Labour Relations Board
Saskatchewan

SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, Applicant v. TEMPLE GARDENS MINERAL SPA INC., Respondent

LRB File No. 172-00; May 1, 2002
Vice-Chairperson, James Seibel; Members: Gloria Cymbalisty and Tom Davies

For the Applicant: Larry Kowalchuk
For the Respondent: Deb Thorn

Unfair labour practice – Duty to bargain in good faith – Disclosure – Failure to disclose expansion plans to union at bargaining table constitutes failure to bargain in good faith - Employer's ostensible fear that union will use information to employer's detriment not credible and does not justify failure to disclose – Board concludes that information withheld because employer representative personally disliked union representative - Employer violated s. 11(1)(c) of *The Trade Union Act*

Unfair labour practice – Duty to bargain in good faith – Disclosure - Exclusive bargaining authority – Board concludes that employer releasing information to group of employees while refusing union's request for same information has effect of undermining union's exclusive bargaining authority - Employer violated s. 11(1)(c) of *The Trade Union Act*

Unfair labour practice – Duty to bargain in good faith – Disclosure – Failure to provide union with employee and wage information to union at bargaining table constitutes failure to bargain in good faith – Board concludes that production of information delayed because employer representative personally disliked union representative - Employer violated s. 11(1)(c) of *The Trade Union Act*

***The Trade Union Act,* s. 11(1)(c)**

REASONS FOR DECISION

Background:

[1] Saskatchewan Joint Board, Retail, Wholesale and Department Store Union (the "Union") is designated as the bargaining agent for a unit of employees at Temple Gardens Mineral Spa Inc. (the "Employer") in Moose Jaw, Saskatchewan, in an Order of the Board dated September 15, 1999. Following certification, the parties commenced bargaining for a first collective agreement. The Union filed an application

with the Board alleging that the Employer committed unfair labour practices in violation of ss. 11(1)(a) and (c) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"). The Union alleges that the Employer failed or refused to disclose information to the Union regarding expansion plans and the status of individual employees including names, addresses, dates of hiring, rates of pay and recent wage increases. The Union says the information was material to the negotiations for a first collective agreement.

Evidence:

[2] Mark Hollyoak has been a representative of the Union for some 12 years. His responsibilities included the collective bargaining with the Employer. He testified that at a bargaining meeting on May 6, 2000, the Union specifically asked the Employer's bargaining representatives if the Employer was considering any plans that could effect collective bargaining. He said that the Union's interest was piqued because the Employer's bargaining representatives wanted the ability to create new departments and were concerned about a clause in a proposed collective agreement regarding the negotiation of new classifications. According to Mr. Hollyoak, the Employer's chief spokesperson, Deb Thorn, responded to the effect that even if there were such plans she would not tell the Union because she was afraid of what the Union might do with the information. He said that he countered by telling her that a failure to disclose would be an unfair labour practice.

[3] Mr. Hollyoak testified that prior to June 1, 2000, the next bargaining session scheduled between the parties, he became aware of an advertising feature in the May 28, 2000 edition of the Regina Sunday Sun weekly newspaper entitled "Temple Gardens developing expansion plans". The article briefly describes several different initiatives for downtown re-development in Moose Jaw and reads, in part, as follows:

> *After several successful years of operation, the Temple Gardens Mineral Spa in Moose Jaw is hoping to bring even more tourists to the city by expanding its facilities.*
>
> *Temple Gardens president Brent Boechler says the company will make an official presentation to city council for the necessary approvals on June 12.*

[4] Mr. Hollyoak testified that he showed the article to Ms. Thorn at the bargaining session and again asked for disclosure of expansion plans that could affect bargaining. He said that Ms. Thorn responded tersely to the effect that by virtue of the Sunday Sun article, plans were now disclosed. Mr. Hollyoak asked for more specific information regarding numbers of employees, classifications and new areas of operation. Ms. Thorn refused to provide any further information.

[5] Mr. Hollyoak followed up with a letter to Ms. Thorn dated June 2, 2000. The letter states:

> *RE: Expansion Plans*
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> *As I mentioned at the bargaining table on June 1, 2000, I am in receipt of a newspaper advertising feature that appeared in the May 28, 2000, Leader-Post Sunday Sun. On May 6th we asked at the bargaining table "if there are any plans or discussions taking place that may have an impact on the bargaining table". After reading the above mentioned advertising feature we made the same request for information. On both occasions you refused to divulge any information regarding expansion plans or any other plans that may impact on the bargaining table and process. Your only comment at the table with respect to the feature was "there you go – it was disclosed". Your refusal to discuss this matter with the Committee is an unfair labour practice.*

[6] Mr. Hollyoak said he received no response.

