three days, there must be a medical note or another form of verification.

[22] The following provisions of the Policy, dated August 2013, are applicable to the issues in dispute:

> ***2.2 Confidentiality***
>
> *Employees should respect the rights of fellow employees and those who access Quint programs, to have any personal information that is disclosed kept confidential.*
>
> *All employees will sign a confidentiality agreement.*
>
> *All personnel records are maintained in a locked file cabinet and all efforts are made to maintain confidentiality.*
>
> ***2.3 Protection of Vulnerable People and Confidentiality***
>
> *2.3.1* ***Confidentiality***
> *Quint employees protect participants' identity and only disclose confidential information to other parties with the informed consent of the participant or their legally authorized representative, or when required by law or a court order.*
>
> *The general expectation that Quint employees will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to the participant or others. In all instances, the employees disclose the least amount of confidential information necessary to achieve the desired purpose.*
>
> ***6.1 Health & Wellness Days (H & W)***
>
> *6.1.1 Health & Wellness days are allotted to full-time & part time employees to be used as needed for sick days, bereavement leave, mental or physical well being of self and immediate family, including parents. H & W days are not to be used as one extra day off per month and are to be used only for legitimate reasons as outlined above.*
> *6.1.2 At the start of each fiscal year employees will be provided with 12 H & W days, equivalent to the employees normal work hours, to be used through the year. A new employee will have the H & W days prorated based upon their employment start date. There will be no carry forward at year end of H & W days.*
> *6.1.3 To take an H & W day, employees must make arrangements ahead of time with the immediate supervisor or telephone the office at the beginning of the day they are absent.*
> *6.1.4 If an illness or leave is more than three days, a doctor's certificate is required. Some other form of verification may be required for other types of leave.*
> *6.1.5 It is recommended that employees try to maintain as many H & W days as possible in case of major illness.*
> *6.1.6 There will be no payout upon notice of leaving or end of employment of H & W days.*
> *6.1.7 If all H & W days have been exhausted other arrangements may be made between employee and management depending on the needs of the organization and employee.*

9.6.1. ***Stage 1: Verbal Reprimand***

i. This stage will be completed by the employees' immediate supervisor. Management should be apprised/consulted at the time.
ii. Clearly identify the performance issue with the employee's behaviour or performance
iii. Give the employee an opportunity to respond and/or explain contributing factors (i.e. mitigating factors; provocation; mistake; etc.)
iv. Provide the employee with clear instruction on how to improve and outline any support you can give the employee to make the required changes.
v. Ensure the employee understands the standard that is expected
vi. Explain the consequences of not correcting the behavior
vii. A specific time period is set in which the change is to take place.

Documentation

The supervisor will complete a verbal warning memo that will be placed in the employees personnel file.

Depending on the circumstances, the immediate supervisor will have some discretion to determine when the circumstance warrants an official Stage 1 verbal reprimand.

9.6.2. ***Stage 2: Written Reprimand***

A written reprimand is prepared if the performance issue, or another issue with the same employee, happens again with the timeframe outlined in the next 1 year.

The written reprimand will include:

i. A description of the performance issues;
ii. Reference to the verbal reprimand that preceded the written reprimand and the changes in behavior that were expected;
iii. Clear instructions on what and how the employee is expected to change;
iv. The consequences of any further incidents.

Documentation

Ask the employee to sign a copy of the written reprimand to confirm that s/he has received, read, discussed and understood the warning. If the employee refuses to sign, make a note on the written warning that the employee refused to sign. Give the employee a copy of the written warning and place a copy of the document and the employee's confirmation of receipt in the employee's personnel file. If the employee refused to sign, make a note that a copy of the warning was given to the employee.

Warnings are still valid even when an employee refuses to sign the document.

9.6.3. Stage 3: Termination

At the termination stage, the manager should meet with the employee to inform the employee that his or her employment has been terminated. A letter confirming the termination of employment will be given to the employee.

i. Employees who have worked for more than three months are given notice, according to the minimum requirements within the Saskatchewan Labour Act, or pay in lieu of notice when their position is terminated.
ii. The employee will be paid all monies due within 14 days of termination.
iii. An Employee terminated for Just Cause will not receive severance pay in lieu of notice. They will only be paid for hours worked.

> ***9.7. Conflict Resolution***
>
> *9.7.1. In the event of a disagreement or difference of opinion between employees, the resulting consultation/dialogue between the involved parties will take place in private, and not in front of other staff or program participants. Any discussion of the disagreement or difference of opinion between employees in any setting other than one that is private will be seen as harassment and will not be tolerated.*
>
> *9.7.2. All employees have the right to feel that difference of opinions will be discussed in a setting free of blame, intimidation and/or humiliation.*
>
> *9.7.3. Employees are encouraged to talk to their program supervisor with regard to issues or concerns they may have with program operations. Employees exercising this option will be free from reprisal. An employee will not attempt to discourage any other employee from exercising this option.*
>
> *9.7.4. If an employee feels that the program supervisor is not responding appropriately to their issue(s) or concern(s) they have the right to talk with Quint management to discuss the problem.*

[23] The Policy Manual dated November 2017 reflects a change to the Health and Wellness days.

> *August 2013 Manual*
>
> *6.1.4 If an illness or leave is more than three days, a doctor's certificate is required. Some other form of verification may be required for other types of leave.*
>
> *November 2017 Manual*
> *6.1.5 If an illness or leave is more than three days, a doctor's certificate is required. The certificate must be submitted to the immediate supervisor no later than 4 days from first day of absence. Some other form of verification may be required for other types of leave.*

[24] Usiskin spoke to the circumstances surrounding Cote's employment as a Home Operator, and her eventual termination. Conway conducted Cote's performance review, dated March 28, 2017, and concluded that Cote had been exceeding expectations in all areas. Conway commented on Cote's strengths and areas for development:

> *Charleen is open to feedback from myself. She will always ask for support when needed. She is reflective at work and will analyze her work. She admits to mistakes and works to correct those.*
>
> *Charleen is a good employee and fulfills her contract without concerns, she is an asset to the program.*

[25] Jayda Robinson ["Robinson"] was also a central figure in the events as they unfolded. Robinson is an employee of the Ministry of Social Services, who made referrals for women and their children and developed the necessary case plans in consultation with the PHP staff. At some point, Cote learned that a certain individual, who the Board will refer to as "X", was going to be

visiting his child at PHP, despite what was viewed as his deeply concerning history. On July 3, 2017, Cote sent an email to Conway, seeking an update on these circumstances, and confirming her view that "X" should not have access to the child, at least not while at PHP. Conway responded the following day, indicating that she was in agreement with Cote.

[26] On August 1, 2017, Conway sent an email to PHP and the Male Youth Lodge staff, stating:

> *...If you are having issues with myself as your supervisor, you can come and speak with me about those concerns/issues. If you feel that you can't speak with me, or you feel that I have not listened to you or did not deal with the concerns/issues appropriately you can then contact Laverne, who is my direct supervisor. If you cannot speak with her the next person to contact would be Len.*

[27] On August 3, 2017, a follow up meeting was held with professionals, resulting in an agreement for visitation with "X" under certain circumstances.

[28] On August 5, 2017, Cote wrote to Usiskin and Szejvolt, copying Conway:

> *Please be advised that I previously addressed this concern for resident safety with my direct supervisor, Reagan Conway on July 3, 2017. Because I feel that the issue has not been resolved and children are in danger due to a decision made by my supervisor I feel the need to further the grievance process.*

[29] Usiskin pointed out that this email was sent through the PHP computer and so therefore was not private.

[30] Cote proceeded to outline, in bullet points, a chronology of events ending with Cote's July 3rd email.

