

LABOUR RELATIONS BOARD
Saskatchewan

BETWEEN:

Canadian Union of Public Employees, Local 4973
(Pam Belanger) 112-10 & 113-10
(Lea Bage) 114-10 & 136-10

APPLICANT

- and -

Welfare Rights Centre

RESPONDENT

BEFORE:

Kenneth G. Love, Q.C., Chairperson)
Kendra Cruson)
John McCormick)

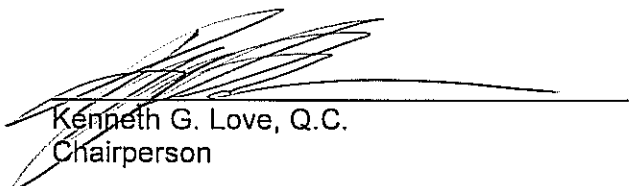
DATED at Regina, Saskatchewan, on
the 17th day of February, 2011.

ORDER

THE LABOUR RELATIONS BOARD, pursuant to Sections 5 (d), (e), (f), (g) and 11(1)(e) of *The Trade Union Act*, having found a violation by the Employer, **HEREBY ORDERS** that;

- (a) Ms. Pam Belanger be reinstated,
- (b) Ms. Lea Bage be reinstated,
- (c) Both Ms. Belanger and Ms. Bage are entitled to monetary loss due to the violation, and,
- (d) This panel will remain seized with respect to the determination of any monetary loss, should the parties be unable to come to resolution.

LABOUR RELATIONS BOARD


Kenneth G. Love, Q.C.
Chairperson

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**The Labour Relations Board
Saskatchewan**

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4973, Applicant v. WELFARE RIGHTS CENTRE, Respondent

LRB File Nos. 112-10, 113-10, 114-10 & 136-10; February 17, 2011
Chairperson, Kenneth G. Love, Q.C.; Members: John McCormick and Kendra Cruson

For the Applicant Union: Ms. Crystal Norbeck
For the Respondent Employer: Mr. David Shiplett

Reinstatement and Monetary Loss – Union President and Secretary-Treasurer placed on Administrative Leave by Employer and subsequently terminated – Union claims employees placed on leave and terminated to weaken support for Union – Employer counters that employees' Criminal Records Checks resulted in those employees not being eligible for insurance coverage.

Reinstatement and Monetary Loss – Section 11(1)(e) of *Trade Union Act* – Onus on Employer to show employee not discharged or suspended contrary to *Act* – Onus difficult, but not impossible to overcome.

Remedy – Board orders reinstatement of discharged employees – Monetary Loss left to parties – Board retains jurisdiction.

***The Trade Union Act*, ss. 5(f), (g) & 11(1)(e).**

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Chairperson:** The Canadian Union of Public Employees ("CUPE") applied to the Board on various dates between August 13, 2010 and August 30, 2010 under Sections 5(g) and 11(1)(e) of *The Trade Union Act* (the "*Act*"), alleging that The Welfare Rights Centre (the "Employer" or the "Centre") had engaged in an unfair labour practice by terminating the employment of both Pam Belanger and Lea Bage contrary to s. 11(1)(e) of the *Act* and for monetary loss resultant from the termination of their employment pursuant to s. 5(g) of the *Act*.

[2] By its decision dated July 20, 2010, the Board allowed the application for interim relief, but did not reinstate the employees to the workplace as they had been placed on leave with pay and the Employer had raised an arguable defense that its actions were based solely upon its inability to obtain insurance funding rather than any anti-union animus. Subsequent to

the Board's decision, Pamela Belanger was terminated by letter dated August 6, 2010 and Lea Bage was terminated by letter dated August 23, 2010.

[3] In addition to applications to reinstate Ms. Belanger and Ms. Bage and for monetary loss associated with their suspension, and ultimate termination, the Union had also filed numerous applications alleging that the Employer had committed unfair labour practices in respect of its initial bargaining for a collective agreement. After having heard some testimony regarding these alleged unfair labour practices, the Board offered first contract assistance to the parties, which offer was accepted by the parties. Thereafter, the hearing of this matter focused solely on the allegations concerning the termination of Ms. Belanger and Ms. Bage.