[7] On June 6, 2000, Ms. Thorn held a meeting with employees during which she disclosed certain information regarding the Employer's expansion plans. However, Mr. Hollyoak said the Union itself received no information regarding such plans from the Employer either before or after the staff meeting.

[8] Mr. Hollyoak attended the meeting of Moose Jaw City Council on June 12, 2000, at which Ms. Thorn and other persons involved in a proposed expansion made a presentation about how a proposed new casino in the City would tie in with and affect the Employer's operation. The presentation included some information about anticipated increases in the number of employees during and after construction.

[9] Mr. Hollyoak received a letter from Ms. Thorn dated July 31, 2000, which, he testified the Employer gave to all employees. The letter reads as follows:

> *This is to advise you that last night at a regularly scheduled meeting of City Council, "Project Moose Jaw" received the municipal approval required to get to the next step. The project still requires approval from the Provincial Government to allow for the expansion of the Regina Casino to Moose Jaw. Without this approval the project will not proceed.*
>
> *I have enclosed a copy of the "Project Moose Jaw" Vision document, which contains information about each of the proposed projects involved, including the expansion of our hotel and spa treatment center along with potential job creation. Given its earliest possible construction start in the spring 2001, assuming approvals occur in a timely manner, it would be the fall of 2002 before our expansion would be completed.*
>
> *As I am sure you are aware, Temple Gardens' current confrontational relationship with the RWDSU only hampers our ability to attract the new investment required to expand. I am sure you are also aware that the RWDSU's "strike vote", its five Unfair Labour Practices filed with the Saskatchewan Labour Relations Board, unresolved dispute over the scope-status of Bob's Facility Manager position, the un-concluded outcome of the Natasha Stewart Arbitration hearing, and most important, your refusal to present our Company's "Comprehensive Contract" to the employees for ratification is <u>not</u> creating an environment conducive for either financiers or investors interested in our expansion proposal. At this time, I can only urge you to set your personal animosities towards me aside, and work cooperatively to bring closure to this year-long dispute as quickly as possible by giving our employees an opportunity to vote on our June 22nd "Comprehensive Contract" Offer. It is time for both of us to do what is in the best interest of both our Company and its employees.*
>
> *Again, I have provided you with all of the current information available on our expansion, so please let me know if you have any further questions at this time.*

[10] The "Vision" document attached to the letter is a glossy promotional brochure intended for public distribution. It very briefly outlines eight proposed projects including a 50-70 room $8 million expansion of the Employer's operation connecting it to a proposed casino. The document provides an estimate of an additional 45 permanent jobs with the Employer worth approximately $850,000 annually.

[11] In cross-examination, Ms. Thorn attempted to have Mr. Hollyoak concede that he knew of the Employer's general desire for expansion of its facilities and of the buzz in the general business community regarding a new casino for the City, but Mr. Hollyoak was adamant that he first learned of any proposed expansion by the Employer from the May 28 newspaper article.

[12] Mr. Hollyoak also testified that by a letter dated April 17, 2000, the Union requested certain information regarding the employees including a list of employee names, addresses, dates of hiring, wage rates and wage increases during the previous year. He said the Union wanted the information because it had agreed to date-of-hire seniority, wanted to prepare for negotiations on the monetary items of a collective agreement and to be able to communicate directly with the employees it represented. On April 29, 2000, the Employer provided some, but not all, of the information. Still lacking were addresses and dates of hire for all employees except those in food services, and wage increase information for all employees. The Union requested the balance of the information in a letter dated June 1, 2000. Ms. Thorn responded to Mr. Hollyoak in a fax message dated June 1, 2000, which reads, in part, as follows:

> *Based on the volume of your letters of complaints/threats, I assume you are using a well-known "anti-management tactic". I was warned about this, but <u>expected</u> as much from you. Your complaints are not substantiated and lack substance, so appear to be an attempt to bury me in paperwork. I promise I'm trying to do my best to keep up. (Sometimes my job gets in the way. Ha. Ha.).*

[13] Although she apparently directed the Employer's accountant to gather the information at that time, it was not all provided to the Union for nearly another six months.

[14] Lee Bollinger has been the Employer's head lifeguard for more than three years. She attended the June 6 meeting with employees that Ms. Thorn arranged. Attendance was not mandatory. Ms. Bollinger testified that at the meeting, Ms. Thorn went through expansion plans in some detail and told the approximately 50 employees in attendance that they were the first to hear about it. Ms. Thorn told the group that the plans included a 70 to 100 room expansion, expansion of the "Oasis Centre", a smaller second pool, an expanded fitness center, additional offices, a physician's office, a

theatre, renovation of “Sweet Waters” and parking for 600 vehicles. If a casino opened in the downtown, the Employer anticipated an occupancy rate of 70 to 90 per cent. Construction was expected to start in 2001 with an opening in 2003. The construction and expansion would create a significant number of new jobs. Ms. Thorn showed professional sketches of the proposed expansion to the employees. She told the group that the Employer was going to City Council with the plan and would appreciate the employees’ support.

[15] Deb Thorn is the Employer’s founding president and has been chief executive officer since 1995. She testified she was concerned by Mr. Hollyoak’s inquiries about the Employer’s plans because of her mistrust of Mr. Hollyoak personally and a concern that the Union might “misuse” such information to harm the Employer. She intimated that another reason the Employer was being guarded with respect to expansion was because of a conflict between Casino Regina and the Saskatchewan Indian Gaming Authority over who would operate a new casino; she said the Employer did not really care, but was concerned that it had to be situated downtown in order for there to be any expansion of its facilities.

[16] Ms. Thorn said she met with interested employees on June 6 to promote a large show of support at the City Council meeting on June 12 and also to celebrate the Temple Gardens Spa fourth anniversary. She said that all of the expansion ideas discussed at the employee meeting were only possibilities – she described how a previous expansion proposal called “North Fork” had fallen through – and there was nothing that could effect bargaining except the potential increase in the number of employees. Ms. Thorn testified that she had obtained legal advice that the Employer did not have to disclose the proposal to the Union because it was so preliminary and would not effect bargaining. Ms. Thorn said that she did not provide the Union with the information she imparted to the employees because she simply “did not trust Mr. Hollyoak”. In cross-examination, Ms. Thorn admitted questioning an employee at the meeting about whether the employee was taking notes for the Union.

[17] With respect to providing the information requested by the Union regarding the employees, Ms. Thorn gave three reasons for the Employer’s tardy response: first, the Employer’s accounting department was overwhelmed with work and

was having difficulty getting the information together; second, she believed it was a tactic by the Union to overwhelm her with paperwork; and third, she was fearful that the Union would use the wage increase information to foment discontent among employees by disclosing who had received what increases.

[18] Without going into detail, much other evidence was adduced at the hearing with respect to rather unbecoming behaviour and snide remarks by the representatives of the parties.

Statutory Provisions:

[13] Relevant provisions of the *Act* include the following:

> *11(1) It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer:*
>
> > *(a) in any manner, including by communication, to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act;*
> >
> > *(c) to fail or refuse to bargain collectively with representatives elected or appointed, not necessarily being the employees of the employer, by a trade union representing the majority of the employees in an appropriate unit;*

Arguments:

[20] Mr. Kowalchuk, counsel for the Union, argued that the Employer had failed in its duty to disclose relevant information to the Union in violation of s. 11(1)(c) of the *Act* and had failed to bargain in good faith. In support of his argument, counsel referred to the decisions of the Board in *Saskatchewan Government Employees' Union v. Government of Saskatchewan*, [1989] Winter Sask. Labour Rep. 52, LRB File Nos. 245-87 & 246-87; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Loraas Disposal services Ltd*., [1998] Sask. L.R.B.R. 1, LRB File Nos. 207-97 to 227-97 & 234-97 to 239-97; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Regina Exhibition Association Limited*, [1997] Sask. L.R.B.R. 787, LRB File Nos. 256-97, 266-97, 279-97, 308-97 & 321-97; and to the decision of the Alberta Labour Relations Board in *United Nurses of Alberta v. Alberta Healthcare Association*, [1994] Alta. L.R.B.R. 250.

[21] Counsel asserted that the Employer's reasons for not disclosing its expansion plans to the Union – that they were preliminary and it was fearful of the use that Union officials it deemed unscrupulous might make of the information – were specious and were belied by the fact that it disclosed the plans to employees a few days after the Union made its request and before its own shareholders had received the information. Counsel said that it is obvious that Ms. Thorn was determined not to be open and honest at the bargaining table, and that while she says she wants to be open and honest with the employees, she does not really recognize the Union as their bargaining agent or respect the bargaining process.

[22] Ms. Thorn, on behalf of the Employer, argued that the information withheld by the Employer regarding the preliminary expansion plans could not effect bargaining at the time because of the long timeline for construction and completion if it went ahead. She asserted that the cases referred to by the Union were not apposite because the employers' plans in those cases were much more concrete. She also reiterated her mistrust of the Union and Mr. Hollyoak and the use that they might have made of the information.

Analysis and Decision:

[23] The Board has considered the issue of the obligation of disclosure during collective bargaining and honesty at the bargaining table on several occasions and has delineated the general scope of the obligation. However, as the individual cases demonstrate, determining the scope of the obligation in any particular case is a fact-driven exercise. In certain cases, determining whether the duties of disclosure or honesty have been violated is relatively easy, but in others it is more difficult.

[24] In *Government of Saskatchewan, supra*, the union alleged that the employer failed to provide adequate information pertaining to plans to reorganize government services while the parties were engaged in bargaining to renew a collective agreement. The Board described the scope of the obligation to make disclosure in the context of bargaining in good faith, as follows, at 58:

> *[The duty to negotiate in good faith] is imposed by Section 11(1)(c) of The Trade Union Act and its legislative counterpart in every other jurisdiction. It requires the union and the employer to make every reasonable effort to conclude a collective bargaining agreement, and to that end to engage in rational, informed discussion, to answer honestly, and to avoid misrepresentation. More specifically it is generally accepted that when asked an employer is obligated:*
>
> *(a) to disclose information with respect to existing terms and conditions of employment, particularly during negotiations for a first collective bargaining agreement;*
> *(b) to disclose pertinent information needed by a union to adequately comprehend a proposal or employer response at the bargaining table;*
> *(c) to inform the union during negotiations of decisions already made which will be implemented during the term of a proposed agreement and which may have a significant impact on the bargaining unit; and*
> (d) *to answer honestly whether it will probably implement changes during the term of a proposed agreement that may significantly impact on the bargaining unit. This obligation is limited to plans likely to be implemented so that the employer maintains a degree of confidentiality in planning, and because premature disclosure of plans that may not materialize could have an adverse effect in the employer, the union and the employees*.

[25] In concluding that the employer in that case was guilty of an unfair labour practice in violation of s. 11 (1)(c) of the *Act*, the Board stated as follows, at 60:

> *In the Board's view, the employer's response dated November 19, 1987 amounted to a practical refusal to provide the union with any information at all. It did not disclose whether any decisions had or had not been made that would significantly impact on the bargaining unit during the term of the collective agreement. It did not claim any confidentiality in planning, nor suggest that premature disclosure might have an adverse impact on the employer/employee relationship. In the Board's view, the response did not meet the standard of good faith expected of the parties at the bargaining table which includes an obligation to answer honestly when asked.*

[26] However, the Board also found, at 62, that the employer had not improperly refused to provide some of the information requested by the union because, "it was not required to adequately comprehend a proposal or response at the bargaining table, and it was not something that could significantly impact upon the existing unit".

[27] In *Regina Exhibition Association, supra*, the employer's operations included a casino. The union represented three different bargaining units of the employer's employees including casino workers, operations workers and food service workers. The union alleged that the employer violated the duty to bargain in good faith in failing to disclose, during the course of bargaining the agreements for the casino and operations workers, that it intended to close the casino. During bargaining, there were persistent rumours that the casino was going to be closed and the union had asked the employer pointedly several times during bargaining whether the rumours were true. Each time the employer's representative said that closure was not being considered. Eventually, the employer did in fact close the casino and layoff all the casino workers, 40 operations workers and 23 food service workers. In finding the employer guilty of bargaining in bad faith, the Board approved of the obligations enunciated in *Government of Saskatchewan, supra*, and stated, at 811, as follows.