[31] On August 6, 2017, Usiskin responded to Cote's email, stating:

> […]
>
> *To be clear, non-emergency decisions that are serious in nature are never done by an individual. In this case the "decision made my (your) [sic] supervisor was mae [sic] in consultation and discussion with medical professionals and knowledge of procedures in place at Pleasant Hill Plaec that would provide low risk for residents.*
>
> *If you have knowledge of any information that had not been provided to your supervisor before the meeting on August 3rd or have knowledge of more recent factual information since the time of that meeting, our expectation is that you provide this to your supervisor immediately.*

> *We appreciate that you may not agree with the decision made at this time. Both Laverne and I are away next week but we could discuss it further when we are back. We are confident that Pleasant Hill Staff will follow and implement the procedures to ensure the safety of the residents while fulfilling our responsibility in regard to the supervised visitation rights.*

[32] On August 7, 2017, Cote sent an email to Usiskin and Szejvolt, stating:

> *Thank you for your speedy response regarding the … visitation at PHP. As we at PHP feel strongly that a … should not be allowed in the home where children in protection live, we would ask that you are both in attendance at the staff meeting on August 22, 2017 at 6 pm. As a collective, we would like to address our concerns.*

[33] The following day, Robinson wrote an email to Conway, copying the common PHP email address, and stated:

> *We have decided to continue to have visits supervised at the visiting suites at CUMFI for the next couple weeks and if there continue to be no concerns with visits then we will be moving forward with having … supervising visitation at her home. Staff need to be aware that they need to remain neutral in their dealings with this family and ensure that their personal values and beliefs are not impacting their ability to work with them effectively. We need to continue to empower … and support her in making safe responsible decisions whether we agree with them or not.*

[34] Usiskin replied to Cote, on August 16, 2017 stating:

> *[…]*
>
> *You continue to use the term … yet this is not term [sic] used by the psychologist or the social workers. This is a specific term and using it inappropriately, especially in the social work and human service realm, is not factual and extremely unprofessional. … The use of this term needs to cease immediately. In our last response, we asked that you provide additional factual information to your supervisor immediately to support your concerns but to date none has been forthcoming.*
>
> *In this meeting we will also address our concerns regarding the poor process and lack of professionalism that we observed in addressing your concerns. Staff are encouraged to have input into decisions regarding work but it has to be done with due process and based on evidence, not rushing to judgment. We want to make sure that future concerns are addressed appropriately and in a constructive manner.*

[35] Usiskin explained that Cote had acted inappropriately in taking her concerns to him, overstepping the program supervisor in the process.

[36] Usiskin described the staff meeting that occurred on August 22, 2017. Topics of discussion included the visitation issue, allegations about Conway's conduct in the workplace, and the proper process for using Health and Wellness days. On the visitation issue, most if not all of the staff expressed a concern with "X" visiting a child at the house. Cote, in particular, used inappropriate

and unprofessional terminology. When asked why they had not raised the issue directly with Conway, a few staff members cited concerns with Conway's professional performance. On the issue of Health and Wellness days, management explained that staff were required to, firstly, advise the immediate supervisor that they intended to take time off, and secondly, provide written verification for a leave longer than three days.

[37] According to Usiskin, management was surprised to hear the complaints about Conway's performance, and so after the staff meeting, Szejvolt conducted one-on-one meetings with each of the staff to gauge their perception of Conway's performance. On re-exam, Usiskin clarified that the one-on-ones disclosed, firstly, that most individuals had no concerns with Conway's supervision, and secondly, that any other individuals failed to substantiate specific incidents of concern.

[38] The day before the hearing, Usiskin learned that Cote had recorded the staff meeting without the permission of management and handed the recording over to the Union. Cote's recording of the meeting was of serious concern. The names of the individuals connected to the visitation issue, which were uttered throughout the meeting, were audible on the recording. Usiskin believed that this recording was a violation of the confidentiality agreement, signed by employees.

[39] After the meeting, Usiskin wrote a formal reprimand memo to Cote dated August 29, 2017, indicating that Cote "did not properly follow the process outlined in section 7.3.1 which requires talking to your supervisor before proceeding to bring the issue to management … At this point, if you had concerns with this decision, your recourse was to talk to your immediate supervisor about your concerns." The memo continues:

> *Instead you jumped to the step outlined in section 7.3.2. and wrote the previously mentioned memo to Laverne and myself. If you had concerns about the decisions made at the August 3rd meeting, you should have brought them to Reagan's attention. This did not happen and this did not allow an opportunity for her to respond and provide the rationale for the decision. This is a lack of regard for and trust of your supervisor and is a form of insubordination.*
>
> *At the August 22 special staff meeting to discuss these issues, we asked why you did not go to your supervisor with your concerns you identified that you were uncomfortable and unable to talk with your supervisor. This is not a legitimate reason as there has been no issues about your supervisor that have been brought to our attention either formally or informally prior to this meeting.*
>
> […]

> *Performance issues*
>
> *The above demonstrates the need for disciplinary action due to insubordination and incompetent work performance as your performance has negatively impacted the PHP operations and our relationship with MSS. I have determined that these performance issues warrant going directly to step 2 of the disciplinary process. This memo will serve as a step 2 written warning that will be placed on your personal file.*
>
> *Corrective Measures*
>
> 1. *You need to acknowledge that you have damaged your professional relationship with your supervisor and that you will work with Laverne and me to find ways to repair your working relationship with your supervisor. This could include participating in professional development such as effective communication in the workplace but may also require some form of mediation.*
> 2. *A letter of apology to Reagan (and copied to Laverne and I) acknowledging that you understand your insubordination and the damage that it has created should be provided by September 3, 2017. The letter should also indicate your willingness to work with Reagan constructively going forward.*
> 3. *If you are not prepared to honestly and diligently take part in these corrective measures or if a further incident like this occurs then this will result in immediate dismissal.*

[40] Usiskin called a meeting with Cote and Szejvolt for August 29, 2017. It was there that he presented the memo to Cote. According to Usiskin, Cote refused to write the letter of apology and refused to sign the memo, but instead proposed that it was Conway who should be required to write a letter of apology to Cote. On cross, Usiskin acknowledged that Cote had asked that the corrective measures be re-considered and that he had agreed to consider this request. Usiskin could not recall whether Cote had suggested a letter of apology of a more limited scope, but the ensuing events allowed for no opportunity to reconsider the corrective measures.

[41] On cross, counsel for the Union reminded Usiskin that the Board had communicated the results of the vote to both parties on August 28, 2017, the day prior to the reprimand meeting. Despite the helpful reminder, Usiskin could not recall how or when he personally learned of the results or if he was in possession of this knowledge at the time of the reprimand meeting. While he was aware that Cote, Hull, and Watkins had been involved in the organizing drive, he could not recall how he became aware. Usiskin knew that he could get into trouble by communicating with employees about the organizing drive but could not recall discussing the organizing drive or the Union at the August 29 meeting.

[42] Although Cote was next scheduled to work a four-day shift starting on September 1, 2017, she did not show up for work, and failed to advise Conway in advance. Cote had found a replacement. On September 8, 2017, Usiskin wrote a memo to Cote informing her that she was being suspended without pay effective immediately pending an investigation into the

circumstances of her leave. Usiskin called her on the same date, leaving a message to return his call. On September 12, 2017, having not heard from Cote, Usiskin emailed the PHP staff to advise that Cote would not be working shifts at PHP until further notice. About fifteen minutes later, he emailed Cote the suspension memo.

[43] On September 18, 2017, Usiskin held a meeting with Cote and Szejvolt to discuss the suspension. Cote insisted that she had not received the voicemail and could provide phone records to prove it. She later advised that her service provider was unable to provide those records.

[44] Cote presented a medical note from the dentist's office, dated September 12, 2017. The note reads:

> *Please be advised that Charleen [sic] Cote had a dental appointment in our office on August 30/17.*
>
> *She was advised that the tooth we worked on, may become infected and abscess.*
>
> *She was given a prescription for antibiotics in the case of infection. She was not given any pain medication. She did have to visit an emergency clinic to have pain medication given. She was unable to attend work until the infection was under control, this took some time.*

[45] Cote explained that she had a dental appointment on August 30 and needed the additional time to recuperate from the procedure. She had informed her colleagues of her absence, but had not informed Conway because Conway was not at work. Usiskin added that staff routinely call or text Conway on her days off.

[46] On cross, Usiskin acknowledged that, at the time of Cote's four-day absence employees were not required to provide a medical note by a certain deadline. But only eight days prior to the absence, management had clearly communicated the requirement to advise the supervisor of an absence. Under the circumstances, it would be difficult to misunderstand the Employer's expectations.

[47] According to Usiskin, Cote became very disrespectful during the meeting, especially toward Szejvolt. Cote suggested that she could not trust management to deal with her concerns with Conway in an objective manner.

[48] Usiskin drafted a memo in relation to the September 18, 2017 meeting, noting the following observations:

> *I adjourned the meeting at about 5:30 pm when it became apparent there was no more new details to be determined and that Charleen's disrespectful attitude to Lavern [sic] and myself made continuing the meeting unproductive. I told Charleen that I would let her know what our next steps would be after reviewing all of the information we had.*
>
> *Our initial thoughts about the meeting are that it is clear that Charleen failed to inform her supervisor and failed to provide a doctor's certificate in a timely manner (essentially only after her suspension notification). Further, Charleen's comments and tone during the meeting indicate that she has little respect for Laverne and me.*

[49] On September 20, 2017, Ususkin wrote a memo informing Cote of her termination, effective immediately with two weeks' pay in lieu of notice. The memo pointed to Cote's unwillingness to acknowledge her insubordination or to write a letter of apology to Conway, her lack of trust in management, and her failure to provide a valid reason for not informing Conway in advance of her leave from work. On cross, Usiskin denied that the 14 days' pay in lieu of notice was evidence of a veiled justification for the termination, indicating instead that he wanted to "help her out". The memo concluded:

> *Based on all of our memos and meetings, it is apparent that you are not willing to meet the corrective measures outlined in your performance memo. You clearly are not willing to work with your supervisor and your comments at our meetings indicate that you have no confidence in or respect for management at Quint. I sincerely regret that we could not find a solution to these issues and that we have to terminate your employment at Quint….*

[50] In his testimony, Usiskin insisted that the decision to terminate Cote was not influenced by the union organizing drive, even in part.

