Summary
In late 2008 employees of Premium Brands in Calgary, Alberta applied to decertify the UFCW. The union filed Unfair Labour Practices charges.

The employer's memo contained information about LabourWatch. The union did not expressly complain about the LabourWatch content. The decision allowed the vote to be counted but said nothing about LabourWatch. It merely reproduced the employer's memo including the LabourWatch section. The vote was in favour of decertification.

Background
Premium operated a fresh meat and warehouse distribution facility in Calgary, Alberta with approximately 48 employees - 25 in the United Food and Commercial Workers bargaining unit. Premium also operated a similar facility in Edmonton that was union-free.

The Calgary employees filed for decertification in November of 2008.. The Board held the vote on December 9, 2008 and sealed the ballot box pending the determination of the union's complaint.

The union's complaint related to the posting of four documents in the workplace on the days prior to the vote. One of the postings was a memo from the employer. This memo referred to other documents such as the benefits under the Collective Agreement, benefits for non-union employees at the Edmonton facility and the Edmonton Employee Handbook, all of which were posted along with the employer's memo. At the bottom of the memo from the employer was contact information for the Labour Board and for LabourWatch.

Though a number of the union's concerns were found to be valid, no reference was made to the employer's referral to LabourWatch and the Board ultimately, in January 2009, ordered the ballot box opened and the votes counted.

Conclusion
Of interest, while the Board had concern with some aspects of the employer's communications, it did rule that the employer's comparison of the collective agreement to the non-unionized employees was accurate and was not unlawful.

LabourWatch was not directly named in the decision save that the Board chose to include the entire employer memo. The employer's reference to the Board, and LabourWatch looked like this:

> You can contact the Alberta Labour Relations Board at:
>
> **Alberta Labour Relations Board**
> Website: www.alrb.gov.ab.ca
> Phone: Barbara Cook, Labour Relations Board Officer, at 403-297-5888.
>
> In addition, LabourWatch is a non-profit, free employee website that provides an alternate source of information for employees. You can contact them at:
>
> **LabourWatch**
> Website: www.labourwatch.com
> Phone: 1-888-652-2687

ALBERTA LABOUR RELATIONS BOARD

January 21, 2009

United Food and Commercial Workers Union, Local No. 373A/401
102, 2635 – 37 Avenue NE
Calgary, AB T1Y 5Z6
Attention: Louise Craig
Fax: (403) 250-3412

McGown Johnson
Barristers and Solicitors
110, 7260 12 Street SE
Calgary, AB T2H 2S5
Attention: W.J. Johnson, Q.C.
Fax: (403) 258-3840

Premium Brands Operating GP Inc.
#1 - 4412 Manilla Road SE
Calgary, AB T2G 4A7
Attention: David Carriere
Fax: (403) 287-4620

McLennan Ross LLP
Barristers and Solicitors
1600 Stock Exchange Tower
300 5 Avenue SW
Calgary, AB T2P 3C4
Attention: Joyce A. Mitchell
Fax: (403) 543- 9150

Garry Trout
84 Chaparral Ridge Terrace SE
Calgary, AB T2X 3N6
(Via Courier)

RE: An Unfair Labour Practice complaint brought by the United Food and Commercial Workers Union, Local No. 401 affecting Premium Brands Operating GP Inc - Board File No. GE-05537

RE: An Application for Revocation of the bargaining rights of United Food and Commercial Workers Union, Local No. 373A/401 brought by Certain Employees of Premium Brands Operating GP Inc. affecting Premium Brands Operating GP Inc. - Board File No. RV-01066

[1] On December 8. 2008 United Food and Commercial Workers' Union, Local No. 373A/401 (the "Union") filed an application pursuant to section 16(1) of the *Code* alleging that Premium Brands Operating GP Inc. (the "Employer") violated section 148(1)(a)(ii) in respect to certain communications with its employees during the week immediately preceding a revocation vote.

[2] The application proceeded to hearing before a Board panel (Kanee, Basken, Conroy) on January 15, 2009. The Board concludes that the Employer did not use "coercion, intimidation, threats, promises or undue influence" in its communications with its employees and therefore did not violate section 148(1)(a)(ii) of the *Code*. The Union's complaint is hereby dismissed. Our reasons follow.