[4] Following the completion of the hearing into this matter, and while it was still under consideration by the Board, other events occurred. Firstly, the Ministry of Social Services determined not to renew its funding contract with the Employer. Secondly, the Board Agent appointed to provide first contract assistance to the parties reported that because of the withdrawal of funding for the Welfare Rights Centre, collective bargaining between the parties would be ineffective and the Agent recommended against the provision of assistance to the parties.

[5] These Reasons relate solely to the issue of the allegations that Pam Belanger and Lea Bage were terminated contrary to s. 11(1)(e) of the *Act* and in respect of any monetary loss associated with such termination should it be found to have been contrary to that provision of the *Act*.

Facts:

[6] The Employer is a non-profit corporation funded by the Ministry of Social Services. The Centre provides trusteeship services, advocacy, family support and housing services to low income families. The provision of these services involves employees of the Centre administering funds on behalf of persons receiving income assistance from the Ministry of Social Services. That administration also involves employees handling cash for and on behalf of those persons to whom they provide services as well as maintaining bank accounts for those persons and acting as signatory on those bank accounts.

[7] Both Ms. Bage and Ms. Belanger have been employed at the Centre for some years. Ms. Bage, since June 2005 and Ms. Belanger, since September, 1998. Ms. Bage held the position of Office Administrator until her termination. Ms. Belanger, prior to her termination, held the position of Trustee, which position she had been in since 2003.

[8] The Union was certified to represent employees of the Centre on January 29, 2010, LRB File No. 137-09. The Centre employs nine (9) persons. Only the Executive Director, Ms. Friesen, is excluded from the unit of employees. In March 2010, Pamela Belanger was elected as the President of the Union. Lea Bage was elected as Secretary-Treasurer of the Union on the same date. Both were members of the Union's bargaining committee.

[9] Morris Eagles, the former Executive Director of the Centre, testified on behalf of the Applicants. He started with the Centre in 1973 as an ordinary employee and retired in 2009 as the Executive Director of the Centre. He testified that the Centre had in excess of 200 clients to whom they provided trustee services. That is, they maintained accounts for such persons and received and disbursed funds to them as required. In cross-examination, Mr. Eagles testified that the Centre handles over \$10,000 monthly on behalf of clients and approximately \$1,500,000.00 on an annual basis.

[10] Mr. Eagles testified further that most of the funds handled by the Centre on behalf of trusteeship clients was in cheque form, but that cash was also taken in and dispersed to clients. He testified that there was also a petty cash account in the amount of \$80.00 – 100.00 handled by the Centre's bookkeeper. Mr. Eagles testified that clients would often attend to the Centre with cash to deposit to their accounts which would be handled by the trustees of that client's account.

[11] Mr. Eagles testified that client trust accounts were reconciled monthly and that reconciliation was provided to the Ministry of Social Services. He testified that the trustees would compile a general ledger which would be checked by the Executive Director. Mr. Wright, the current Chairperson of the Centre's Board also testified concerning reconciliation of client trust accounts. It was his testimony that since he had been Chairperson of the Centre Board, that the Centre had not been able to properly globally reconcile the trust accounts held for over 200 clients. While nothing turns on this point specifically, I accept the evidence of Mr. Wright in this regard.

[12] Mr. Eagles testified that there had been only two (2) incidents of employee theft during his employment with the Centre. One incident occurred in 1979 when \$1,400.00 was stolen from a client account. He testified that this discrepancy was identified, the theft reported, the individual charged, and the monies repaid.

[13] The second incident occurred in 1981 or 1982 when a discrepancy was noted in the low income loans program monies. In that case the sum of \$800.00 was involved and those monies were subsequently repaid to the Centre.