[51] Next, Usiskin testified about the circumstances involving Hull. Hull is a casual employee on a one-year contract, renewable annually. Contrary to the Union's suggestion, Hull has not been terminated or suspended, but continues to be employed at Quint. Usiskin described the process through which Hull is to pick up shifts. Conway releases a monthly schedule, which is Hull's signal to notify Conway of her availability for the coming month, so that she may be placed on the upcoming schedule. Hull has another full-time job, which poses some challenges in terms of her availability and/or energy levels. In this vein, on September 7, 2017, Hull informed Conway that she was "starting to feel burnt out working two jobs" and "just would like to be scheduled the odd weekend shift". As of the date of the hearing, Hull had not picked up a shift since December, 2017.

[52] On cross, Usiskin disclosed that he had treated the August 22 meeting as an opportunity to investigate the concerns with the visitation decision. All of the staff had raised concerns in some

form or another, but according to Usiskin, they had raised these concerns in the absence of complete information and in contradiction with certain social worker principles. Part of PHP's mission is to facilitate women carving a path toward independent living, including by being in a relationship with whomever they choose. While Usiskin is not a professional social worker and does not work on site, he depends on and trusts the advice of professional social workers and the experience of Conway and the staff.

[53] Counsel for the Union confronted Usiskin about his apparent concern with ensuring confidentiality over the personal details of individuals involved in the visitation incident. In response, Usiskin admitted that a number of employees spoke to the specifics of the family – not just Cote – and that a breach of confidentiality was not the basis for Cote's termination. Usiskin's main concern was with Cote raising the visitation issue at the staff meeting, and not in a direct manner with Conway. At the meeting, two or three staff, including Cote, claimed that they were not comfortable speaking to Conway directly, due to their past experience. Cote's approach contradicted the Policy Manual.

[54] Although management also disciplined Heather Findlay ["Findlay"] for failure to follow the appropriate conflict resolution process, no one else was disciplined to the extent of Cote.

[55] Usiskin admitted that, at some point during the organizing drive, the Employer circulated a "fact" sheet entitled, "Information & FAQ's for Quint Employees about Union Organizing", provided by his lawyer ["Fact Sheet"]. There had been a few staff seeking answers from Conway, which she did not feel equipped to provide, and so the fact sheet was meant to respond to those questions. He did not review the Fact Sheet prior to its distribution.

[56] The Fact Sheet, which is identical to a document prepared by the organization, Labour Watch, starts with the following sentences:

> *Most likely, the union is interested in you because it wants you paying dues to them and it wants more unionized employees in Canada. The union may be interested in you and your coworkers for other reasons. […]*

[57] It includes the following paragraphs:

> *The only things a union can guarantee are things it can control. For example, things like rules of membership and union dues. The union may promise you many things but there are only a few that they can guarantee: Your obligation to pay union dues or fees. The application of the union's rules to you as a member – to discipline you or terminate your membership which may require, in some*

> *provinces, your employer to fire you. The possibility of being on strike or of being locked out of your workplace.*
>
> *A union can't guarantee job security because it doesn't control the market. How can a union make promises about business conditions and profits? How can unions guarantee steady work? Seniority rights are not the same as job security – if you are more qualified for a position, but are not the most senior, is this the kind of job security you want? If you need and have or want flexible scheduling, do you want seniority (length of service or employment) to decide who gets what schedule and control scheduling changes? If you are the best performer, do you want the length of employment of a lesser, or even the weakest performer, to determine who is laid off?*

[58] On re-exam, Usiskin suggested that it was mostly or exclusively Cote who used the inappropriate terminology to describe "X". Usiskin denied raising issues related to the Union at any meetings, and suggested that if someone else raised such issues, his response would have been that he could not discuss it. He acknowledged that there were rumors about who supported the Union, but he did not take any of it seriously, as the employees have the right to organize. Finally, he could not recall having received correspondence from the Union objecting to the Fact Sheet.

Reagan Conway ["Conway"]

[59] Conway is the Program Manager for PHP and the Male Youth Lodge. She manages the finances, staffing, budgets, internal issues, and assists with residents' case plans and referrals.

[60] Conway testified about the discussions that led up to the visitation decision. The issue was not whether "X" could visit the child, generally, as he had already been doing so, but whether he could do so at PHP, where the staff could assist with the development of parenting skills. After the decision was made, Conway returned to PHP, and informed the staff who were present. The decision would have been noted in a meeting book and in the log book. Apart from her email on July 3, 2017, Cote did not approach Conway about her concerns.

[61] Conway explained that she had sent the August 1, 2017 email in response to a staff member raising concerns about the referrals process. The email was intended to clarify the appropriate conflict resolution avenues in the workplace. She explained her understanding of the email, being that staff would come to Conway first, then to Szejvolt and then to Usiskin, if they could not otherwise find a solution.

[62] After the August 6, 2017 meeting, Conway asked Robinson to move the visits elsewhere due to the concerns of staff, and together they decided that this course of action was the best way

forward. Later in her testimony, in response to a question from the Vice-Chairperson, Conway explained that Robinson's views in this regard would have trumped her own.

[63] At the August 22 staff meeting, all staff expressed concerns about the visits, but some were willing to accept them if safety measures were put in place. Conway said that she tries not to take things personally, but that she was still impacted by the suggestion that she is untrustworthy and mean. Conway was surprised and humiliated by the accusations, having been raised directly in front of both of her bosses and all of the staff. Cote was the main person to express concerns about her supervisory style. Findlay suggested that there was tension in their relationship but that was all.

[64] Conway remembered receiving the email from the Board providing the results of the vote. She would have spoken to Usiskin and Szejvolt afterwards and forwarded the email to them.

[65] Conway spoke to the scheduling issue. Casual employees, like Hull, generally provide their availability to Conway in advance of scheduling so that she can fit them into the schedule during the initial drafting process. After they receive the schedule, they are entitled to contact Conway to advise if they want any available shifts. In this case, Hull did not provide her availability for September. Instead, she had sent Conway an email indicating that she felt burnt out and wanted to work fewer shifts.

[66] Hull did not raise concerns about scheduling. Her only concern was that she did not receive the schedule in January, so Conway rectified that by providing it. When she came in to sign her contract, she advised that she could not open a schedule on her phone, and so Conway gave her a hard copy.

[67] The relevant email exchange reads as follows, starting with Hull's email dated September 4, 2017:

> *Good morning,*
>
> *Just wanted to touch base before the next schedule is made. I'm just wondering about the October schedule and when it's being made. I wanted to give you a heads up on when I'm available and know what shifts need to be filled. I know it's still early in the month for scheduling but when you have an idea, do you mind letting me know and we can work together to see what works?*
>
> *Thanks,*
>
> *Jacey Hull*

[68] Conway's response on September 5, 2017, reads:

> *Hi Jacey,*
> *I will be working on the schedule this week.*
>
> *Reagan*

[69] Hull's email, dated September 7, 2017, reads:

> *Sounds good, I was just wanted* [sic] *to touch base and work together with scheduling. I am starting to feel burnt out working two jobs and just would like to be scheduled the odd weekend shift. October 14 or 15 weekend shifts (either or) I would be available for. And the weekend after that. But just one shift a weekend. I will tell the girls if shifts come up (if someone calls in sick, or would like to switch) I will see if I am available for to* [sic] *come in. Let me know what you think.*
>
> *Thanks,*
> *Jacey Hull*

[70] Hull worked on October 14, 20, and 22, 2017. She did not work in November. She picked up a shift on December 16, which is the last time she worked.

[71] Conway explained the process for using Health and Wellness days. To do so, employees must contact their direct supervisor for permission in advance. When permission is granted, the Employer will book the time and find replacements for necessary shifts. In practice, employees call the house to advise of an illness, but are expected to call or email Conway to advise that they have done so. Conway suggested that she has always asked for doctor's notes for an illness of three days or longer. At the August 22 meeting, staff were reminded to request permission directly from Conway and/or advise Conway of an absence. If the staff cannot reach Conway, Usiskin or Szejvolt are the next in line.