Background

[3] The Employer operates a fresh meat and warehouse/distribution facility in Calgary that services restaurants and other institutions. There are approximately 48 employees including 25 bargaining unit employees. The Employer operates a similar operation in Edmonton that services Edmonton and northern Alberta. The Edmonton operation is non-union.

501, 10808 - 99 Avenue
Edmonton, Alberta
T5K 0G5

Tel: 780-422-5926
Fax 780-422-0970

308, 1212 - 31 Avenue NE
Calgary, Alberta
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Tel: 403-297-4334
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E-mail:
alrbinfo@gov.ab.ca

Website:
alrb.gov.ab.ca

[4] The Union (at that time, Local 373A) became the certified bargaining agent for the employees of Centennial Packers Plant, Centennial Calgary Foodservice Branch and Centennial Gourmet Foods Plant in Calgary in the early 1970's. Effective February 12, 2007 Local 401 of the United Food and Commercial Workers' Union became the successor trade union to Local 373A. The division of the certified employer known as Centennial Calgary Foodservice was sold to the Employer effective July 6, 2007.

[5] There is a collective agreement in effect with a term of December 1, 2002 to November 30, 2008 (the "Collective Agreement"). The Union served notice to commence collective bargaining on September 12, 2008.

[6] The Board received a revocation application dated November 20, 2008 filed by certain employees of the Employer. The Board officer investigating the application concluded that the application was timely, the signatures on the application were obtained voluntarily and the application had the requisite 40% support for a representation vote. The Board accepted the Board Officer's conclusions and ordered a vote scheduled for December 9, 2008.

[7] The ballots from the December 9, 2008 vote have remained sealed pending the determination of this application.

Complaint

[8] The Union's complaint relates to the posting of three documents by the Employer on the workplace bulletin board on or about December 5, 2008. The documents were:

a) a memo from the Employer to its employees;
b) a summary of the benefits provided under the Collective Agreement;
c) a summary of the benefits provided to the Employer's non-union employees at its facility in Edmonton. The Employer also posted a copy of the Employee Handbook from its Edmonton Facility. A copy of the Employer's memo to employees is appended to this decision.

[9] The Union complains that by comparing the Collective Agreement terms to the non-union terms and conditions of employment at its facility in Edmonton, the Employer was attempting to assure employees that they would receive the non-union terms if they voted in favour of revocation. The Union also objects to the Employer's statement contained in its memo:

> The Union's bulletin also suggests that the Collective Agreement provides job security because you can only be fired for just cause. Job security is only provided by having a productive, profitable business with satisfied customers.

[10] The Union submits that this statement is inaccurate and by contradicting the Union, the Employer undermines the Union's credibility with its members.

[11] The Employer argues that it posted these documents in response to a Union bulletin posted on December 3, 2008. The Union bulletin explained that the Collective Agreement is null and void upon revocation. The bulletin also contrasted certain terms of the Collective Agreement with the minimum requirements contained in the Alberta *Employment Standards Code*. The Employer suggests that the inference from the Union's bulletin was that the

Employer would only provide the employees with the terms of employment equivalent to the minimum standards provided by the *Employment Standards Code* and it felt compelled to clarify the misconceptions generated by the Union's bulletin. It also argues that it needed to clarify confusion arising from statements made by a union representative during a workplace visit.

Evidence

[12] The parties have enjoyed a long-standing, co-operative bargaining relationship. Ross Metcalfe, who has served as the Calgary branch manager for 14 years testified that there have been only two grievances filed during his tenure and both were readily resolved. The Union is entitled to access to the workplace and a bulletin board to post notices under the terms of the Collective Agreement. Such access has been readily provided by the Employer.

[13] Louise Craig is the Union representative who usually services the bargaining unit. She was on holidays when the revocation application was filed. Shortly after the application was filed another union representative attended at the workplace lunch room to speak to employees. An altercation occurred between the union representative and at least one employee. Several employees told James Miller, the warehouse manager, that they found the union representative's visit intimidating and they were confused by statements he made relating to wages and statutory holidays.

[14] Upon her return from holidays Louise Craig attended at the workplace on at least two occasions, met with employees off-site on one occasion, posted a union bulletin on the bulletin board on December 3, 2008 and delivered the union bulletin and a "Keep the Union" card to employees by mail at their last known address and by hand at the workplace.

[15] After the Union posted its bulletin, a number of employees approached James Miller and expressed concerns about the status of their wages, statutory holidays and pension plan in the event of revocation. Some raised issues about the *Employment Standards Code*. Mr. Miller approached Ross Metcalfe to see if the Employer could do anything to clarify the situation for the employees. Mr. Metcalfe shared these concerns and discussed them with the president of the company. With the assistance of legal counsel, the Employer's memo was prepared and Mr. Miller posted it and the other documents on the bulletin board late on December 4, 2008.

[16] Louise Craig read the Employer's memo on site on December 5, 2008. She asked Mr. Metcalfe for a copy and immediately sought legal counsel about its contents. This complaint was filed on December 8, 2008.

[17] On the day before the revocation vote, another Union representative attended at the workplace and remained in the lunchroom for most of the day.

[18] Although the Union had served notice to commence collective bargaining and the parties had some communications about meeting dates, no formal negotiations for a renewal collective agreement had taken place.

Decision

[19] The focus of the Union's complaint is the Employer's comparison of certain terms and conditions under the Collective Agreement with those available at its non-union facility in Edmonton. The Union characterizes the comparison as a "promise" by the Employer that employees will receive its non-union terms and conditions in the event the certificate is revoked.

[20] There is no express promise made by the Employer that its non-union facility terms and conditions will necessarily apply to the Calgary employees upon revocation. We must decide whether it is reasonable to infer such a promise from the Employer's memo.

[21] In making this assessment we must scrutinize any communication from an employer recognizing the inequality in the relationship between employers and their employees. The Canada Labour Relations Board noted in *Retail Clerks International Union and the Bank of Nova Scotia, Selkirk Branch* [1978] Can. L.R.B.R. 544 at 551:

> Words from an employer have an impact that is far more personal and immediate than those from politicians or many others who affect an employer's life. A threat or a promise, no matter how veiled, is quickly translated by an employee into tangible consequences that can have a serious and readily perceived cost to the employee.

[22] Similarly, in *Local 424 of the International Brotherhood of Electrical Workers v. Stuve Electric Ltd. et. al.* [1989] Alta L.R.B.R. 69 at 75, this Board stated:

> …an employer is in a position of power, particularly in respect to unorganized employees. Free speech must be tempered, as it is in section 146(2)(c), by a recognition that certain conduct emanating from the employer can coerce or unduly influence employees impairing their right to freely select a union.

[23] There was no evidence from employees as to the impact upon them of the Employer's memo. While such evidence can be helpful, it is not necessary. The test we must apply is objective – "what is the likely effect of the employer's conduct upon employees of average intelligence and fortitude?" See *Health Sciences Assn. (Re)* [2006] Alta. L.R.B.R. LD-031 at paragraphs 9 – 11.

[24] Both counsel submit that the Board's analysis must be contextual. We must read each statement made by the Employer in the context of the memo in its entirety and in all of the surrounding circumstances, to determine whether the line between legitimate speech and unlawful intimidation has been exceeded. See *Force Electric Ltd. (Re)* [1997] Alta. L.R.B.R. 27 at paragraphs 59 and 60.

[25] The parties have referred us to a number of decisions of this Board and other labour boards across the country addressing the limitations of employer speech. The most analogous to the case before us, is this Board's decision in *United Utility Workers' Association of Canada v. SNC-Lavalin ATP Inc. et. al.* [2002] Alta L.R.B.R. 254.

[26] In that case, the employer acquired a portion of a business from an employer that had a long-standing relationship with the union. At the time of the acquisition, the union and the previous employer had commenced collective bargaining to renew the collective agreement. Upon the acquisition, the employer recognized the union and the binding effect of the collective agreement. Shortly thereafter a number of employees filed a revocation application with the Board.

[27] Prior to the representation vote on revocation, the employer delivered a letter to its employees. The letter stated, in part:

> To assist you in making a decision, the enclosed documents describe some of your terms and conditions of employment under the status quo and what they would be in a non-unionized environment. The primary change would be that your relationship with SNC-Lavalin ATP Inc. would be direct and individualized rather than through a third party. This may also create different opportunities given that work would not be subject to the boundaries of the collective bargaining relationship.
>
> If employees choose to be non-unionized, we would be required to continue the fundamental terms and conditions of employment that currently exist for you. However, some terms and conditions would be modified to be consistent with those for our current non-unionized employees. Company policies for non-unionized employees would apply to you going forward. If the application of SNC-Lavalin ATP Inc. policies for non-unionized employees would result in a change to your current overall compensation, salary amounts would be reviewed to ensure that you are kept compensation-neutral. Our goal is to ensure that SNC-Lavalin ATP Inc. provides a competitive compensation package based on our industry marketplace.
>
> The important choice before you is yours alone to make. SNC-Lavalin ATP Inc. will respect whatever that choice is. Our related company, SNC-Lavalin Inc., is non-unionized, and we would be pleased to deal with you on that basis. We would foster relationships on an individualized basis. We are also fully prepared to continue dealing with your current bargaining agent, the UUWA. We would continue to honour the collective agreement in place. We would preserve the distinction between work covered by the collective agreement and non-unionized work or work of related companies by ensuring that unionized employees are not transferred between union and non-union organizations. We would respect the UUWA's representation of employees.
>
> We simply encourage you to be informed, ask questions as required, and participate. Consider the differences between a unionized and non-unionized relationship ? such as a collective agreement vs. individual agreements, the potential for strikes and lockouts, union dues, and union representation ? and what the benefits and costs are to you of having a union or not.

[28] Attached to the letter was a three page document which compared 18 terms and conditions of employment under the collective agreement with similar terms and conditions provided to the employer’s non-union employees. Some collective agreement terms were more favourable and others were portrayed as less favourable.

[29] The Board found that:

a) The employer’s accurate comparison of collective agreement terms with what it provides to its non-unionized employees was not unlawful.

b) The employer’s suggestion that a non-union work environment would provide other work opportunities not available because of the collective bargaining relationship was inaccurate and an improper promise intended to unduly influence the employees to vote for revocation.

c) Reference to the union as a "third party" was intended to demean the union and unduly influence members against it.

d) The employer's statement that "salary amounts would be reviewed to ensure employees are kept compensation-neutral" was an unlawful promise that if the employees chose to decertify they would suffer no disadvantage.

[30] The Employer highlights the Board's finding that the employer's accurate comparison of collective agreement terms with what it provides to its non-unionized employees was not unlawful. It argues that in this case, there is no suggestion that the comparison of terms was inaccurate. It also points out that in *SNC-Lavalin*, the employer was not responding to any earlier statements made by the union whereas in this case, the Employer was responding to a union bulletin that implied that employees would be left with minimum statutory standards if the employees revoked the certificate.

[31] We do not interpret *SNC-Lavalin* as suggesting that an employer's comparison of collective agreement terms to the terms provided to its non-union employees is never unlawful. As counsel have urged, in each case, a careful, objective, contextual analysis is required to determine whether such comparison would be construed as a promise by the employer that would unduly influence the employees in favour of revocation.

[32] In this case, we conclude that the Employer's comparison of certain Collective Agreement terms with terms and conditions of employees at the Employer's non-union operation in Edmonton does not cross the line into unlawful speech. An employee of average intelligence and fortitude would not be unduly influenced by the comparison in favour of revocation. The factors that support our conclusion are:

a) The Employer did not expressly state that it would provide the non-union terms at its Edmonton plant to the employees in Calgary if the Union is decertified.

b) The non-union terms were not obviously more favourable than the Collective Agreement terms.

c) The Union posted its own bulletin the day before in which it compared the Collective Agreement terms with the minimum terms provided by the *Employment Standards Code*.

d) There has been an established collective bargaining relationship at the Calgary facility for over three decades.

e) There was no evidence of other employer conduct reflecting anti-union animus.

f) The Union's representative was in the workplace lunchroom for the majority of the day immediately prior to the revocation vote with the consent of the Employer.

[33] We are also not persuaded that the Employer's statement about the limited scope of job security was unlawful. We agree with the Union that by saying "Job security is <u>only</u> provided by having a productive, profitable business with satisfied customers" immediately after making reference to the Union's statement about the job security value of the just cause provision, the

Employer was contradicting the Union. However we conclude this statement alone would not undermine the Union in the eyes of employees and would not unduly influence them in favour of revocation.