[14] Mr. Eagles testified that all employees were required by the funding contract with the Ministry of Social Services to provide a Criminal Record Check. He testified that he discussed this policy with Ms. Friesen upon her hiring as Executive Director. He further testified that he had previously requested all staff to provide Criminal Record Checks when it became a requirement of the Ministry's funding in 1997.

[15] Mr. Marsden, a National Representative of the Union, testified concerning meetings he attended with both Pam Belanger and Lea Bage on August 6, 2010. He testified that he had an email from Ms. Friesen requesting that they meet with Ms. Belanger and Ms. Bage. He attended both meetings. The meeting with Ms. Bage was held first.

[16] Mr. Marsden testified that the meeting was a long one taking about an hour. He testified that at that meeting, Ms. Bage was advised that she was being placed on unpaid administrative leave due to her "non-compliance with the Welfare Rights Centre Criminal Records Checks Policy." The letter indicated that Ms. Bage employment "will be suspended without pay as of August 6, 2010, until such time as you comply with the Policy and the insurance issue has been addressed". Mr. Marsden testified that at that meeting, Ms. Bage, "reluctantly" provided the requested information regarding her criminal record.

[17] Following the meeting with Ms. Bage, Mr. Marsden and Ms. Belanger met with Ms. Friesen. At that meeting Ms. Belanger was provided a letter advising her that her employment was being terminated "for reasons of insurability coverage for liability and bond insurance for employees with the Welfare Rights Centre."

[18] Subsequent to the meetings on August 6, 2010, Ms. Belanger's employment was also terminated by the Centre by letter dated August 23, 2010. The reason given for her termination was the same as the reason given to Ms. Bage, that is that she was being terminated "for reasons of insurability coverage for liability and bond insurance for employees with the Welfare Rights Centre."

[19] Pursuant to the contract by which the Centre provides services to Ministry of Social Services Clients, the Centre is required to develop, document and follow a policy which "stipulates requirements for staff and volunteers, including board members, to obtain Criminal Record Checks." A policy requiring employees to provide Criminal Record Checks was implemented by the Centre in September, 2008. The staff of the Centre were asked by the current Executive Director to provide a "current Criminal Records Check...on or before August 28, 2009" following a meeting she had with Adella Fox, a Program Consultant from the Ministry of Social Services in June, 2009.

[20] The job descriptions for the positions occupied by Ms. Belanger and Ms. Bage had, as a requirement for the position, that a criminal record check be provided. Those job descriptions do not require that the employee be bondable.

[21] Ms. Bage testified that she disclosed that she had a criminal record to the former Executive Director, Mr. Eagles, when she was hired. Through the Union she advised the Centre that she was in the process of applying for a Pardon with respect to her conviction. However, until the meeting of August 6, 2010, she refused to provide the nature of her conviction to the Centre.

[22] Ms. Belanger complied with the request for a Criminal Records Check in or about December, 2009. She testified that her last conviction was eighteen years ago. Since that time, she has graduated with a Degree in social work from the University of Regina, although she has not registered as a social worker in Saskatchewan.

[23] Prior to their terminations, both Ms. Belanger and Ms. Bage had been placed on paid administrative leave on June 24, 2010. That action by the Employer was dealt with by the Board in its Reasons for Decision dated July 20, 2010.¹

[24] Ms. Friesen testified on behalf of the Centre. She testified that while discussing the insurance coverage of the Centre with her insurance agency, she was advised to consider an increase in the "crime coverage". She pursued this suggestion further. As early as May 27, 2009, Ms. Friesen had received an email from her insurance agency advising of the persons at the Centre who were currently covered by the Centre's insurance policy for "excess employee dishonesty coverage". This coverage, Ms. Friesen testified was coverage for certain employees up to the amount of \$10,000.00. Both Ms. Belanger and Ms. Bage were named as employees insured under this coverage.

[25] On May 28, 2010, Ms. Friesen was again contacted by the Centre's insurer concerning the renewal of the Centre's insurance. That memo also listed both Ms. Belanger and Ms. Bage as two of the employees "to be bonded for the excess".