[72] Home Operators work 20 hour shifts, and so four days off is equivalent to 80 hours. Cote missed 80 hours of work without contacting Conway. Conway heard nothing from Cote, but instead learned about the absence through another staff member, after Conway returned to work.

[73] Conway spoke to the suggestion that she conveyed anti-union animus in the workplace. She did not initiate union-related discussions with staff during the organizing drive. Some staff came to her to ask questions, and she had to gain clarification from management about what she could say.

[74] Conway spoke to the issue of confidentiality. Staff are not supposed to share information about one resident with another resident, or with third parties, except in case of an emergency.

[75] On cross, Conway spoke to Cote's performance review. In the review, Cote observes that "[i]f she is unable to work a shift she contacts the appropriate people". By this statement, she meant that Cote would contact the house if she was unable to attend work, and contact Conway.

[76] Conway admitted that she has stepped outside of the written policy pertaining to absences. But when an illness surpasses one day, the staff have contacted her. To be sure, this distinction (between one-day and longer absences) is an understanding about which she had not had specific, formal conversations with all staff.

[77] Furthermore, the Home Operators had historically been calling to advise her that someone had been sick the day prior, and sometimes, a staff member would call the house and then the house would contact Conway. If she is on vacation, she may learn of an absence upon her return, and at times, it has been the Home Operator who initialed the changes to the schedule.

[78] Conway bases the payroll on the PHP schedule. She reaches out to a staff member or the house if there is a discrepancy between the schedule and the timesheet. Although she is not privy to all disciplinary actions taken against employees, she could not recall a circumstance in which an individual was disciplined for "that specific issue". Staff do sometimes report their illness the following day, but not a week later.

[79] Conway initially testified that she believed that Hull had sent her availability for most of the months in the first half of 2017. On the other hand, she could not recall if she had received an email from Hull for each, specific month. Hull had also arranged to cover vacations for other staff, and Conway might have sent her an email with her general availability, until further notice. She could not recall how many shifts Hull was scheduled for, or how many she picked up. Conway schedules staff when she knows that they can work.

[80] Prior to the filing of the certification application, a staff member had contacted Conway and explained that she had been approached to sign a card and had felt intimidated in the process. She explained that she had wanted to make management aware, but did not provide names. Conway replied that she had only ever been involved with an established union, and not with an organizing drive. She decided that she should talk to management before taking it further and so she proceeded to seek guidance from Usiskin and Szejvolt. Although she could not confirm, it was possible that she spoke with Loretta Warden ["Warden"], another PHP staff member.

[81] Other staff approached Conway about the organizing drive, asking what a union “meant” and what it does. One staff member approached Conway to advise that she was not involved in the drive and Conway responded that she could not discuss it. Conway was never aware that Watkins and Hull were involved with the drive. She does not listen to or hear rumors about their involvement.

[82] After consulting with management, Conway told staff that unions are neither good or bad, and that she had never been involved in an organizing drive. She might have said that it could be difficult if the staff were not in agreement about certification. As for the Fact Sheet, she made a copy to hang in each office and attached it to pay stubs and put it in the staff cubby holes. In her view, the Fact Sheet provided a balanced perspective. She explained to staff that she was allowed to post the Fact Sheet in the workplace because she had received it from a lawyer.

[83] On re-exam, Conway testified that for a one-day illness, the practice is for staff to call the house in advance to advise of their absence. Sometimes they message or call Conway, but if they do not, it is not a big deal. For two or more days, the expectation is to advise Conway or management and to bring in a doctor’s note. That she can remember, she has never had a staff member fail to contact her for a three or four-day absence.

[84] When she said that she has stepped outside of the policy, she meant for one-day, not multi-day, absences. In the past, she has not taken issue with staff switching shifts and telling her after the fact. She would sometimes find out about illness absences after the fact, but “usually” for only one day. She repeated that she has never had a staff member absent for four days, like Cote, without contacting her.

[85] On the issue of the schedule, Hull expressed no concerns about not being scheduled for the month of September. Conway would not schedule a casual employee if she was unaware of their availability.

Charleen Cote [“Cote”]

[86] Cote began working at Quint in or around June, 2016. As a Home Operator, Cote oversaw the daily operations of the house and ensured residents’ needs were met, the home was safe, and staff were present. It is the responsibility of the Home Operators to know what is going on in the home. Cote explained the nature and extent of communication between the Home Operators

and management. With Usiskin and Szejvolt, there was no communication. Communication with Conway was done mainly through Findlay, as Findlay worked weekdays and Cote worked weekends (Friday until Tuesday).

[87] Cote explained the reasons for the certification drive, for which she was the lead organizer. Cote and Findlay felt that they understood the residents' needs but did not have a voice to advocate for them. When they tried to speak with Conway, they were treated with disrespect. Cote believed that there was an agreement internally to unionize, and so she contacted Don Regel ["Regel"] in the latter part of June, picked up the cards at the Union office, and met with Regel on June 28, 2017.

[88] According to Cote, management knew about the union drive. Sometime between June 28 and August 22, Warden called Cote advising that she had just gotten off the phone with Conway. Conway had called asking about the organizing drive. Warden had been scared and so she had lied to Conway, saying, "I don't know. I haven't heard anything".

[89] About this evidence, in response to the Employer's hearsay objection, counsel for the Union advised that its key witness was unable to testify due to illness. The Board considered counsels' respective submissions and admitted the testimony on the basis that it would be weighed against the totality of the evidence.

[90] Regel sent information about the Union to Cote, and she printed it off and posted it beside Conway's material. Cote arranged a meeting with staff from PHP and the Male Youth Lodge, and it was clear from the meeting that she was organizing the union drive.

[91] Cote explained her concern with the visitation issue. She was concerned with "X" having access to children and about the risks posed to the residents of PHP. She had personally observed "X" acting inappropriately and knew of reports pertaining to other inappropriate behavior. Cote expressed her concerns and objections through Findlay, had discussions with other staff members, and proceeded to email Conway. Cote interpreted Conway's email to mean that it was "okay" for her to go ahead and contact management. She felt that that was the most respectful thing to do, because by law, it is her responsibility to report when a child is in danger. She also wanted management to be aware that she had previously addressed the issue with Conway.

[92] Cote explained her repeated use of the allegedly inappropriate terminology to describe "X". She explained that she was simply adopting the term used in child protection circles, a term that she had learned during her education and that accurately predicts the associated behaviors. Cote felt that she had expressed her concerns at the staff meeting, but was attacked for unprofessionalism and for using inappropriate terminology.

[93] Cote described the August 29 meeting. Usiskin read the performance issue reprimand memo to her, word for word. He explained that Cote had damaged the relationship with Conway. Cote denied this, saying that Conway had previously humiliated Cote in meetings and so the damage was already done. She did not agree that she should be writing a letter of apology to Conway, but thought that Conway should be writing one to her. Cote later allowed that she would write a letter to Conway for raising the issue of Conway's supervision in front of the other coworkers.

[94] According to Cote, Usiskin agreed that amendments would be made to the memo, and that they would reconvene at a later date. Cote testified that at the end of the meeting, Cote asked Usiskin, "this is not in effect, so I am not going to be fired over this?" Usiskin laughed, replying, "no". Notably, in cross examination, Cote clarified that Usiskin had actually said, "no, so long as you're willing to work with us."

[95] Cote admitted that she had initiated the discussion about the Union, which took up the latter half of the meeting. In that discussion, Cote explained that she was leading the organizing drive. She explained why. Usiskin agreed that there were underlying issues at the workplace. Usiskin said he should not be talking about the drive, but that is where the conversation eventually landed. Usiskin spoke about being a union activist, said the lawyer had advised against speaking to staff about the organizing drive, and suggested that the Quint Policy Manual was better than most collective agreements.

[96] Cote invited Usiskin and Szejvolt to join the meeting scheduled for September 14, for the purpose of signing cards. She wanted to be completely transparent.

[97] Cote made a vague reference to a notebook in which she had kept notes in an earlier attempt to eliminate gossip from the workplace. She mentioned that she had chosen to work through the associated issues instead of bringing the notebook forward and making things harder for Conway.

[98] Cote explained her four-day absence. It had all started with a dental appointment. Cote found a replacement for one day, called the house, and reported her absence. She expected to be at work the following day, but instead was in pain, and asked the same coworker to cover for her again. The third day, she called again asking for coverage for the third and fourth days. She took this approach because she did not know in advance that she would be absent for all four days. Cote obtained the doctor's note on September 12. She waited until September 18 to present it to Usiskin, as she had already made him aware of its existence.

[99] Cote described her past experience with Health and Wellness days. When an employee wanted to take a day, Cote would receive a call from the employee, and then Cote would call a casual staff member as a replacement. Cote would cross out the name of the employee listed on the schedule and add the name of the replacement employee. On cross, she acknowledged that it was not her job to approve or disapprove shift changes, even though she documented them.