[34] We dismiss the Union's complaint and direct the Board Officer to contact the parties to arrange a time for the opening and counting of the ballots.

Lyle Kanee, Vice-Chair

[Centennial Food Service Letterhead]

On November 20, 2008, a number of employees filed an application with the Labour Relations Board to revoke the bargaining rights of the United Food and Commercial Workers Union, Local No. 401 (the "Union"). An officer of the Labour Relations Board conducted an investigation into the application based on the requirements in the *Alberta Labour Relations Code.* The Board Officer recommended that the application proceed to a vote of affected employees. We have now been advised by the Labour Relations Board that a vote will be conducted on December 9, 2008. The details of that vote are now posted for you.

The purpose of the vote will be to determine your wishes about whether or not to continue to have union representation. We will respect whatever decision you make. It is important that you take the opportunity to learn about your options and that you participate in making an informed decision. The vote will be determined based on the majority of those who vote. If you do not vote, you are leaving this important decision to others. Therefore, please be sure to vote.

On December 3, 2008, the Union posted a bulletin setting out its view of what you may lose if you choose to vote in favour of decertification. The Union's bulletin implies that your employment will be based on Alberta's *Employment Standards Code* if you vote to decertify the Union. The Union has no basis for suggesting that your employment relationship would be governed strictly by the provisions in the *Employment Standards Code.*

The *Alberta Labour Relations Code* prohibits Centennial Food Service, your employer, from making any promises regarding your future terms and conditions of employment if you choose to decertify. Alberta's labour laws also prohibit us from attempting to coerce or intimidate you in any way in order to influence your vote. We have no intention of violating these laws. However, we do feel that it is necessary to correct the inaccurate perception created by the Union in its bulletin.

As you may know, Centennial Food Service operates a non-union facility in Edmonton. The Company produced an Employee Handbook in August 2004 that continues to apply to these employees. Set out below are your current Collective Agreement provisions referenced by the Union in its bulletin. Set out beside those provisions are the provisions of our Company Handbook which currently apply to our non-union facility in Edmonton.

<table>
<tr><th></th><th colspan="2">UFCW Collective Agreement</th><th colspan="2">Company Handbook</th></tr>
<tr><td>Hours of Work before Overtime Payable</td><td colspan="2">Forty (40) hours per week, consisting of live (5) days of eight (8) hours each, Monday to Friday inclusive, shall constitute the basic work week for full-time employees who are not on a compressed work week.</td><td colspan="2">The regular work week is eight (8) hours per day, forty (40) hours per week with two (2) consecutive days off.</td></tr>
<tr><td>Vacation</td><td colspan="2">Employees shall receive annual vacation with pay as per the schedule below:</td><td colspan="2">Employees hired prior to January 1. 1991 shall be entitled to the following</td></tr>
<tr><td></td><td>LENGTH OF SERVICE</td><td>VACATION</td><td>LENGTH OF SERVICE</td><td>VACATION</td></tr>
<tr><td></td><td>After one year</td><td>Two weeks</td><td>After one year</td><td>Two weeks</td></tr>
<tr><td></td><td>After five years</td><td>Three weeks</td><td>After four years</td><td>Three weeks</td></tr>
<tr><td></td><td>After ten years</td><td>Four weeks</td><td>After ten years</td><td>Four weeks</td></tr>
<tr><td></td><td>After twenty years</td><td>Five weeks</td><td>After fifteen years</td><td>Five weeks</td></tr>
<tr><td></td><td colspan="2" rowspan="6">Employees who, as of November 1,1989, were already receiving six (6) weeks vacation entitlement, shall retain this six (6) week vacation entitlement.</td><td>After twenty years</td><td>Six weeks</td></tr>
<tr><td></td><td colspan="2">Employees hired after January 1.1991 shall be entitled to the following</td></tr>
<tr><td></td><td>LENGTH OF SERVICE</td><td>VACATION</td></tr>
<tr><td></td><td>After one year</td><td>Two weeks</td></tr>
<tr><td></td><td>After four years</td><td>Three weeks</td></tr>
<tr><td></td><td>After ten years</td><td>Four weeks</td></tr>
<tr><td></td><td></td><td></td><td>After fifteen years</td><td>Five weeks</td></tr>
</table>

General Holidays	The following days shall be recognized as General Paid Holidays for the purposes of this Agreement: New Year's Day First Monday in August(Civic Family Day Day) Good Friday Labour Day Victoria Friday Thanksgiving Day Canada Day Christmas Day Boxing Day In the event that Family Day is proclaimed to be a day observed on a day other than a normal work day, the Employer shall add Remembrance Day to the list above as a General Paid Holiday and Family Day shall no longer be observed as a General Paid Holiday for the purposes of this Agreement. Also, at the same time Article 21.07 shall be deleted from this Agreement.	The following recognized holidays will be observed and paid on the basis of eight (8) regular hours per day for eligible employees. New Year's Day August Civic Holiday Family Day Labour Day Good Friday Thanksgiving Day Victoria Day Christmas Day Canada Day Boxing Day The August Civic holiday is recognized in lieu of the Remembrance Day statutory holiday in the Alberta Standards Code.
Health and Welfare Benefit! and Pension Plan	See Attached 'Tour Benefits, at a Glance" for Calgary Union Benefit Program	See Attached "Your Benefits, at a Glance" for Non-Union Hourly Benefit Program

The Union referenced the mandatory grievance and arbitration procedure in the Collective Agreement. As you may be aware, there have been no grievances brought under that procedure in the last five years. The Union's bulletin also suggests that the Collective Agreement provides job security because you can only be fired for just cause. Job security is only provided by having a productive, profitable business with satisfied customers. The Company can reduce the workforce under your Collective Agreement too if it is necessary. The following layoff and severance provisions are contained in each of the Collective Agreement and Company Handbook respectively:

UFCW Collective Agreement	**Company Handbook**
10.01 In the case of a reduction in the work force, the Employer shall use the following factors in determining which employees shall be laid off: 1] Layoffs shall be determined separately at each Plant location according to on employee's seniority. 2] The qualifications, skill, ability to perform the available work at the Plant. 11.01a] In advance of any lay-off expected to exceed sixty (60) days duration, permanent shutdown of the Employer's operations or any portion thereof, or severance due to technological change, the affected employees will receive notice of such layoffs or severance pay in lieu thereof as follows: i) one (1) week, if the employee has been employed by the Employer for more than three (3) months but less than two (2) years, ii) two (2) weeks, if the employee has been employed by the Employer for two (2) years or more but less than four (4) years, iii) four (4) weeks, if the employee has been employed by the Employer ft-r four (4) years or more but less than six (6) years, iv) five (5) weeks, if the employee has been employed by the Employer for six (6) years or more but less than (8) years, v) six (6) weeks, if the employee has been employed by the Employer for eight (8) years or more but less than ten (10) years, or vi) eight (8) weeks, if the employee has been employed for ten (10) years or more.	If layoffs are necessary, the Company will consider performance, qualifications and services in determining who will be affected by a lay off. Employees who have completed their probationary period, and who are laid off, will have the first opportunity to fill openings and will be recalled for positions for which they are qualified. If a layoff exceeds the time periods listed below, the employee will be considered terminated and applicable Alberta Employment Standards provisions will apply regarding severance pay. Following probation to 1 year of service - 3 months After 1 year of service - 6 months **(NOTE: These severance amounts are the same as the amounts provided in the Collective Agreement.]**

The Collective Agreement severance provisions are the same as the provisions in the *Employment Standards Code.*

We encourage you to obtain as much information as possible to assist you in making this important decision. For those of you who are interested, we have also posted the entire Employee Handbook that currently applies to our non-union employees**.**

If you have questions, please refer them to your management team. We would be happy to answer any factual questions that you may have. There are additional sources of information available to you.

You can contact the Alberta Labour Relations Board at:

Alberta Labour Relations Board
Website: www.aIrb.gov.ab.ca
Phone: Barbara Cook, Labour Relations Board Officer, at 403-297-5888.

In addition, LabourWatch is a non-profit, free employee website that provides an alternate source of information for employees. You can contact them at:

LabourWatch
Website: www.labourwatch.com
Phone: 1-888-652-2687