LABOUR RELATIONS BOARD
Saskatchewan

INDUSTRIAL WOOD AND ALLIED WORKERS CANADA, LOCAL 1-184, Applicant v. CABTEC MANUFACTURING INC., Respondent

LRB File Nos. 042-02, 043-02 & 044-02; June 10, 2002
Vice-Chairperson, James Seibel; Members: Mike Carr and Pat Gallagher

For the Applicant: Neil McLeod, Q.C.
For the Respondent: Kevin Lang

Unfair labour practice – Anti-union animus – Employer acknowledges that discharge of employees motivated by anti-union animus – Board determines that Employer's conduct had effect of intimidating employees and interfering with their right to select a trade union – Board finds violations of ss. 11(1)(a), 11(1)(e) and 11(1)(g) of *The Trade Union Act* – Board issues declaratory Order to that effect and directs Employer to post Order and reasons in workplace for ten days.

Unfair labour practice – Dismissal for union activity – Employer acknowledges that discharge of employees motivated by anti-union animus – Employer's contention that other, non-culpable reasons informed decision to discharge employees not coherent or credible – Board finds violation of s. 11(1)(e) of *The Trade Union Act* and issues declaratory Order to that effect – Order and reasons to be posted in workplace for ten days.

Unfair labour practice – Interference – Communication - Employer admits to interrogating employees about their and their co-workers' support for the Union – Board finds violation of s. 11(1)(o) of *The Trade Union Act* – Board issues declaratory Order to that effect and directs Employer to post Order and reasons in workplace for ten days.

Remedy – Unfair labour practice – Reinstatement and monetary loss – Employer makes whole employees who were unlawfully discharged – Board issues Order declaring that Employer violated ss. 11(1)(a), 11(1)(e), 11(1)(g) and 11(1)(o) of *The Trade Union Act* – Board commends Employer's efforts to rectify its violation of the *Act* but articulates need to have as matter of record that Employer's conduct was unlawful and unacceptable.

***The Trade Union Act,* ss. 3, (5(d), 5(e), 10.1, 11(1)(a), 11(1)(e), 11(1)(g) and 11(1)(o).**

REASONS FOR DECISION

Background:

[1] On March 21, 2002 Industrial Wood and Allied Workers Canada, Local 1-184 (the "Union") filed an application (LRB File No. 042-02) alleging that Cabtec Manufacturing Inc. (the "Employer"), a millwork and office furniture manufacturer with a workforce of approximately 45 employees, had committed unfair labour practices in violation of ss. 11(1)(a), (e), (g) and (o) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"). The allegations arose out of conduct by officers of the Employer during the Union's organizing drive, including the questioning of employees as to whether they and/or other employees supported the Union, and the subsequent termination of the employment of six of the employees. The Union also filed applications seeking reinstatement of the employees (LRB File No. 043-02) and compensation for their monetary loss (LRB File No. 044-02). A few days after the impugned conduct, the Union filed an application for certification (LRB File No. 034-02), which is scheduled for hearing in the near future. The Employer subsequently reinstated all of the discharged employees and compensated them for their lost wages.

[2] On April 11, 2002 the Union filed similar applications alleging unfair labour practices (LRB File No. 058-02) and seeking reinstatement (LRB File No. 059-02) and compensation for monetary loss (LRB File No. 060-02) with respect to the discharge of two other employees.

[3] The Board was scheduled to hear all six applications on May 17, 2002. At the outset of the hearing, the Union sought leave to withdraw the applications for reinstatement and compensation for monetary loss in LRB File Nos. 043-02 & 044-02; the Board granted the request. The parties also advised that they had reached a tentative settlement of the applications in LRB File Nos. 058-02, 059-02 & 060-02, and requested that the hearing on those files be adjourned *sine die;* the Board also granted this request.

[4] The Board heard the unfair labour practice application in LRB File No. 042-02 on the basis of agreed facts contained in paragraphs 4(a) through (i) of the Union's application, which is in the form of a statutory declaration.

Agreed Facts:

[5] The facts on which the parties agreed are as follows:

(a) The Union engaged in an organizing campaign leading to the filing of a certification application with the Labour Relations Board on March 19, 2002;

(b) On or before March 15, 2002 the Employer and Ken Kowalchuk became aware of the union activity, and identified certain employees as supporting the Union;

(c) On March 15, 2002 Ken Kowalchuk, who is a director and an owner of the Employer, confronted an employee by the name of Jason Sernecky. He called Mr. Sernecky into a meeting with himself and Kim Kowalchuk, his brother and also an owner of the company. They interrogated Mr. Sernecky about the Union, asking, among other things, who had signed cards and the location of the cards. Mr. Sernecky was interrogated for approximately one-half hour;

(d) In the course of questioning Mr. Sernecky, Kim or Ken Kowalchuk said that the company would not tolerate a union coming in, and they would close the operation and move to Alberta. Ken or Kim Kowalchuk also said that they might cut back production, resulting in the loss of some work;

(e) Mr. Sernecky left the meeting, and shortly thereafter Ken Kowalchuk brought Jason Sernecky a termination letter dated March 15, 2002;

(f) On March 15, 2002 Ken Kowalchuk asked another employee, Jason Koshman, to meet with him in his office. Mr. Koshman refused to go unless another employee could accompany him. That request was

refused. Shortly after that Jason Koshman received a letter of termination dated March 15, 2002;

(g) On March 15, 2002 Ken Kowalchuk also delivered termination letters to Jason Turner and Curtis Mazenc;

(h) On the morning of March 18, 2002 a letter of termination was delivered to another employee, Robert Iglesias;

(i) On March 15, 2002 Ken Kowalchuk asked another employee, Joell Kowal, if she had signed with the Union. She replied "no", being fearful of the consequences. On March 18, 2002 Ms. Kowal was terminated by means of letter of the same date.

[6] All of the letters of termination were identical, providing as follows:

> *Due to a re-organization, we no longer require your services as an employee of Cabtec Manufacturing Inc.*
>
> *Accept this as termination of your employment effective immediately. You must return any keys, security codes and property of Cabtec immediately.*
>
> *Please dismiss your self and your personal belongings off the premises immediately and quietly.*

[7] Other facts that were not in dispute at the hearing included the following:

(a) The Employer admitted that the activity of the Union in relation to its organizing drive was, if not the primary reason, at least a relevant consideration in the termination of these employees' employment;

(b) Upon obtaining legal advice regarding the terminations, the Employer reinstated each of the 6 employees effective April 1, 2002 and compensated them for lost wages;

(c) The Employer has since co-operated with the Union with respect to the preparation of the statement of employment on the application for certification.

Statutory Provisions:

[8] Relevant provisions of the *Act* are as follows:

> *3. Employees have the right to organize in and to form, join or assist trade unions and to bargain collectively through a trade union of their own choosing; and the trade union designated or selected for the purpose of bargaining collectively by the majority of the employees in a unit appropriate for that purpose shall be the exclusive representative of all employees in that unit for the purpose of bargaining collectively.*
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> *. . .*
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> *5. The board may make orders:*
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> > *(d) determining whether an unfair labour practice or a violation of this Act is being or has been engaged in;*
> >
> > *(e) requiring any person to do any of the following:*
> >
> > > *(i) refrain from violations of this Act or from engaging in any unfair labour practice;*
> > >
> > > *(ii) subject to section 5.1, to do any thing for the purpose of rectifying a violation of this Act, the regulations or a decision of the board;*
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> *. . .*
>
> *10.1 On an application pursuant to clause 5(a), (b) or (c), the board shall make an order directing a vote to be taken by secret ballot of all employees eligible to vote, and may make an order pursuant to clause 5(g), where:*
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> > *(a) the board finds that the employer or the employer's agent has committed an unfair labour practice or has otherwise violated this Act;*
> >
> > *(b) there is no evidence before the board that shows that a majority of the employees in the appropriate unit support the application; and*

(c) the board finds that evidence of majority support would have been obtained but for the unfair labour practice or violation of this Act.

. . .

11(1) It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer:

(a) to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act, but nothing in this Act precludes an employer from communicating with his employees;

. . .

(e) to discriminate in regard to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including discharge or suspension or threat of discharge or suspension of an employee, with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in a proceeding under this Act, and if an employer or an employer's agent discharges or suspends an employee from his employment and it is shown to the satisfaction of the board that employees of the employer or any of them had exercised or were exercising or attempting to exercise a right under this Act, there shall be a presumption in favour of the employee that he was discharged or suspended contrary to this Act, and the burden of proof that the employee was discharged or suspended for good and sufficient reason shall be upon the employer; but nothing in this Act precludes an employer from making an agreement with a trade union to require as a condition of employment membership in or maintenance of membership in the trade union or the selection of employees by or with the advice of a trade union or any other condition in regard to employment, if the trade union has been designated or selected by a majority of employees in any such unit as their representative for the purpose of bargaining collectively;

. . .

(g) to interfere in the selection of a trade union as a representative employees for the purpose of bargaining collectively;

> *. . .*
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> *(o) to interrogate employees as to whether or not they or any of them have exercised, or are exercising or attempting to exercise any right conferred by this Act;*

Arguments:

[9] Mr. McLeod, counsel for the Union, argued that the evidence on the agreed facts clearly established the alleged violations of the unfair labour practice provisions of the *Act*. The Employer admitted interrogating employees about their support of the Union and also acknowledged that the dismissed employees' support of the union was at least a factor in the decision to terminate their employment.

[10] Citing the decisions of the Board in *Saskatchewan Union of Nurses v. Jubilee Lodge Inc.*, [1990] Summer Sask. Labour Rep. 70, LRB File Nos. 021-90, 022-90 & 023-90, and *Canadian Union of Public Employees, Local 3990 v. Core Community Group Inc*., [2001] Sask. L.R.B.R. 131, LRB File Nos. 017-00 to 022-00, Mr. McLeod submitted that first, the onus rests on the Employer to demonstrate that union activity played no part in the decision to discharge the employees, and second, that it had coherent and credible reasons untainted by any anti-union sentiment for discharging the employees.

[11] While Mr. McLeod acknowledged that the Employer had purported to remedy its breach by reinstating and reimbursing the six dismissed employees as soon as it received legal advice, he argued that a declaration that the Employer had committed unfair labour practices is still necessary. In asserting that the unfair labour practice provisions of the *Act* are integral to the recognition and enforcement of the rights of employees, including the right to organize, as set out in s. 3 of the *Act*, counsel referred to the following comments by Bastarache, J., in the recent decision of the Supreme Court of Canada in *Dunmore v. Ontario (Attorney General)* (2001) 207 D.L.R. (4th) 193, 2001 SCC 94, a case that dealt with the repeal of trade union and collective bargaining rights for agricultural workers in Ontario:

> *[22] . . . without the necessary protection the freedom to organize could amount "to no more than the freedom to suffer serious, adverse legal and economic consequences" (see H.W. Arthurs, et al., Labour Law and Industrial Relations in Canada (1993), at para. 431). . . .*
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> *. . . .*
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> *[36] In assessing the appellant's claim for the repeal of s. 3(b) of the [Ontario Labour Relations Act], it is essential to examine the essential ambition of the LRA. As numerous scholars have pointed out, the LRA does not simply enhance, but instantiates, the freedom to organize. The Act provides the only statutory vehicle by which employees in Ontario can associate to defend their interests and, moreover, recognizes that such association is, in many cases, otherwise impossible. This recognition is evident not only from the statute's protections against unfair labour practices, but from the express "right to organize" it inscribes in s. 5. . . .*

[12] Mr. Lang, counsel for the Employer, argued that while the union activity may have been a subordinate factor in the decision to discharge the six employees, the decision was primarily based on their productivity and work quality, and on them being the most junior staff. Counsel asserted that the Board's powers under s. 5 of the *Act* are permissive and that even if the evidence clearly supported the allegations that the Employer had violated the *Act*, there is no need for the Board to make a declaration to that effect, let alone to make any further remedial orders. He argued that for the Board to do so would, in fact, be counter-productive to the parties' labour relations.

[13] Counsel requested that the Board exercise its discretion not to issue an order based on consideration of the following factors: the Employer acted quickly to remedy the breach; the legislation has, therefore, already served its purpose; the Employer has "learned its lesson"; the employees are now aware that they cannot be dismissed for union activity; and, given that the application for certification has already been filed, the Employer's actions have not affected the Union's organizing drive or the support it enjoys.

[14] In reply, Mr. McLeod argued that it remains in the employees' interests that the Board issue an order. He asserted that the damage done to the Union's

organizing efforts has not been completely remedied and that it is important that the Board make it clear to employers generally that they cannot engage in such conduct, and then purport to rectify it, without some sort of sanction.

Analysis and Decision:

[15] We must determine two issues: whether the Employer has committed a violation or violations of the *Act*, and if so, whether we should make declaratory or other remedial orders.

[16] The first issue is not difficult. On the agreed facts and undisputed evidence it is clear that the Employer committed unfair labour practices.

[17] The Employer admitted that it interrogated Mr. Serencky and Ms. Kowal about their support and/or the support of fellow employees for the Union. This conduct clearly violates s. 11(1)(o) of the *Act* and cannot be condoned.

[18] With respect to the discharge of the six employees in question and the alleged violation of s. 11(1)(e) of the *Act*, the Board summarized the applicable principles 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, at 583-85:

> *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 Trade Union 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:*
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> > *It is clear from the terms of s. 11(1)(e) of The Trade Union Act that any decision to dismiss or suspend an employee which is influenced by the presence of trade union activity must be regarded as a very serious matter. If an employer is inclined to discourage activity in support of a trade union, there are few signals which can be sent to employees more powerful than those*

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

The Board made further comment on the significance of the reverse onus under s. 11(1)(e) in The Newspaper Guild v. The Leader-Post, [1994] 1st Quarter Sask. Labour Rep. 242, LRB Files No. 251-93, 252-93 and 253-93, at 244:

> *The rationale for the shifting to an employer of the burden of proof under s. 11(1)(e) 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.*
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> *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.*

As the Board has pointed out, it is not sufficient to meet the onus of proof under s. 11(1)(e) for an employer to demonstrate the existence of a defensible business reason for the decision to suspend or terminate an employee. In United Steelworkers of America v. Eisbrenner Pontiac Asüna Buick Cadillac GMC Ltd., [1992] 3rd Quarter Sask. Labour Rep. 135, LRB Files No. 161-92, 162-92 and 163-92, the Board made the following observation in this connection, at 139-140:

> *When it is alleged that what purports to be a lay-off or dismissal of an employee is tainted by anti-union sentiment on the part of an employer, this Board has consistently held, as have tribunals in other jurisdictions, that it is not sufficient for that employer to show that there is a plausible reason for the decision. Even if the employer is able to establish a coherent and credible reason for dismissing or laying off the employee - and we are not persuaded that the reasons put forward by Eisbrenner are entirely convincing - those reasons will only be acceptable as a defence to an unfair labour practice charge under s. 11(1)(e) if it can be shown that they are not accompanied by anything which indicates that anti-union feeling was a factor in the decision.*

An important element of the task of this Board in assessing a decision which is the subject of an allegation made pursuant to s. 11(1)(e) is the evaluation of the explanation which is offered by an employer in defence of the decision to dismiss. In this respect, the Board has emphasized that our objective is somewhat different than that of an arbitrator determining whether there is "just cause" for dismissal. In The Leader-Post decision, supra, the Board made this comment, at 248-249:

> *For our purposes, however, the motivation of the Employer is the central issue, and in this connection the credibility and coherence of the explanation for the dismissal put forward by the Employer is, of course, a relevant consideration. We are not required, as an arbitrator is, to decide whether a particular cause for dismissal has been established. Nor, like a court, are we asked to assess the sufficiency of a cause or of a notice period in the context of common law principles. Our task is to consider whether the explanation given by*

> *an employer holds up when the dismissal of an employee and some steps taken in exercise of rights under The Trade Union Act coincide. The strength or weakness of the case an employer offers in defence of the termination is one indicator of whether union activity may also have entered the mind of the Employer.*

> *As the Board has pointed out on a number of occasions, the fact that trade union activity is taking place does not mean that an employer is prevented altogether from taking serious disciplinary steps against an employee. The onus imposed on an employer by s. 11(1)(e) is not impossible to satisfy. There is no question, however, that it is difficult to meet. In order to satisfy ourselves that the grounds stated for a decision to dismiss an employee do not disguise sentiments on the part of an employer which run counter to the purposes of The Trade Union Act, it is necessary for us to evaluate the strength or weakness of the explanation which is given for a dismissal, in the light of other factors, including the kind of trade union activity which is going on, the stage and nature of the collective bargaining relationship, and the possible impact a particular disciplinary action may have on the disciplined employee and other employees.*

[19] In *Core Community Group Inc., supra*, the Board explained the nature of the determination with respect to the allegation that an employee was terminated for activity in relation to the exercise of rights under the *Act* as follows, at 149:

> *On this type of application we are not concerned with assessing whether the employee was terminated for just cause, but rather, as stated in International Union of Operating Engineers v. Quality Molded Plastics Ltd., [1997] Sask. L.R.B.R. 356, LRB File Nos. 371-96, 372-96 and 373-96, at 376:*
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> > *The Board is attempting to assess the coherence and credibility of the reasons for dismissal in the context of the employee's activities in support of the trade union, the timing of the termination, the stage of collective bargaining and the likely impact of the termination on the employees in the bargaining unit.*

[20] In the present case, the Employer did not dispute that its knowledge that the Union was engaged in a campaign to organize its employees was at least a secondary reason for the discharge of the 6 employees in question. In fact, there was no actual evidence that there was any other reason. It was simply the submission of counsel for the Employer that issues of productivity and quality of work were involved in

the decision. There is no evidence that any of the employees had ever been warned or disciplined in any way for any conduct related to productivity or quality of work; the letters terminating their employment make no mention of such matters. Under the circumstances, the Employer has not satisfied the onus under s. 11(1)(e) of the *Act* necessary to rebut the presumption in favour of each employee that he or she was discharged contrary to the *Act* and not for good and sufficient reason unrelated to union activity. The Employer's explanation that the terminations were for non-culpable reasons in addition to union activity is not coherent or credible. The Employer is guilty of an unfair labour practice in violation of s. 11(1)(e) of the *Act*.

[21] The Union further alleges that the Employer's conduct outlined above violated ss. 11(1)(a) and (g) of the *Act* in that it interfered with, restrained, intimidated, threatened or coerced an employee in the exercise of a right conferred by the *Act*, and interfered in the selection of the Union as a representative of employees for the purpose of bargaining collectively.

[22] There is no evidence that the employees were discharged for reasons other than union activity and an anti-union animus on the part of the Employer. The agreed and undisputed facts lead to the ineluctable inference that the Employer's conduct, even if not so intended, objectively viewed, would have the effect of interfering with the exercise of rights under the *Act*. Moreover, even if we accepted the assertion of counsel for the Employer that the discharges were primarily for reasons related to productivity and quality of work, termination of employment is out all proportion to such alleged deficiencies, particularly where there has been no prior counselling or discipline.

[23] In *International Woodworkers of America, Local 1-184 v. Trail-Rite Flatdecks Ltd.*, [1982] Oct. Sask. Labour Rep. 42, LRB File Nos. 177-82 and 180-82, the Board found the employer guilty of an unfair labour practice under s. 11(1)(a) of the *Act*. The Board determined that while the employer may have been justified in reprimanding an employee for engaging in union activity on company time and premises, the manner and degree of reprimand were so unreasonable as to constitute coercion and were intended to discourage union activity.

[24] In the present case, the Employer accepts that Ms. Kowal was intimidated by the interrogation to which she was subjected in that she was "fearful of the consequences" if she said she had signed with the Union. As it turned out, her fear was reasonable. But the Union does not have to demonstrate that any particular employee was actually intimidated or coerced to establish that there has been a violation of s. 11(1)(a) of the *Act*. In *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Saskatchewan Centre of the Arts*, [1996] Sask. L.R.B.R. 67, LRB File Nos. 292-59 and 293-95, a case dealing with alleged interference by means of communication, the Board stated, at 73-74, that the assessment of an employer's conduct in the context of s. 11(1)(a) is objective. The test is whether the conduct would likely interfere with, restrain, intimidate, threaten or coerce "an employee of reasonable fortitude" in the exercise of rights under the *Act*.

[25] In our opinion, the assessment of whether there has been interference in the selection of a trade union within the meaning of the *Act* is also made objectively. In *The Newspaper Guild Canada/Communication Workers of America v. Sterling Newspapers Group, a Division of Hollinger Inc., operating the Leader-Post and Leader-Star News Services*, [2000] Sask. L.R.B.R. 558, LRB File Nos. 272-98 & 003-00, upheld on judicial review at [2001] Sask. L.R.B.R. c-1 (Q.B.), the Board found the employer guilty of an unfair labour practice in violation of s. 11(1)(g) when it provided wage increases and bonuses to its non-union employees but not to its unionized employees, when its pre-certification practice was to provide such increases and bonuses to all its employees. The test is whether the Employer's conduct is likely to interfere with the selection of a trade union; an applicant does not have to prove that selection by any particular employees or group of employees was actually interfered with.

[26] Accordingly, on the agreed facts and undisputed evidence, we also find the Employer guilty of unfair labour practices in violation of ss. 11(1)(a) and (g) of the *Act*.

[27] The question remains whether, having found the Employer in violation of the *Act*, we should issue an order declaring same or granting any other relief.

[28] It is a virtual certainty that the Employer's conduct would have a "chilling effect" on the Union's organizing drive and on the employees' perception of the Union's effectiveness as a bargaining agent able to protect them from unlawful conduct by the Employer. The Employer is to be commended for recognizing its obligations and responsibilities during the organizing and certification process and for attempting to make whole the employees who were unlawfully discharged. However, the depth of the "chill", and the extent to which it may have been ameliorated cannot be measured with nicety.

[29] The Union has filed the certification application with such evidence of support as it was able to garner despite the Employer's unlawful conduct. The application was filed before the Employer purported to remedy its breaches of the *Act*. The application has not been heard and determined. This panel does not know whether the Union has majority support for the application. It does not know if or to what extent support for the Union remains affected by these events. It does not know whether the panel of the Board that hears the application will order a vote of the employees to determine support for the application or dismiss the application for lack of support or whether it will exercise its discretion under s. 10.1 of the *Act* should it find that evidence of majority support would have been obtained but for the violations of the *Act* by the Employer.

[30] Section 3 of *The Trade Union Act* sets out the purpose and object of the legislation, that is, to establish and preserve the rights of employees to organize and bargain collectively through a trade union of their choosing as their exclusive representative. We agree with the dicta of Bastarache, J. in *Dunmore*, cited *supra*, to the effect that the unfair labour practice provisions of labour relations statutes are what provide the protection for employees in their exercise of the express right to organize free of interference by their employer. It is important that these protections be jealously guarded and applied sincerely and with vigour, not least because of the significant contribution by trade unions to societal debate and their role in social change (see *Retail Wholesale and Department Store Union v. Pepsi-Cola Canada Beverages (West) Ltd.*, 2002 SCC 8, at para. 35).

[31] In the present case, we wish to reiterate that we are impressed by the Employer's prompt action in reinstating the discharged employees and compensating them for their monetary loss. However, despite the Employer's agreement to the facts contained in the Union's application, it still attempted, at the hearing of this matter, to downplay the influence of union activity on its actions. In the circumstances, we find it necessary to state emphatically that there is no evidence that its actions were motivated by any thing other than an anti-union stance. If the Employer has since become educated as to its obligations and responsibilities – and we note with approval its present co-operation with the Union in completing the statement of employment – that is to be commended.

[32] An employer is in a position of power and influence over its employees. Beyond question, the actual loss of employment can be devastating for employees and their families. The threat of loss of employment, express or implied, may be used as an insidious and powerful tool to bend an employee to the employer's will. In the present case, it is important that the employees should know that the Employer has honestly admitted that it violated *The Trade Union Act* and is presently co-operating with the Union. However, it is of overarching importance that the employees be aware that the Employer's conduct was unlawful and that they understand that they are absolutely entitled to exercise and enjoy their rights under *The Trade Union Act* free from interference or retribution by the Employer. It is also of overarching importance that employees and their employers understand that an employer is not entitled under any circumstances to interrogate their employees as to whether they or other employees support a union or are involved in union activity. Employees must know that those matters are matters of confidence between themselves and the union and that they will not be required to reveal them unless they do so voluntarily or are required to do so by operation of law.

[33] Finally, in the event that the Board may have occasion to consider the application of s. 10.1 of the *Act* on the application for certification, it is necessary that there be some record of the Employer's unfair labour practices.

[34] For these reasons, we will issue an Order declaring that the Employer has committed unfair labour practices in violation of ss. 11(1)(a), (e), (g) and (o) of the *Act*, and ordering that such violations cease. The Order and these reasons for decision shall be posted by the Employer for a period of ten (10) days from the receipt thereof in a place where notices to employees are ordinarily posted and they are likely to be seen and may be read by the majority of the employees in the workplace.

DATED at Regina, Saskatchewan, this **10th** day of **June, 2002.**

LABOUR RELATIONS BOARD

James Seibel,
Vice-Chairperson