[100] Cote denied that she had absconded from work due to her anger at management. She had scheduled the dental appointment a month prior and there was no way that she could have predicted the subsequent events.

[101] Cote was in B.C. from September 8 to 12, 2017. She had informed Conway at the beginning of August. Usiskin's email on September 12 was forwarded to Cote by a co-worker. After the email went out, Cote received a flood of text messages, all prior to receiving Usiskin's own email. She had no idea what was going on.

[102] Cote described the meeting of September 18, acknowledging that she became emotional – after all, she felt like she was being degraded and belittled. Szejvolt was smirking and Usiskin was being condescending. She communicated these observations in the meeting. At one point, Usiskin said "things don't look good for you Charleen". She assumed she was going to be terminated.

[103] On cross, Cote admitted to having recorded the three key meetings. She defended her actions, saying that she had felt threatened due to her role with the organizing drive. Szejvolt and Conway had previously spoken about their jobs not being secure. Cote wanted to be able to demonstrate what happened at meetings with management. She had experienced a similar situation in the past, in which she had led a union drive in another workplace, and was terminated as a result.

[104] Cote acknowledged that she did not have permission from management to record the meetings. Cote explained that the recordings are no greater breach of confidentiality than the minutes taken of the meetings, which also included the names of relevant residents and their family members. If no legal proceedings had resulted from her termination, then the recordings would not have been disclosed. She understands her duty of confidentiality.

[105] Cote acknowledged that, on August 22, Szejvolt had reminded or informed staff that they were to contact Conway about their Health and Wellness leave, but she had not indicated whether the contact had to be made in advance. Besides, Conway advised that a staff member could call into the Home Operator if they were sick for one day.

[106] Findlay was the first person to raise the concerns about Conway. Besides Findlay and Cote, no one spoke about it. Cote would not have mentioned it if she had not been asked to explain her approach. Even so, she had planned to speak about Conway's failure to take into account their concerns. When Cote spoke, the rest of the staff sat back and let her speak. When she was asked about the Policy Manual, Cote admitted that she was probably encouraged to read the Policy Manual in orientation but did not. In fact, she had never read it.

[107] Cote was cross examined about the content of the August 29 meeting. She admitted that she told management that Conway had damaged the relationship, and not the other way around. Cote admitted to saying, "why should I write a letter of apology to Reagan. Do I get one from Reagan?" Despite this, she claimed that she was willing to take responsibility for her role. To be specific, she was willing to apologize for questioning Conway's supervisory skills in the staff meeting.

[108] At some point, Cote advised management that she was considering going to the Child and Youth Advocate with her concerns, and filing criminal charges against Conway. She admitted to telling Usiskin and Szejvolt that they seemed to defend Conway at every turn. She told them that they were not listening to anything she said.

[109] Cote clarified why she felt comfortable speaking about the Union with management. It was because Usiskin had said that he had been a trade union activist at one point.

[110] She explained the timing of the doctor's note. After the procedures, she was in pain for about a week. She did not think to ask for a doctor's note at emergency. This was the first time that she had taken four consecutive days for illness.

[111] Cote insisted that she never received a call or a voice mail from Usiskin. Despite this, Usiskin provided a phone record that showed a 30 second phone call from his number to Cote's number. Cote indicated that her phone was turned off at the time and that there was no voice message. In the September 18 meeting, Cote insisted that she did not get a voice mail. She felt that Usiskin was accusing her of lying. She admitted that at one point she lost her composure, and said "don't put words in my mouth" and "just let me speak". She accused Usiskin of talking down to her. She said to Szejvolt, "don't sit there all smug like I'm a liar".

[112] To this day she still feels as though she followed the proper avenues. She did not do anything wrong. She was, however, ashamed of having lost her composure at the last meeting. Cote informed other staff members that she was reprimanded. She was not embarrassed about it. She was angry.

[113] Although none of the managers complained about the posted union material, someone had taken it down. Cote was unsure who.

[114] On re-direct, Cote clarified a few points. First, she testified that there had been no practical distinction between one day and multiple days. Second, only about "two minutes" was spent discussing Conway's supervision style in the August 22 meeting. Third, Usiskin had raised no concern with the sufficiency of the doctor's note.

Audio Recording

[115] During the hearing, the Board was charged with deciding whether to admit the audio recording of the last disciplinary meeting prior to Cote's termination. Counsel for the Employer applied to admit the recording during its cross examination of Cote. Counsel for the Union objected, stating that if the recording were admitted, the recordings of the two additional meetings should also be admitted through Cote, on re-direct.

[116] Counsel for the Employer suggested that the recording from the last meeting was highly relevant because it was the last interaction between management and Cote, and it provided context for the termination decision. Counsel for the Union suggested that he had proceeded on

the understanding that neither counsel would rely on the audio recordings. In reply, counsel for the Employer suggested that both were free to rely on any recordings as needed, as circumstances arose and took shape. The Employer received the recordings shortly before the hearing. There was no undertaking that they would not be led as evidence.

[117] The Board indicated that each recording should be considered separately and on its own merits. The Board admitted the last recording on the basis that it was relevant evidence, introduced for a narrow purpose, being to assess the tone of the meeting, with weight to be assigned to the recording, as appropriate. The Board indicated that, the panel could review the audio for the narrow purpose of assessing the tone, as requested.

[118] Initially, counsel for the Union had asked for the right to recall Cote for the purpose of admitting the two other audio recordings as evidence. Following the comments from the panel, counsel indicated that the Union was prepared to proceed with its final witness.

[119] While the Board has reviewed the audio, it has relied solely on the related testimony and documentation about the last meeting. The latter evidence was sufficiently detailed and thorough to allow the Board to make its determination without taking the recording into account.

Jacey Hull ["Hull"]

[120] Hull has worked at Quint since the summer of 2015. As a support worker, she assists in supporting the daily activities of residents. Support workers document progress or lack thereof, address safety concerns, and communicate with the Ministry of Social Services.

[121] In July, Hull assumed a weekend Home Operator role. In or around July 10, she was approached by a co-worker who wanted to sign a union card, and asked Hull to retrieve it for her. Hull and Watkins proceeded to the Union office to retrieve the card. By the time they returned, the employee's body language had altered and she had changed her mind. Hull did not want to push her opinions, so did not say anything further.

[122] The next day, Hull later received a call from Warden. Warden explained that she had received a call at home from Conway. Conway had said she was informed that staff were organizing and another staff member was bullied into supporting the Union. Hull was working at the time. Warden knew that Hull was pro-union. Hull and Watkins were the apparent bullies.

[123] Hull spoke about the visitation issue. Hull explained that she was against the visitations, under the circumstances. PHP should remain safe for mothers and children, and there are other locations that are more appropriate for visitations of that kind. She voiced her opinion at the staff meeting.

[124] Hull is a casual employee, and so she cannot partake in Health and Wellness days. Although Hull has never called in sick, she has had to take time off for other reasons, and in those cases, she has texted staff to find a replacement, and then advised the Home Operator that her shift was being covered.

[125] Hull described the nature and extent of scheduling communications with Conway. For the first half of 2017, Hull was typically scheduled for weekends. In January, 2017, she spoke with Conway about her availability. Between January and September, she had three or four conversations with Conway on the topic. In some of these conversations Conway reached out to Hull about additional shifts.

[126] For September 2017, Hull was not scheduled at all. This was shocking to her. She had not requested removal.

[127] In August, Hull started working full-time hours at another job, Monday to Friday. She had come to realize that she could not obtain full-time hours at Quint. She requested weekends, to start in October. She remains confused as to why she was omitted from the September schedule. She picked up shifts in September because she had wanted to keep working.

[128] On cross, Hull described her involvement in the organizing drive. She signed the Union card while on site at PHP. The shifts at PHP are lengthy. If employees need to run an errand during a shift, they are welcome to do so. They do not otherwise have the opportunity to take lunch or coffee breaks.

[129] Hull reflected on her reduced schedule as of late, relative to the first half of 2017. Hull's contract says "[h]ours will vary based on workload and funding". If there is insufficient workload or funding for Hull, then how have other staff been hired on?

[130] Hull explained the September email. She was legitimately burnt out, and she wanted to address what she viewed as a scheduling problem, to avoid not being scheduled again. She

picked up shifts in September because there were open shifts. She did not mention her concerns to Conway because she took it upon herself to do something about it.

[131] According to Hull, Conway accommodated her request to work fewer shifts but did not accommodate her request to work weekend shifts. In October she was granted one shift, in November zero, December zero, and in January and February she received no email. Hull confronted Conway about this and she apologized and said that others were missed.