[26] By email dated June 23, 2010, the Centre's insurer clarified the current coverage for employee dishonesty and excess indemnity. Each had a limit of \$10,000, but were separate coverages. Both Ms. Belanger and Ms. Bage were listed as being covered by the excess indemnity coverage. The email went on to advise that, "[I]f you require higher limits, SGI requires a completed bond application. If interested, please advise".

[27] That memo also noted:

With regard to your inquiry about Criminal Charges on an employee, as discussed under the policy there is a clause – Prior Fraud, Dishonesty or Cancellation (Page 4) which indicates that if any employee has committed any Fraudulent or [sic] Dishonest Act in the service of the insured or otherwise they are not covered...

[28] Ms. Friesen testified that this matter had arisen when she was discussing increased coverage for employees with her insurer. She testified that she later contacted the author of the email to determine what the consequences would be if any of the covered employees had a prior criminal record.

¹ LRB File No. 083-10, [2010] CANLII 42668.

[29] The discussion concerning criminal records, she testified, was triggered by a discussion concerning an increase to the Centre's excess indemnity insurance. In order to obtain an increase in that insurance, she was advised that each employee would have to submit a new application for bonding to SGI. That application, she was advised, would require that any prior criminal records would have to be disclosed to the insurer.

[30] The email of June 23, 2010, made the following comment:

Marg, I have made an inquiry with SGI to see if they will even consider providing coverage for employees that have criminal records but I have not heard back from them. It is very doubtful that they would offer coverage, but I will advise once I hear.

[31] The receipt of the email of June 23, 2010, Ms. Friesen testified, was the reason why Ms. Bage and Ms. Belanger were placed on administrative leave. Ms. Friesen testified that she also advised the Board of the Centre of the risk that these employees would not be covered by the Centre's insurance in the event of an insurable loss.

[32] Subsequent to Ms. Belanger and Ms. Bage being placed on administrative leave, SGI confirmed to the Centre's insurance agent that SGI was "not prepared to provide coverage for either Lea Bage or Pamela Belanger. Even if one of them obtains a pardon we are aware of past history already and are not prepared to provide employee dishonesty coverage."

[33] The Union wrote to Ms. Friesen on August 26, 2010 regarding the insurance issue and the dismissal of Ms. Belanger and Ms. Bage. In that letter, they advised that they had become aware of an appeal procedure which could be utilized where SGI "declares an employee ineligible for bonding coverage". The letter also advised that they had spoken to the Centre's insurer, who advised:

- *It is possible to bond employees with a criminal record by payment of a higher premium.*
- *A hypothetical theft or fraud perpetrated by an employee who is not bonded would not nullify or jeopardize an existing SGI Canada Commercial Pak policy.*
- *A SGI Canada Commercial Pak can co-exist with separate bonding insurance from another insurance company.*

[34] In response to that letter, the Centre apparently contacted their insurer who, in turn, contacted SGI to reconsider its denial of coverage. By letter dated August 17, 2010, the Centre's insurer advised that "SGI has advised that they are unable to reconsider their position on providing bonding coverage for Lea Bage. Their previous decision that she would be excluded for underwriting reasons stands."

[35] Ms. Friesen testified that she was not satisfied with the response from SGI so she also sought to obtain insurance in respect of Ms. Belanger and Ms. Bage from other insurers. Ms. Friesen testified that she contacted Farrell Agencies on or about August 11, 2010. She received an email from Farrell Agencies on August 25, 2010, in respect of those discussions. That email read in part, as follows:

I am just following up on our telephone conversations on August 11, 2010 regarding when an employee may or may not be bondable under your current insurance policy.

As I understood from our conversation your current policy contains Crime Coverage under SGI Canada's Form D-2 Rider – Comprehensive Dishonesty, Disappearance and Destruction. This wording includes Insuring Agreement I – Employee Dishonesty – Fidelity Bond coverage.