> *The Trade Union Act establishes a legal framework for the co-determination by an employer and a union of the terms and conditions of work for employees in a bargaining unit. The cornerstone of this framework is the duty to bargain collectively, which entails two related obligations: first, an obligation to bargain in good faith, and second, an obligation to make every reasonable effort to conclude a collective agreement. The duty to disclose pertinent information during the course of collective bargaining is part of the overall duty to bargain in good faith.*
>
> *. . .*
>
> *The purpose of the disclosure requirement is to enable parties to bargain matters that may impact on the bargaining unit over the term of the agreement that is under negotiation. It is also designed to foster rational discussion of the bargaining issues. In order for collective bargaining to work effectively without mid-contract disruptions, a union must be kept informed during bargaining of the initiatives that the employer is planning over the course of the collective agreement. The union is also entitled to use its economic weapons in order to negotiate provisions to protect its members from the effects of the employer's initiatives.*

[28] In *Loraas Disposal Services, supra*, in bargaining for a first collective agreement, the employer failed to disclose a decision to close one of its divisions and permanently lay off more than thirty percent of its workforce, a decision it in fact implemented without any prior warning while bargaining was still going on. The

employer attempted to justify the failure to disclose the impending sale based on an alleged fear that employees would vandalize the equipment. In finding that the employer failed to bargain in good faith, the Board held, at 17, that an employer has several avenues it may follow in making the required disclosure where it has a legitimate concern that such disclosure might result in untoward actions:

> *The Board finds that such a fear, even if based on reasonable belief, does not justify a failure to disclose to the Union decisions that Loraas has already made. If an employer was permitted to pick and choose the topics that are required to be disclosed to the union based on fear of vandalism or other similar concerns, the union's ability to effectively negotiate a collective agreement would be seriously undermined. In circumstances where an employer fears that disclosure will result in the destruction of its property by angry employees, it has a number of alternate strategies that it can pursue besides refusing to disclose the information. For instance, the employer could request the services of the Labour Relations, Mediation and Conciliation Branch of the Department of Labour to provide advice and assistance in raising the concerns with the union. The employer could also seek a meeting with the union staff representatives in advance of the negotiating committee in order to have an informal discussion of the employer's concerns. In essence, the employer must be willing to treat the union as an equal and responsible partner in the bargaining relationship and must not act on paternalistic assumptions that are destructive of that relationship.*

[29] The foregoing cases paint a rather stark picture of violation of the duties of disclosure and honesty in bargaining. Each of the employers consciously withheld information from the union about decisions that had already been made in circumstances where there was no question that it would significantly impact on bargaining (if it were known to the union) and on the bargaining unit during the term of an agreement. In each of the foregoing cases, decisions had either already been made, or the Employer knew that they were going to be made, that would result in significant reorganization of the bargaining unit and layoffs or job loss. Indeed, in *Regina Exhibition Association* and *Loraas Disposal Services*, both *supra*, the employers' actions appear to demonstrate an element of deception or subterfuge concerning their plans for the workplace.

[30] We cannot say that the Employer in the present case is guilty of such clearly delinquent conduct. However, this does not mean that its actions are not

censurable. Ms. Thorn asserted that her reasons for withholding the information regarding expansion plans were essentially threefold: first, the idea was merely preliminary and there was no obligation to disclose; second, it was not of a nature that could effect bargaining; and, third, she did not trust that the Union, and more specifically Mr. Hollyoak, would not use the information to harm the Employer. In her evidence, she only vaguely described the defence on each of these purported grounds.

[31] The plans for expansion were indeed at an early stage, but were not, as the Employer alleged, merely preliminary. The plans were a great deal more than a mere concept or "vision". The scope and detail of the project revealed to employees on June 6, 2000, and at City Council on June 12, disclose that a great deal of work had already been done. If the Employer and the several other proponents involved in the overall project obtained City and Provincial approval, the Employer's expansion plan would go ahead. The glossy and obviously professionally prepared brochure entitled "Project Moose Jaw Downtown Revitalization Project 2003" contains eight pages of photographs, artist's drawings, quotations of statements by Ms. Thorn and the City's mayor, the City commissioner, and the president of the local chamber of commerce. It provides details of eight projects with investment of some $47 million. Two of the projects were already under way. The status of the estimated $8 million expansion to the Employer's facilities is described as "committed"; the brochure estimates that the jobs associated with the Employer's expansion would include more than 33 full-time jobs during construction and more than 44 full-time operational jobs after completion. Clearly the project had proceeded past the stage of a mere idea or concept.

[32] By May 2000, the parties had been engaged in bargaining terms of a first collective agreement for some time. They had language that addressed the negotiation of new job classifications. The Employer was interested in discussing the issue of the creation of new departments. The parties were getting ready to bargain monetary issues. The Union asked the Employer directly, both orally and in writing, whether there were any plans or discussions that could effect bargaining. Its queries were either ignored or flippantly brushed aside, as when Ms. Thorn tersely informed Mr. Hollyoak that the Sunday Sun article constituted adequate disclosure. At the time of the Union's queries, there was clearly much more particular information available concerning the details of the plan, the magnitude of investment and the creation of new jobs than could

possibly be gleaned from the advertising feature, as demonstrated by both the June 6, 2000 meeting with employees and the promotional brochure.

[33] Ms. Thorn also asserted that she was concerned that the Union and Mr. Hollyoak might use the information to harm the Employer. This assertion is perhaps even more difficult to understand and less defensible than the claim made in *Loraas Disposal Services, supra,* that the employer was concerned that the employees might vandalize equipment if it disclosed its plan to close a division. First, in her evidence Ms. Thorn did nothing more than make the bald assertion. She did not provide any detail whatsoever to support the assertion. The nature of the information that was withheld does not come within the exception to the duty to disclose described in the excerpt from *Government of Saskatchewan, supra*, that outlines the duty. The Employer's detailed disclosure of its plans to a group of employees on June 6, 2000, in advance of the City Council meeting belies the alleged motivation for withholding disclosure asserted by Ms. Thorn. She could not have believed that the Union would not discover what went on at the meeting. Second, as was pointed out in *Loraas Disposal Services, supra*, if Ms. Thorn's concern was genuine, there were methods by which disclosure could have been made to allay or minimize her concern. There is simply no excuse for not providing the Union with at least the information provided to the group of employees and City Council such a short time after the Union specifically asked if any plans were under discussion that might affect the bargaining unit during the life of a first collective agreement.

[34] Similarly, there was no credible excuse offered by Ms. Thorn for why it took so long to provide the employee and wage information requested by the Union. Following certification, at the request of the union, the employer must provide reasonable information regarding the employees in the bargaining unit within a reasonable period of time. In the present case, the Employer did not object that the information requested was not reasonable or that the Union was not entitled to it. The information was credibly required in order to appropriately bargain the monetary terms of an agreement and to enable the Union, as the exclusive bargaining agent for the employees in the bargaining unit, to communicate and obtain news and information relative to that process and representation in general.

[35] In our opinion, on the whole of the evidence, the real motivation for withholding both the expansion plan and employee information was Ms. Thorn's personal dislike for Mr. Hollyoak and an intention to be uncooperative with him.

[36] Furthermore, the Employer's unjustified refusal to disclose its expansion plans to the Union while disclosing it to employees a few days later has the tendency to undermine the union's credibility with the employees it represents. A union representing a nascent bargaining unit is in a vulnerable position. It is not difficult for an employer to erect obstacles and create problems in an attempt to make the union look ineffective to employees who do not yet fully understand the dynamics and psychology of the new relationship between their employer and the union as their bargaining agent.

[37] In the present case, Ms. Thorn painted her meeting with the employees as a benign effort to garner their support for the Employer's plan at City Council. This may be so. And it may be that she did not intend to undermine the Union. But the effect was to create a situation in which the employees might view their bargaining agent as being "out of the loop" and unable to keep informed of events necessary to properly represent them. Appropriate prior disclosure to the Union would not have prevented the Employer from garnering employee support for the expansion proposal. Indeed, the Union might well have cooperated with the Employer in encouraging its members to do so. But for the Employer to circumvent the Union as it did was unacceptable.

[38] In all of the circumstances, the Employer's conduct constitutes a failure to bargain in good faith with the Union as the representative of the employees in the bargaining unit in violation of s. 11(1)(c) of the *Act*.

DATED at Regina, Saskatchewan this **1st** day of **May, 2002.**

LABOUR RELATIONS BOARD

James Seibel
Vice-Chairperson