[132] Hull acknowledged that, as a casual employee, there is no guarantee of hours. She explained that she did not raise her concerns with Conway because she felt that she was getting pushed out, and it was her practice to contact the Home Operator to pick up shifts. By working more and more, she had been trying to communicate her desire for more hours. She did not tell Conway that she wanted to obtain a full-time position. Hull indicated that she was impacted when other casual staff were getting hired and she was not being placed on the schedule.

Don Regel ["Regel"]

[133] Regel is an organizer with SGEU. In June 2017, Cote called asking if SGEU was interested in organizing the workplace. Regel and Cote had a follow-up meeting in late June. Regel attended a meeting on September 14 in relation to the organizing drive. He stated that there were concerns raised about sanctions against the employees suspected of organizing. One of these employees was Cote, although in her case he had heard about her issues sometime shortly before the September 14 meeting.

[134] It was Regel's understanding that, during the organizing campaign, employees had no access to personal contact information for other employees, and only knew their coworkers by their first names. Despite this, one of the employees obtained personal email addresses for employees of both houses, in order to call a meeting about the organizing drive. Regel seemed to be implying that this employee had been provided email addresses, perhaps for the purpose of undermining the drive.

[135] During Regel's testimony, the Board was asked to admit an affidavit sworn by Usiskin, and filed in a different, related proceeding before the Board. The affidavit had not been put to Usiskin in his earlier examination. Counsel was attempting to tender the affidavit for the truth of its contents. Counsel for the Employer suggested that the Union was attempting to supplement Usiskin's testimony after its opportunity for cross examination had closed.

[136] The Board ruled against admitting the affidavit. Its admission would deprive the Employer of cross examination on evidence that could have been put to the witness in direct. The portions of counsel's brief that related to the evidence contained therein, were therefore struck from the record.

[137] On cross, Regel acknowledged that he did not have access to the workplace. Everything that he knew, he had heard through the employees. He had no idea how the aforementioned employee had obtained the impugned email addresses. Finally, he observed that the Labour Watch website is anti-union, and much of the information is misleading and inaccurate.

Relevant Statutory Provisions:

[138] The following provisions of the Act are applicable:

> *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:*
>
> *. . .*
> *(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;*
>
> *(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.*

Analysis:

Onus of Proof:

[139] To benefit from the reverse onus established by subsection 6-62(4), the Union must demonstrate that the Employer has suspended or terminated an employee, and that employees of the Employer or any of them had exercised or were exercising or attempting to exercise a right pursuant to Part VI of the Act. There is no dispute as to whether the Employer suspended or terminated Cote or whether Cote and other employees were exercising or attempting to exercise

rights pursuant to Part VI, and so therefore there is no question as to whether the reverse onus applies to the circumstances involving Cote.

[140] Therefore, the Employer bears the onus to prove that it suspended and terminated Cote for good and sufficient reason. This is a very high standard.[1] To meet this standard, the Employer is required to show both that it had credible and coherent reasons for its actions, and that union activity played no role in its decisions. The Board does not operate as an arbitrator of a collective agreement, for example, by inquiring as to whether the Employer had just cause for the termination. In making its assessment, the Board is guided by the statutory protections for employees who choose to organize a workplace, such that they are entitled to do so without fear of reprisal.

[141] The reverse onus does not apply in relation to Hull. The Employer did not suspend or terminate Hull from her employment. During all material times, Hull continued to pick up available shifts on the schedule. As far as Hull is concerned, the Union is obliged to demonstrate, on a balance of probabilities, that the Employer discriminated or used coercion or intimidation, in the manner as outlined in subsection 6-62(1)(g) of the Act. The Union's evidence must be sufficiently clear, convincing and cogent.

Circumstances Involving Cote:

[142] The Board summarized the test to be applied in the existing circumstances in *International Brotherhood of Electrical Workers, Local 2038 v Clean Harbors Industrial Services Canada Inc*, 2014 CanLII 76047 (SK LRB) ["*Clean Harbors*"], at paragraphs 91 and 92:

> *[91] 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. […]*
>
> *[92] However, even if the Board is satisfied that there were valid 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*

[1] See, *I.B.E.W. 2038 v Magna Electric Corp*., 2013 CanLII 74458 (SK LRB) ["*Magna Electric*"]; *S.G.E.U.* v *Lac La Ronge Indian and Child Services Agency*, 2015 CarswellSask 754, 2016 CLLC 220-018, 269 CLRBR (2d) 300 ["*Lac La Ronge*"].

> *animus. […] 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.*
>
> *[citations removed]*[2]

[143] While that case was decided under the previous legislation, the test has been substantially adopted and applied in applications brought under clause 6-62(1)(g) of the Act. As the Board observed in C*anadian Union of Public Employees v Warman (City)*, 2017 CanLII 30130 (SK LRB) ["*City of Warman*"]:

> *[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.*[3]

[144] In considering whether the Employer has met its onus in this case, the Board heeds the earlier guidance from this Board in relation to the rationale behind the onus. In *Saskatchewan Government & General Employees' Union v Valley Hill Youth Treatment Centre Inc*., 2013 CarswellSask 755, 2013 CanLII 98136 (SK LRB) ["*Valley Hill*"], the Board explained the rationale:

> *[45] Byway* [sic] *of further example, this Board summarized the principles and rationale underlying the application of s. 11(1)(e) in Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Moose Jaw Exhibition Co. Ltd., [1996] Sask. L.R.B.R. 575, LRB File Nos. 131-96, 132-96 & 133-96 as follows:*
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> > *The Board has always attached critical importance to any allegation that the suspension or dismissal of an employee may have been affected by considerations relating to the exercise by that employee or other employees of rights under the Act. In a decision in Saskatchewan Government Employees' Union v. Regina Native Youth and Community Services Inc., [1995] 1st Quarter Sask. Labour Rep. 118, LRB Files No. 144-94, 159-94 and 160-94, the Board commented on this matter as follows, at 123:*
> >
> > > *It is clear from the terms of Section 11(1)(e) of the Act that any decision to dismiss or suspend an employee which is influenced by the presence of trade union activity must be regarded as a very serious matter. If an employer is inclined to discourage activity in support of a trade union,*

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[2] See also, *International Brotherhood of Electrical Workers, Local 2038 v Clean Harbors Industrial Services Canada Inc*, 2015 SKQB 232 (CanLII), at para 78.
[3] See also, *R.W.D.S.U. v Sakundiak*, 2011 CanLII 72774 (SK LRB); *Magna Electric*; *Lac La Ronge*.

> *there are few signals which can be sent to employees more powerful than those which suggest that their employment may be in jeopardy. The seriousness with which the legislature regards conduct of this kind is indicated by the fact that the onus rests on the employer to show that trade union activity played no part in the decision to discharge or suspend an employee.*

The Board made further comment on the significance of the reverse onus under Section 11(1)(e) of the Act in The Newspaper Guild v. The Leader-Post, [1994] 1st Quarter Sask. Labour Rep. 242, LRB Files No. 251-93, 252-93 and 254-93, at 244:

> *The rationale for the shifting to an employer of the burden of proof under Section 11(1)(e) of the Act to show that a decision to terminate or suspend an employee was completely unaffected by any hint of anti-union animus has, in our view, two aspects. The first is that the knowledge of how the decision was made, and any particular information regarding the employment relationship involving that employee, is often a matter available exclusively to that employer. The trade union knows of the termination or suspension, knows of the union activity, and asserts that there is a link between them of anti-union animus. A decision that this link does in fact exist can often only be established on the basis of information provided by the employer. Whether this is described as a legal onus of proof, which is the basis of the challenge made by the Employer to the courts, or whether it is seen as an evidentiary burden, an employer must generally be able to provide some explanation of the coincidence of trade union activity and the suspension or termination in question.*
>
> *The second aspect of the rationale, which is particularly important in a case, such as this one, where union activity with an employer is in its infancy, addresses the relative power of an employer and a trade union. An employer enjoys certain natural advantages over a trade union in terms of the influence it enjoys with employees, and the power it can wield over them, particularly where the power to terminate or discipline is not subject to the constraints of a collective agreement or to scrutiny through the grievance procedure. In these circumstances, the vulnerability of employees, and their anxieties, even if exaggerated, about the position in which they may be put by communicating what they know of the circumstances surrounding the dismissal to trade union representatives, and possibly to this Board, makes it difficult for the trade union to compile a comprehensive evidentiary base from which they may put their application in its fairest light.*

[145] In this case, the Board has evaluated the strengths and weaknesses of the Employer's explanation and is satisfied that the Employer has met the "stringent requirement" to prove that its explanation for the suspension and the termination is credible and coherent. This is not to be taken as a conclusion as to whether the Employer had just cause for the termination. In arriving at this determination, the Board takes into account the fact that, as per Cote's most recent performance review, she was exceeding expectations in all areas.