In discussion with SGI's Commercial Department, they pointed out the following clause within this wording which appears to remove any coverage for an employee who has committed any Fraudulent Act or Dishonest Act regardless of the limit of the bond or whether or not an application was completed.

On the D-2 rider page 4 section 7 under Prior Fraud, Dishonesty or Cancellation it says:

*The coverage of Insuring Agreement I shall not apply to any Employee from and after the time that the Insured or any partner or officer thereof not in collusion with such Employee shall have knowledge or information that such Employee has committed **any** Fraudulent or Dishonest Act in the service of the Insured or otherwise, whether such act be committed before or after the date of employment by the Insured.*

[36] Ms. Friesen also testified that Farrell Agencies also provided wording from other insurers which was similar to that contained in the SGI policy covering the Centre. Portions of an Aviva Insurance Policy which was tendered into evidence provided the following:

SECTION 7. The coverage of Insuring Agreement I shall not apply to any Employee from and after the date that the Insured or any partner or officer thereof not in collusion with such Employee shall have knowledge or information that such Employee has committed any fraudulent or dishonest act in the service

of the Insured or otherwise, whether such act be committed before or after the date of employment by the Insured.

[37] Similarly, a portion of a policy from Wawanesa provided as follows:

E. 1. Cancellation as to Any Employee: This insurance is cancelled as to any "employee":

a. Immediately upon discovery by:

(1) You; or

(2) Any of your partners, officers or directors not in collusion with the "employee" of any dishonest act committed by that "employee" whether before or after becoming employed by you.

[38] Ms. Friesen testified that given the small staff at the Centre, that it would not be possible to adjust the job duties for Ms. Belanger and Ms. Bage so as to allow them to work without any insurance coverage. Her conclusion was that in the absence of any insurability, the Centre had no ability to continue to employ either Ms. Belanger or Ms. Bage.

[39] In September, 2010, the Union contacted Mr. Mark Brochu of the Ministry of Social Services regarding bond insurance requirements for Community Based Organizations ("CBOs") funded by the Ministry. In an email response on September 24, 2010, Mr. Brochu made the following comments:

At the present time Ministry contracts with community CBOs for the provision of trusteeship services do not require the agency to have bond insurance for their employees involved in the direct provision of trustee service.

From an agency risk perspective there is a strong argument for this need as the Ministry does not cover the financial risk CBOs may experience resulting from potential employee mis-conduct.

As with many funders, an annual risk/governance review is required with all CBOs funded through the Ministry. This is a joint process with the agency supporting their overall governance capacity, ensuring service expectations are understood and positive client outcomes are achieved. To my knowledge the documents involved in this process are internal and not available to the general public.

[40] Mr. Tom Wright also testified on behalf of the Employer. Mr. Wright is the Chairperson of the Centre, a position which he had held since the fall of 2008. He testified that when Mr. Eagles retired, the Board advertised the vacant position. Ms. Belanger was one of the applicants for the position of Executive Director.

[41] Neither Ms. Belanger nor Ms. Friesen were the Board's initial choice for the vacancy. However, the person initially selected by the Board did not prove to be suitable and the position was ultimately offered to Ms. Friesen based upon her experience and qualifications.

[42] He noted in his testimony that the funding arrangements for the Centre had changed from a "grant system of funding" to a "fee for service" funding model. Similarly, he noted that the Board, following Mr. Eagles departure, became more actively involved in policy development and began to revise and review numerous policies related to the operations of the Centre, in conjunction with the new Executive Director.

[43] Mr. Wright acknowledged in his testimony that the Centre was in discussions with the Ministry of Social Services with respect to improvements in their governance models and risk assessment. He testified that while the Ministry would like to see the Centre to be further advanced, they remained understanding of the challenges faced by the Centre.

[44] He acknowledged that it had been a difficult decision to terminate Ms. Belanger and Ms. Bage, but he testified that the Board concluded that if the employees could not be insured that the risk to the organization was too great. He testified, as had Ms. Friesen that the termination of Ms. Belanger and Ms. Bage were in no way related to their involvement in organizing the union. He testified that the decision was made on business principles only.

Arguments of the Parties:

[45] The Union argued that the Employer is seeking to intimidate the employees of the Centre by its actions in placing the President and Secretary-Treasurer of the newly created local on administrative leave. The Union further argues that the removal of these employees from the workplace was motivated by anti-union animus and that the actions will have a chilling effect on the workplace. They further argue that the newly created bargaining unit is fragile, and has yet to achieve a first collective agreement.

[46] The Union cited in support of its case the following decisions of the Board:

1. *Canadian Union of Public Employees, Local 4973 v. Welfare Rights Centre*²;
2. *United Steelworkers of America v. Eisbrenner Pontiac Asuna Buick Cadillac GMC*³;
3. *The Newspaper Guild and the Leader Post*⁴;
4. *SGEU v. Regina Native Youth and Community Services*⁵;
5. *RWDSU and Moose Jaw Exhibition Company Limited*⁶;
6. *SGEU and Saskatoon Food Bank*⁷; and
7. *SEIU, Local 336 v. Chinook School Division No. 211*⁸.

[47] The Employer argued that its actions were purely administrative and were not motivated by anything other than its concern that its funding from the Ministry of Social Services would be interrupted or cancelled if it failed to maintain proper insurance and comply with the Criminal Records Check procedures mandated by the Ministry. They argued further that they sought to mitigate the impact on the affected employees, during its investigations, by placing those employees on paid leave.

[48] They argued that they had made reasonable inquiries with respect to obtaining alternated insurance and to determine if the decision of SGI concerning insurability for Ms. Belanger and Ms. Bage could be reviewed. They further argued that the workload and relationships within the Centre precluded transferring job duties so that Ms. Belanger and Ms. Bage could work in some capacity without insurance.

[49] They argued that the decision to terminate the two employees was not motivated by any anti-union animus, but rather was based solely upon the inability of the Centre to obtain insurance and the risk to the organization attendant to that inability to obtain insurance.

Relevant Statutory Provisions:

[50] Sections 5(f), (g) and 11(1)(e) provide as follows:

5 *The board may make orders:*

² *Supra* Note 1.

³ [1992] S.L.R.B.D. No. 31, LRB File Nos. 161-92 to 163-92.

⁴ [1994] S.L.R.B.D. No. 10, LRB File Nos. 251-93 to 253-93.

⁵ [1995] S.L.R.B.D. No. 4, LRB File Nos. 144-94 & 160-94.

⁶ [1996] S.L.R.B.D. No. 47, LRB File Nos. 131-96 to 133-96.

⁷ [1999] S.L.R.B.D. No. 40, LRB File Nos. 225-98 to 227-98.

⁸ [2008] S.L.R.B.D. No 12, CLLC para 220-060, LRB File Nos. 025-08 to 027-08.

(f) requiring an employer to reinstate any employee discharged under circumstances determined by the board to constitute an unfair labour practice, or otherwise in violation of this Act;

(g) fixing and determining the monetary loss suffered by an employee, an employer or a trade union as a result of a violation of this Act, the regulations or a decision of the board by one or more persons, and requiring those persons to pay to that employee, employer or trade union the amount of the monetary loss or any portion of the monetary loss that the board considers to be appropriate;

...

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:

...

(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;

Analysis and Decision:

[51] In *SEIU, Local 336 v. Chinook School Division No. 211*, the Board reviewed the recent Board jurisprudence with respect to s. 11(1)(e) of the Act. At paragraphs 50 – 54, the Board says as follows:

[50] The Board has recently outlined its jurisprudence with respect to the application of s. 11(1)(e) of the Act in *Canadian Union of Public Employees v. Del Enterprises Ltd. o/s St. Anne's Christian Centre [2004] Sask L.R.B.R. 156, [2004] S.L.R.B.D. No 33, LRB File No. 087-04 to 092-04*. That decision referenced the

Board's decision in 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, which decision referenced the Board's decision 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.

[51] In the Moose Jaw Exhibition case, *supra*, the Board quoted from para. 123 of its decision in Saskatchewan Government Employees Union v. Regina Native Youth and Community Services Inc. [1995] 1st Quarter Sask. Labour Rep. 118, LRB File Nos. 144-94, 159-94 and 160-94 as follows:

It is clear from the terms of Section 11(1)(e) of the Act that any decision to dismiss or suspend an employee which is influenced by the presence of trade union activity must be regarded as a very serious matter. If an employer is inclined to discourage activity in support of a trade union, there are few signals which can be sent to employees more powerful than those which suggest that their employment may be in jeopardy. The seriousness with which the legislature regards conduct of this kind is indicated by the fact that the onus rests on the employer to show that trade union activity played no part in the decision to discharge or suspend an employee.

[52] Also, in its decision in The Newspaper Guild v. The Leader Post, [1994] S.L.R.B.R. No. 10, LRB File Nos. 251-93, 252-93 & 254-93, at p. 248, the Board says:

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 the 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 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.

[53] As noted by the Board in Saskatchewan Government and General Employees' Union v. Saskatoon Food Bank, [1999] Sask. L.R.B.R. 497, LRB File Nos. 225-98, 226-98 & 227-98, at para. 52a, the onus on the Employer "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."

[54] Also, in Saskatoon Food Bank, *supra*, the Board found from examination of the cases referenced therein that in all of those cases, "...there was at least some evidence upon which the intrusion of anti-union animus into the decision to impose discipline could be inferred."

[52] In its decision regarding the application for interim relief, the Board concluded that there was an arguable case that the Employer was seeking to undermine support for the Union by its actions in placing the two (2) executive members of the Union on administrative leave. Clearly, the Union is in the embryonic stage of its development, having recently been certified and not yet having achieved a first collective agreement. The actions of the Employer in removing the two principal members of the Union from the workplace can, arguably, at least, be seen as an attempt to undermine support for the Union during this critical time before the achievement of a first collective agreement.

[53] In its decision in the interim application, The Board also went on to say at paragraph [19]:

[19] That having been said, however, that is not, of course, finally determinative of the alleged unfair labour practice allegation. The Employer also makes out an arguable case that the actions taken were strictly administrative and were not aimed at destabilization of the bargaining unit.

[54] Those comments are equally applicable in here. However, the timing of the events and the background of the issues faced by the Union in attempting to negotiate on behalf of the employees of the Centre, in our opinion, give rise to a presumption of anti-union animus in the terminations. But, as noted by the Board in *SGEU v. Regina Native Youth and Community Services Inc.*⁹, "the Board has been at pains to make it clear that s. 11(1)(e) does not impose an absolute embargo on disciplinary actions or business decisions by the Employer."

[55] In that case, also at p. 7, the Board quoted from its decision in *RWDSU v. Versa Services*¹⁰ as follows:

*Stringent as this test is, it does not and cannot mean that employers who are engaged in protected activity cannot be discharged for just cause. For example, in Metal Fabricating Services Ltd., (1990) Spring, Sask. Labour Rep. p. 70, the Board considered the lay-off of employees for lack of work in circumstances that gave rise to a presumption of **anti-union animus**. The Board stated:*

*In our view, even if there is evidence of **anti-union animus**, that in itself does not mean the employer is thereafter unable to lay off employees in the normal course of business for just cause or for economic reasons. The presumption that arises in such situations is rebuttable, not conclusive.*

⁹ *Supra*, Note 5 at p. 7.

¹⁰ LRB File Nos. 090-92 to 094-92.

[56] Similarly, in *SEIU, Local 336 v. Chinook School Division No. 211*¹¹, the Board found that the presumption in s. 11(1)(e) was rebuttable with a coherent and credible explanation. Unfortunately, in this case, the Board finds that the explanation provided, albeit credible, lacks coherence and is, in our view, insufficient to rebut the presumption contained in s. 11(1)(e).

[57] The evidence related to the efforts made by the Centre to investigate the insurability of the two terminated employees lacked coherence. It focused primarily on the needs of the centre to obtain insurance, rather than focusing on the ability to accommodate the employees who had a criminal record and who had been good employees for many years. The suspensions (administrative leaves) were issued without prior consultation either with the employees or the union and followed, almost immediately, upon receipt of the email of June 23rd from the Centre's insurer.¹² While the administrative leave was to allow the Centre to look into alternatives regarding insurance, in its investigations, the Centre ignored the years of faithful service provided by these two employees, in respect of whom there had never been an insurance issue.

[58] There was obvious tension between employees and the new Executive Director (which ultimately lead to the Union being contacted to certify the employees). As well there were changes which were underway to the Centre's funding. Add to those events the ongoing policy review by the Board and the changes in policy that were being implemented, leads to the conclusion that there were strong tensions in the workplace. The termination of these two employees would send a very strong signal in that environment.

[59] It is surprising to the Board that the Centre would overlook many years of uneventful service on the basis that these two employees were now found to be uninsurable. Regrettably, it points towards the insurance issue being a *red herring* issue which was being used as a justification for the terminations.

[60] Had the Centre been sincerely concerned about the insurance funding issue, they could have explored options with the Ministry (who did not have a requirement for insurability in

¹¹ *Supra*, Note 8, at para. 59.

¹² See paragraph [26] & [27], *Supra*.

its CBO contracts) to operate without insurance for Ms. Belanger and Ms. Bage. The Centre had operated without incident for many years (other than those outlined by Mr. Eagles in his testimony, neither of which incidents involved either Ms. Belanger or Ms. Bage).

[61] However, with what appears to be untimely haste, the Board, upon discovery that Ms. Belanger and Ms. Bage may be uninsurable, they moved to remove both employees from having access to the workplace, which suggests that they fear that after all the years of incident free work, that they will suddenly put the Centre at risk and will engage in activity which would invalidate the Centre's insurance because of some act of dishonesty on the part of either or both of them.

[62] Furthermore, to dismiss the two employees, purportedly without notice (presumably for cause due to their failure to be insurable) lacks credibility. While it is beyond the expertise of this Board to deal with issues involving requisite notice periods for wrongful dismissal, one would, we think, have thought it appropriate that the Centre provide these two employees with reasonable notice of their termination since their termination should not have been "for cause" as it was predicated upon a refusal of the insurer to provide insurance in the circumstances.

[63] Taken all together, the explanation given by the Centre for the termination of Ms. Belanger and Ms. Bage is not sufficient to rebut the presumption contained in s. 11(1)(e).

[64] For these reasons the Board finds that the Welfare Rights Centre has violated s. 11(1)(e) of the *Act*. Accordingly, both Ms. Belanger and Ms. Bage are ordered reinstated to their positions pursuant to section 5(f) of the *Act*.

Monetary Loss:

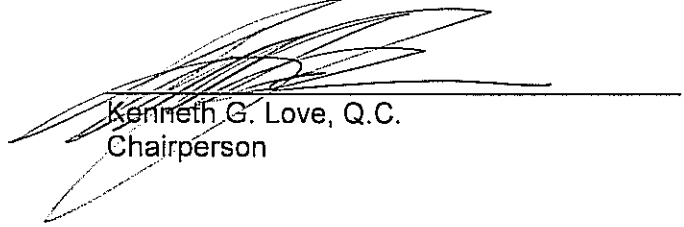
[65] The Board will refer the issue of monetary loss to the parties to discuss and settle if possible. Either party may request the assistance of the Registrar to the Board, or his designate, should they be unable to come to a resolution of the amount of monetary loss.

[66] This panel of the Board will remain seized with respect to the determination of any monetary loss, should the parties be unable to come to a resolution.

[67] An appropriate Order of the Board will follow these Reasons.

DATED at Regina, Saskatchewan, this **17th** day of **February, 2011**.

LABOUR RELATIONS BOARD



Kenneth G. Love, Q.C.
Chairperson