

## Newsletters

Newsletter Vol. 5, Issue 2

By John Mortimer

It must be getting lonely on shore for those in Canada's labour movement who argue that surfing to a website that provides fair and accurate information on labour laws is off side.

An October 2005 decertification of the United Food and Commercial Workers (UFCW) by employees of a Sobeys store (Varsity Common Garden Market) in Saskatoon gives legs to a new trend: for the second time in two years a Labour Relations Board heard complaints about LabourWatch - and in dismissing all union complaints in its decision - the Board didn't even mention our name. It also represents the first time we are aware of a Labour Board hearing testimony about employee use of LabourWatch for a decertification.

UFCW Local 1400 cross examined witnesses about LabourWatch, questioning whether a store manager had influenced an employee to seek a free vote on decertification by telling staff that LabourWatch provided information about unions.

The Saskatchewan Labour Relations Board, in granting the employee's September 2004 application to decertify in April of 2005, didn't so much as mention LabourWatch in its written decision. Despite further objections raised by the Union, the Board finally approved the employee's decertification in late October 2005 ([2005] S.L.R.B.D. No. 9).

Unions and their lawyers have long objected to LabourWatch. In Newfoundland (LRB No. 4766: 1/12/2004 - posted on our website), the Board heard oral complaints and considered two sets of Union pleadings against an Employer's use of the website. The Board chose not to mention LabourWatch in a decision that cleared the Employer of all unfair labour practice complaints.

Unique to the Sobeys case is that it was the first time we are aware that a Board heard such complaints and evidence about the use of the LabourWatch website under oath during a decertification hearing and then chose not to mention it in its decision. Instead, the Board simply said that the employee "went to a web site and obtained information about unions and the name of a lawyer."

In the end counsel for the UFCW, Drew Plaxton of Plaxton Gillies made no written submissions and no closing arguments about the employee's use of LabourWatch and the Board chose to leave our name out of the decision, simply using terms like internet and web site to refer to us.

While the store manager's actions seem quite benign, employers in particular should always retain expert labour law advice when using LabourWatch web resources.

The Sobeys manager had actually mentioned the website during a staff meeting in 2003 while the UFCW was campaigning to unionize the store.

The staff meeting was one held monthly in which representatives from each store department gather to raise and discuss workplace concerns. One employee wanted to know more about unions. The store manager said he wasn't free to discuss unions, and instead suggested LabourWatch.com.

The UFCW was certified in November of 2003. But less than a year later, an employee, never a union supporter, wanted to find out if it was possible to get them out of the store.

Remembering the website's mention, the employee surfed to LabourWatch.com and got the information she needed. She was also able to contact a lawyer, Larry Seiferling, Q.C., of McDougall Gauley whom she retained. He advised her on the decertification process and represented her for the four days of hearings and for the reconsideration of the Board's initial decision. Legal counsel for the Employer was Kevin Wilson of McPherson Leslie and Tyerman LLP.

The Union raised several arguments alleging management influence, the voting eligibility of employees, the conduct of balloting and other issues. The union lost the initial decision and eventually its application for reconsideration and its application to object to the conduct of the vote.

On the crucial issue of whether the employee was influenced to make the decertification application, the Board accepted that she was driven by a sincere, independent desire, that she had never discussed the Union or decertification with anyone in management, and that the Employer knew nothing about her application. In fact, she had already decided to seek decertification before she logged on to LabourWatch.com. The decision also contains analysis and findings with respect to the topic of the employee's legal fees.

In the final of three Decisions, (the October 24th 2005 ruling) the Board rejected the Union's argument that the employee's pre-vote communication campaign "impaired" employee "freedom of choice". Further, the Board found "that the Employer did not interfere" with either campaign.

The Union's evidence was that three staff Union representatives maintained a presence in the store handing out business cards with pro-union slogans and that they had up to 23 employees campaigning with them. There were union buttons, pins and pens in the store and the lunchroom. There were mailings to employee homes.

The applicant employee finally placed handwritten posters in the lunchroom three days before the vote. Union supporters defaced them and tore one down. The applicant employee removed her posters the day before the vote.

When the vote was finally counted, six months later and thirteen months after the decertification application was filed, employees had voted to be union-free again.

Click [here](#) to obtain the full decision, which is posted in the Decisions section of the website.