[146] The Board has come to this conclusion for the following reasons. The Employer launched its disciplinary action in direct response to Cote's conflict resolution strategies. Cote's actions, while well-intentioned, were misguided. By contrast, Conway took a measured, rational approach, initially taking Cote's concerns into account, but then reversing her decision, in consultation with professionals, and reaching a decision with which Cote did not agree.

[147] Instead of addressing Conway directly, Cote designed or facilitated a setting in which communal criticism of her supervisor was the likely result, not an ill-fated surprise. Cote emailed her managers, inviting them to a staff meeting in which all employees would present their concerns about the visitation scenario in the presence of Conway. Predictably, Cote was asked at that meeting why she did not speak about her concerns directly with Conway, and in response she recounted her issues with Conway's supervisory style.

[148] At the same meeting, management spoke to the issue of Health and Wellness days and outlined its expectations in relation to same, namely that staff were expected to advise their supervisor of absences. At the time, there was some confusion over the details. What is amply clear, however, is that management communicated an expectation that staff contact their direct supervisor at some point prior to, or during multi-day absences, on a go-forward basis.

[149] Following the staff meeting, Usiskin wrote a reprimand memo to Cote, and called a meeting to discuss his concerns. At that meeting, certain corrective measures were discussed. Cote asked that the corrective measures be re-considered and Usiskin agreed to consider this request. The Board accepts Usiskin's evidence that he was willing to move forward, with a show of good faith on behalf of Cote.

[150] The problem is that Cote's subsequent actions compromised her relationship with Usiskin, during a delicate time. Cote did not show up to her next set of shifts, consisting of four 20-hour timeslots for a total of 80 hours. She missed 80 hours of work without contacting her direct supervisor. The Employer had recently communicated its expectations around absences. This should have been top of mind. Under the circumstances, even if not a break from historical practice, Cote's failure to contact Conway about a four-day absence was very imprudent. Understandably, Usiskin assumed that Cote's actions were related to the previous meeting and the reprimand. Usiskin's decision to suspend Cote without pay was rational, and his explanation credible and coherent.

[151] Despite Usiskin's misgivings, he called a meeting with Cote again, to try to understand her point of view. In that meeting, Cote presented the doctor's note, which substantiated her absence. Nonetheless, Cote became disrespectful towards Usiskin and Szejvolt. At some point Usiskin determined that continuing the discussion would be unproductive. By the time the meeting had ended, Usiskin had concluded, or was close to concluding, that the relationship was irreparably harmed.

[152] In the hearing, Cote provided certain justifications for not contacting her supervisor, but took little to no responsibility for her role in breaking Usiskin's trust. She repeatedly insisted that she had done nothing wrong and that she would do it all over again, if placed in the same position. Cote failed to accept responsibility for her part in the unravelling of the employment relationship, Overall, Cote displayed an unwillingness to take direction or responsibility, consistent with Usiskin's descriptions at the hearing and in the termination letter. Cote's testimony, at these times, lacked a certain thoughtfulness that proved detrimental to her credibility.

[153] The Notice of Termination is dated two days later. In that Notice, Usiskin stated:

> *At the performance meeting… you were not willing to acknowledge your insubordination or stated that you were not willing to work with your supervisor and your comments in our meetings indicate that you have no confidence in or respect for management at Quint.*

[154] The pay in *lieu* does not alter the Board's conclusion about the Employer's explanation, despite the Employer's policy on this subject matter. Even in cases around wrongful termination, a severance payment motivated by generosity is not necessarily inconsistent with an assertion of cause.[4] Furthermore, the Board is not charged with assessing whether the Employer had just cause.

[155] As an aside, while Usiskin insists that he left a message with Cote about her suspension, it is not clear that Cote received the message. Although the Board prefers Usiskin's thoughtful and generally consistent evidence, Cote does not waiver from her position about the voicemail. Either way, the damage in the last meeting arose from the overall context and not from Cote's failure to return one phone call.

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[4] *Parkinson v Kemh Holdings Ltd*., 2013 SKQB 172, 2013 CarswellSask 328, at para 53.

[156] In assessing the alleged breach, the Board must also consider whether union activity played any part in the decision to suspend or discharge Cote. If it did, then the Employer will have been found to have committed an unfair labour practice. In making this assessment, the Board notes that the disciplinary action against Cote began shortly after the organizing drive wrapped up and almost immediately after the tabulation result was communicated. The termination occurred a few weeks after that, and in the midst of a second organizing drive. In these circumstances, the discipline and termination could have, theoretically, been perceived as retribution and as a threat.

[157] The Board will turn to this aspect of the inquiry now.

[158] First, the Employer was aware, at the time of the termination, that Cote was leading the organizing drive. Given the openness of the drive, it was also likely that the Employer was aware of Cote's involvement prior to initiating disciplinary action. However, in the August 29 meeting Cote offered information about the organizing drive because, by her own admission, she felt comfortable to do so, given Usiskin's disclosures.

[159] While timing alone is not necessarily determinative, the Board must remain highly alert to the possibility of anti-union motivation.[5] As the Board pointed out in *R.W.D.S.U. v Moose Jaw*, 1996 CarswellSask 845, [1996] Sask LRBR 575, [2001] SLRBD No 19:

> *[W]hen such action is taken against an employee who is playing a significant role in a union organizing campaign and in the activities which lay the foundation for the collective bargaining relationship, the Board has always been highly alert to the possibility that a decision to discipline such an employee at this particular time may be something other than a coincidence".*[6]

[160] Second, the timing of the initial and subsequent discipline occurred in a logical sequence relative to the activities for which the discipline was being meted out. The first certification application was filed on July 20, 2017, and the organizing drive was in full, open force at the workplace as of early July, 2017. Cote was initially reprimanded following the staff meeting, approximately five weeks following the filing of the certification application. Cote's discipline arose directly as a result of her conduct in relation to that meeting and in relation to the visitation issue.

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[5] See, for example, *Clean Harbors* [SK LRB] upheld on judicial review although the Court might have come to a different conclusion on anti-union animus given the evidence presented, see *Clean Harbors* [SK QB], at para 85.
[6] *R.W.D.S.U. v Moose Jaw Exhibition Co.,* 1996 CarswellSask 845,[1996] Sask LRBR 575, [2001] SLRBD No 19 ["*R.W.D.S.U. v Moose Jaw*"], at para 46.

[161] While Usiskin determined that Cote's actions warranted proceeding directly to step two of the disciplinary process, this was not a significant leap forward on the progressive discipline path.[7] Cote's actions reasonably supported the progression as a means to communicate the seriousness of the conduct.

[162] Nor is this akin to *Valley Hill*, in which, "Ms. Cote's involvement with the Union was the catalyst that transformed the Employer's previous view of her performance from "*excellent*" and "*competent*" … to its current view that her performance is substandard".[8] The Employer's progressive discipline path reveals a degree of rational escalation and thoughtful deliberation.

[163] While the Union views with suspicion the one-week period following the staff meeting, the Board does not. Even if the Employer had waited to receive the vote results, this discloses a cautionary approach rather than anti-union approach, under the circumstances.

[164] While it is concerning that Cote was an exemplary employee terminated following a relatively short sequence of events, the Employer did not attempt to minimize or discount Cote's performance evaluation. The Employer had rationally concluded her actions amounted to insubordination. The Employer attempted to salvage the relationship by working with Cote through a series of memos, conversations, and meetings. The Employer pursued an investigation of the concerns with Conway by conducting one-on-ones.[9]

[165] Third, in assessing whether anti-union animus formed a component of the Employer's decision to suspend or terminate Cote, the Board is alive to issues of concern. The first issue pertains to the Labour Watch materials. In considering these materials, the Board is conscious of the fact that the unfair labour practice outlined in clause 6-62(1)(a) does not prohibit an employer from communicating facts and its opinions to its employees.[10] Nor is it the Board's role, in this case, to determine whether the Employer committed an unfair labour practice, pursuant to clause 6-62(1)(a), by distributing the Labour Watch materials.

[166] Nonetheless, employers may not communicate with employees in a manner that infringes on employees' ability to engage in and exercise their rights pursuant to Part VI of the Act. The Board, in assessing whether anti-union animus played a role in the Employer's decision, must

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[7] By contrast, see, *City of Warman*, at para 60-1.
[8] *Valley Hill*, at para 55.
[9] In contrast with *Lac La Ronge*, at para 41.
[10] See, subsection 6-62(2).

consider all of the facts before it, including Employer communications. The Board echoes the comments of the Board in *Valley Hill*, in which it stated:

> *While it is not unusual for employers to be disappointed to hear that their employees feel the need for a trade union or for management to view unionization as a loss of confidence, [The Saskatchewan Employment Act] expects employers (and their respective management personnel) to conduct themselves with an appropriate degree of balance and with due respect for the right of employees to determine their own destiny under the Act.*[11]

[167] The content of the materials, clearly designed to discourage employees from unionizing, combined with the manner of distribution, is concerning. Conway did not merely post the Labour Watch materials on the wall, but proceeded to print copies and distribute them with the employees' pay stubs. But the Board must assess these actions in context. The Board accepts Conway's testimony that she distributed the materials to respond to questions from the staff members about the Union, and that she believed that they were "neutral", having been provided by counsel. The Board also accepts the evidence of Usiskin, in which he explained that he had not reviewed the materials prior to them being distributed.

[168] Conway testified that she was concerned about the exacerbation of staff conflict, and not with the fact of organizing itself. Conway had the good sense to inquire with management about appropriate communications in relation to unions. She advised staff that unions were neither good or bad.

[169] In assessing whether anti-union animus played a role in the Employer's decisions, the Board must consider the whole of the circumstances. Those circumstances include the hearsay evidence pertaining to Warden's telephone call with Conway. According to Hull, Conway had allegedly expressed a concern with an employee being "bullied" into joining the Union. Hull and Watkins were the alleged bullies. While the Board exercised its discretion to admit this hearsay evidence, it can place only minimal weight on Hull's recollection of a conversation with Warden about a conversation with Conway.[12] The Board also notes that Warden was not "on shift" at the time of the conversation, which suggests that she was not regularly at the workplace.

[170] Furthermore, while Usiskin seemed to downplay his recollection of Union-related conversations, the Board accepts that he generally stayed out of the fray, engaged in

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[11] *Valley Hill,* at para 56.

[12] Not to mention Cote's recollection of a conversation with Hull about a conversation with Warden about a conversation with Conway.

conversations about the Union when invited to do so, and communicated a measure of neutrality toward organizing, including by outlining his own previous union involvement. The Employer also conducted itself in a reasonable fashion by obtaining advice and coaching its managers on how to respond to questions from employees. Furthermore, the Board notes that Conway was not in attendance at the disciplinary meetings with Cote. Regel's evidence about potential sanctions and unforeseen email addresses, is rather frail hearsay that carries very little weight or import.

[171] For the foregoing reasons, the Board cannot conclude that anti-union animus played a part in the decision to suspend or terminate Cote. In coming to this conclusion, the Board has taken into account the whole of the circumstances, including but not limited to the existing circumstantial evidence, the relative credibility of witnesses, and the fact that the true reasons for the suspension and termination often lie with the Employer, recognizing that seldom if ever will an Employer admit to anti-union animus.[13]

[172] The Employer seems to urge the Board to draw parallels between the current case and Valley Hill's argument in a previous case involving Cote. The Board declines the invitation. The Board cannot take as findings of fact in this case what amounted to mere arguments in another.

[173] As an aside, Cote struck the Board as a capable, well-intentioned, and highly intelligent individual. Unfortunately, she seemed to treat the workplace with a level of distrust and suspicion, as evidenced by her maintenance of a gossip notebook and her audio recording of the meetings with management. It may be the case that Cote was influenced by her previous experience in attempting to organize a workplace, in which she was terminated, and that this experience shaped her perspective on Quint. If so, this is unfortunate.

Circumstances Involving Hull:

[174] In the circumstances involving Hull, it is the Union's burden to prove, on a balance of probabilities, that the Employer discriminated or used coercion or intimidation in the manner outlined in clause 6-62(1)(g) of the Act. For greater clarity, the Union is required to prove that the Employer, or any person acting on behalf of the Employer, did any of the following:

> *(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;*

[13] *Devine v Alberta Bingo Supplies Ltd*., 1999 CarswellAlta 802 [AB LRB], at para 26.

[175] The first aspect of clause 6-62(1)(g) is discrimination with respect to hiring or tenure of employment or any term or condition of employment. The issue here is whether the Employer discriminated against Conway on the basis of a term or condition of employment.

[176] In assessing the meaning of "term or condition" in clause 6-62(1)(g), the Board looks for guidance to the modern rule of statutory interpretation. In *Krayzel Corporation v Equitable Trust Co*., [2016] 1 SCR 273, 2016 SCC 18 (CanLII), the Supreme Court of Canada summarized the rule, at paragraph 15, as follows:

> *[15] Statutory interpretation entails discerning Parliament's intent by examining the words of a statute in their entire context and in their grammatical and ordinary sense in harmony with the statute's schemes and objects: Rizzo & Rizzo Shoes Ltd. (Re), 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21. Throughout, it must be borne in mind that every statute is deemed remedial and is to be given "such fair, large and liberal construction and interpretation as best ensures the attainment of its objects": Interpretation Act, R.S.C. 1985, c.I-21, s. 12.*

[177] Part VI confers benefits on employees, and must accordingly be given a generous and purposive interpretation. The Board finds that the ordinary meaning of the clause, in the context of the labour relations rights protected under Part VI of the Act, extends beyond the specific text in an employee's contract of employment, and includes terms or conditions of employment beyond those which are explicitly embedded in an employment contract. Given this conclusion, the Board will consider both the explicit and implicit terms and conditions of employment.

[178] Hull was and is employed with Quint as a casual employee with hours which "vary based on workload and funding". These are the explicit terms of Hull's employment. As a casual employee, Hull has no guarantee of hours. The Employer has therefore not discriminated on the basis of an explicit term or condition of employment.

[179] Furthermore, there is insufficient evidence to persuade the Board that an implicit term or condition of Hull's employment entitled her to placement on the monthly schedule. Perhaps it was an expectation, but it was not an implicit term or condition. Even if Hull was consistently "pre-scheduled" after January 2017, the hours were still variable and somewhat dependent on external circumstances. Even if the Board could so determine, there is insufficient evidence to persuade the Board that the omission of Hull from the September schedule was conducted with a view to discouraging membership in or activity in or for the Union or participation of any proceeding pursuant to Part VI.

[180] Lastly, the Board must consider whether the omission from the September schedule amounted to coercion or intimidation with a view to discouraging membership, activity, or participation in a relevant proceeding. The Board is not so persuaded. In coming to this determination, the Board takes into account the fact that Hull was involved in the Union organizing drive, a fact about which Conway was likely aware.

[181] Conway's practice is to complete monthly schedules, which she then sends to the staff. Casual employees may pick up available shifts after reviewing the monthly schedule. If Conway was aware of a casual employee's availability in advance of preparing the monthly schedule, she would take that employee's availability into account when doing so. Conway insisted that she would have omitted Hull from the schedule because she was unaware of her availability. Hull suggested that when she was omitted from the schedule, she was "shocked".

[182] Despite this, Hull never raised her concern with Conway directly. She did, however, send her availability to Conway for the following month, and was placed on the schedule, albeit not to her satisfaction. She did not approach Conway about the discrepancy between the October schedule and her request. But she was permitted to pick up available shifts, and she did so. Hull did not appear to pick up any shifts in November, and picked up only one shift in December.

[183] On the evidence before the Board, it is more likely that the omission from the September schedule was caused by a communication breakdown or a misunderstanding, as opposed to an attempt to coerce or intimidate Hull. Hull's failure to communicate her concerns directly with Conway, and her minimal attempts at picking up shifts after the fact, are consistent with this conclusion. The practice of communicating availability via verbal conversations, was a practice that could easily lead to misunderstandings, but it was a practice that was undertaken in this case.

[184] This is not to suggest that every complaint involving potential coercion or intimidation is illegitimate in the absence of an employee raising concerns directly. Far from it. But in this case, the Union bears the onus to demonstrate that the Employer engaged in coercion or intimidation. To be sure, Conway seemed to downplay her knowledge of who was involved in the organizing drive. But the coincidental timing, coupled with the limited evidence around Conway's conduct, fails to persuade the Board that the Employer discriminated, coerced or intimidated Hull with a view to discouraging Union activity.

[185] The Board is not persuaded by the evidence, on a balance of probabilities, that the Employer discriminated or used coercion or intimidation against Hull in the manner outlined in clause 6-62(1)(g) of the Act. The Union has not satisfied its burden of proof.

[186] On the basis of the foregoing Reasons, the Board dismisses the Union's Application in its entirety.

[187] Finally, the Board notes that the parties made oral arguments and filed written submissions, which the Board has reviewed and found helpful in arriving at its determination in this matter. The Board is grateful to all counsel for their skilled advocacy in this matter.

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

DATED at Regina, Saskatchewan, this **21st** day of **August, 2019.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson