



ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

OLRB Case No: 1006-18-IO
Interim Order

Unifor, Michelle Williams, Grace Guanzon, Gee Manalastas, Myleen Piansay, Jorge Junio, and Carol Tulod, Applicants v UNITE HERE Local 75, and Fairmont Royal York Hotel, Responding Parties

COVER LETTER

TO THE PARTIES LISTED ON APPENDIX A:

The Board is attaching the following document(s):

Decision - August 07, 2018

DATED: August 07, 2018

Catherine Gilbert
Registrar

Website: www.olrb.gov.on.ca

Address all communication to:

The Registrar
Ontario Labour Relations Board
505 University Avenue, 2nd Floor
Toronto, Ontario M5G 2P1
Tel: 416-326-7500
Toll-free: 1-877-339-3335
Fax: 416-326-7531



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No.: **1006-18-IO**

Unifor, Michelle Williams, Grace Guanzon, Gee Manalastas, Myleen Piansay, Jorge Junio, and Carol Tulod, Applicants v. UNITE HERE Local 75, and **Fairmont Royal York Hotel**, Responding Parties

BEFORE: Gita Anand, Vice-Chair

APPEARANCES: C. Donovan, Lisbeth Pimentel Michelle Williams, Grace Guanzon, Gee Manalastas, Myleen Piansay, Jorge Junio, Carol Tulod, Shelli Sareen, Daniel Janvier, Cicely Phillips and Williams Leon appearing on behalf of the applicant; Ryan D. White, Ilija Pimeski, and others appearing on behalf of UNITE HERE Local 75; Trevor Lawson and Anna Chartres appearing on behalf of Fairmont Royal York Hotel

DECISION OF THE BOARD: August 7, 2018

1. This is an application for interim relief filed under section 98 of the Labour Relations Act, 1995, S.O. 1995, c.1, as amended (the "Act"). The applicants, Unifor and Michelle Williams, Grace Guanzon, Gee Manalastas, Myleen Piansay, Jorge Junio, and Carol Tulod (collectively "Unifor") seek interim orders against the responding parties UNITE HERE Local 75 ("Local 75"), and Fairmont Royal York Hotel ("the Hotel").

2. This application relates to Board File No. 1004-18-U filed under section 96 of the Act in which Unifor alleges that Local 75 and the Hotel have violated numerous sections of the Act (the "main application"). Both applications were filed on June 22, 2018. Both applications arise out of a campaign by Unifor to displace Local 75 as the bargaining agent for employees of the Hotel, which is further described below. In the main application, Unifor challenges the integrity of the ratification vote held on June 14 and 15, 2018 which resulted in the ratification of a renewal collective agreement between the responding parties. In this

interim application, Unifor seeks the following interim orders under section 98 of the Act, pending the determination of the main application:

a. an order for the preservation and production of documents relating to the unfair labour practices allegations in Board File No. 0518-18-U and in relation to the ratification vote held June 14-15, 2018, including:

- i. all iterations of the list of UNITE HERE Local 75 authorized representatives for the Royal York Hotel, from May 1, 2017 to present;
- ii. all records of access to the Fairmont Royal York Hotel by representatives, authorized or otherwise, of UNITE HERE Local 75, other UNITE HERE locals, and the UNITE HERE international union, from May 1, 2017 to present, including dates and entry and exit times;
- iii. all records listing all employees in the bargaining unit represented by UNITE HERE Local 75, from January 1, 2018 to present;
- iv. the complete list of eligible voters for the ratification vote held on May 1, 2018 used by UNITE HERE Local 75, including all lists recording the names of people who received ballots (including any "scrutineers' lists");
- v. all ballots cast in the May 1, 2018 ratification vote;
- vi. the complete list of eligible voters for the ratification vote scheduled for June 14 and 15, 2018 used by UNITE HERE Local 75;
- vii. the list of names of members who received ballots in the ratification vote held on June 14 and 15, 2018 (including any "scrutineers' lists");
- viii. all ballots cast in the June 14 and 15, 2018 ratification vote;
- ix. all notes, correspondence, emails, and documents of any kind related to the Fairmont Royal York Hotel's decision to permanently layoff Epic Restaurant and Lounge employees, from January 1, 2018 to present;

- x.all notes, correspondence, emails, and documents of any kind between the Fairmont Royal York Hotel and UNITE HERE Local 75 related to the closure of the Epic Restaurant and Lounge, from January 1, 2018 to present;
 - xi.all notes, correspondence, emails, and documents of any kind between the Fairmont Royal York Hotel and UNITE HERE Local 75 related to the conduct of the ratification vote held on May 1, 2018 and the ratification vote held on June 14 and 15, 2018, from January 1, 2018 to present;
 - xii.a copy of the signed memorandum of settlement between the Fairmont Royal York Hotel and UNITE HERE Local 75 for the proposed collective agreement voted on at the ratification vote on June 14 and 15, 2018; and
 - xiii.a copy of the investigation report prepared by Cavalluzzo LLP in early 2017 regarding allegations of racism and sexual harassment against Lis Pimentel, David Sanders, and other former UNITE HERE Local 75 leaders;
- b.an order requiring UNITE HERE agents and supporters to cease and desist attending at the houses of UNIFOR agents and supporters;
- c.an order requiring the Fairmont Royal York Hotel to rescind the 30-day suspension described below from Gee Manalastas' employment record; and
- d.an order that UNITE HERE Local 75 delete all photos on its social media accounts, including Twitter and Facebook, containing images of Royal York bargaining unit employees in uniform and/or on hotel property.
- e.an order requiring the Fairmont Royal York Hotel to cease and desist providing preferential access to the workplace for UNITE HERE organizers to campaign against UNIFOR, to revise its policies and practices to ensure that both UNITE HERE and UNIFOR organizers have equal access to bargaining unit members to discuss representation issues, and to distribute its revised policies to all managers and bargaining unit members;

3. In this application and in the main application, Unifor alleges that the responding parties have engaged in unlawful conduct which was intended to intimidate, coerce, and mislead employees to abandon their support for Unifor's organizing campaign and to ratify a collective agreement which is not acceptable to them. Relying on its allegations in Board File No. 0518-18-U, it alleges that a pattern of such unlawful conduct is revealed. Unifor pleads that Local 75 failed to communicate material changes to employment conditions, pleads that the Hotel had a preferential access policy for UNITE HERE organizers, that UNITE HERE representatives engaged in electoral misconduct as well as in intimidating and coercive activities, and that the Hotel and Local 75 colluded to discipline Unifor supporters and hold them out of service to prevent them from organizing. Unifor claims that the Memorandum ratified by the second ratification vote is not a collective agreement because it was obtained with employer support. In the main application, it seeks an order voiding the collective agreement, as well as other relief.

4. The Board held a consultation on July 19, 2018. A consultation is a summary process intended to provide the Board with enough information to determine whether or not it is appropriate to grant an interim order. The parties have provided the Board with declarations from individuals having relevant knowledge, as well as submissions on their respective positions. The declarants are not cross-examined on the contents of their declarations, as the consultation is not a hearing to adduce evidence. Therefore, in considering the information, the Board does not make findings of fact or credibility. This decision will address whether it is appropriate to grant interim relief under section 98 of the Act in the circumstances.

Material Before the Board

5. In support of its request for remedial relief, the applicant filed the declarations of: Grace Guanzon (Fairmont Royal York room attendant), Lisabeth Pimentel (Unifor organizer), Michelle Williams (Fairmont Royal York valet employee), Belgin Euperio (Fairmont Royal York mini bar attendant), Jorge Junio (Fairmont Royal York stewarding department runner), Ronald Lopez (Fairmont Royal York house person), Gee Manalastas (Fairmont Royal York room attendant), Myleen Piansay (Fairmont Royal York stewarding department kitchen assistant), Carol Tulod (Fairmont Royal York room attendant), Anita Vitug ((Fairmont Royal York restocking employee), Paul Simoes (Fairmont Royal York doorperson), Renato Lopez (Fairmont Royal York houseman), Prema

Perera (Fairmont Royal York room attendant), David Sanders (Unifor organizer), Patrick Hartnett (Fairmont Royal York doorman),

6. Local 75 filed declarations from: Danny Kastner (lawyer who served as an election observer), Mahen Krishnamoorthy (Local 75 organizer), Vemelyn Feliciano (Local 75 organizer), Shelli Sareen (Local 75 research coordinator), Amarjeet Kaur Chhabra (Local 75 senior organizer), Mike Casey (Local 2 organizer currently assigned to assist Local 75), Cicely Phillips (Fairmont Royal York room attendant) and Kattia Delgado (Fairmont Royal York room attendant).

7. The Hotel filed the declarations of Anna Chartres (Regional Director, Talent and Culture), Josee Tremblay (Assistant Director, Talent and Culture), Nicole Stewart (Director of Housekeeping), Jessica Santantonio (Assistant Director of Housekeeping), and Michael Wong (Engineering Supervisor).

8. It is clear that the two unions are opposed in interest. Suffice it to say that there is very little that the parties agree upon in the declarations. Local 75 and the Hotel dispute and deny the bulk of Unifor's assertions against each of them. It would not be useful to set out the factual disputes in the declarations, given that they will be determined ultimately by the evidence adduced in the hearing of the main application. Nonetheless, I will note that I have reviewed all of the information submitted by the parties, as well as the legal authorities they have provided. In addition, I have reviewed the submissions I received with respect to the Board's decision in *The Original Cakerie Ltd.*, 2018 CanLII 68716 (ON LRB), released after the consultation in this case.

9. Based on the pleadings and declarations of the parties and representations at the consultation, it appears the following background information is not disputed.

Background

10. The Hotel is a large hotel in downtown Toronto, with more than 1325 guest rooms. It operates food and beverage outlets, meeting rooms, banquet facilities, retail outlets and a fitness centre and pool. The Hotel employs approximately 1256 persons, of whom about 947 are unionized employees represented by Local 75. The Hotel and Local 75 have had a long-standing bargaining relationship and were parties to a collective agreement which expired on July 16, 2017.

11. The Hotel and Local 75 engaged in collective bargaining on nine dates in 2017 with a view to negotiating amendments to the collective agreement. On December 11, 2017, Local 75's President and Chief Negotiator, Lisabeth Pimentel, advised the Hotel that she could not continue negotiations on Local 75's behalf, citing an impending trusteeship being imposed on Local 75. Subsequently, Ms. Pimentel was removed as an employee of UNITE HERE and as Local 75's President. She, and other members of Local 75, joined Unifor. Unifor commenced an organizing drive at the Hotel.

12. Early in Unifor's organizing campaign, Anna Chartres, in charge of human resources for the Hotel, met with two of Unifor's key organizers to discuss the parameters of their organizing activities in the Hotel. Unifor did not object to the conditions set by the Hotel.

13. Local 75 and the Hotel re-commenced negotiations for a renewal collective agreement in March 2018, which resulted in a Memorandum of Settlement ("the Memorandum") resolving all outstanding issues in dispute for the renewal of the collective agreement being signed on April 29, 2018. As a term of the Memorandum, both parties agreed to recommend full acceptance of all terms of the Memorandum and to speak publicly in support of its ratification.

14. On April 20, 2018, Gee Manalastas and Marcil Stoll, both employed by the Hotel in the housekeeping department, were involved in a physical fight on a guest floor of the Hotel, although their respective roles in this incident is in dispute. On April 25, 2018, each received a thirty-day suspension. Local 75 filed a grievance on behalf of both employees. The grievance is being processed and has, as at the date of consultation, been referred to arbitration.

15. On April 30, 2018, Unifor filed a displacement application for certification with respect to the bargaining unit represented by Local 75. The Board dismissed the displacement application on May 18, 2018, on the basis that it was untimely.

16. A ratification vote was held on May 1, 2018 ("First Vote") in respect of the tentative agreement. The tentative agreement was rejected by a margin of 8 ballots, having 332 in favour and 340 against. Local 75 and the Hotel returned to the bargaining table. Both parties to the agreement confirm that the Hotel made it clear that it would not offer any further proposals or agree to any changes to the Memorandum.

17. Unifor filed applications on May 30, 2018 for interim relief and unfair labour practices in Board File Nos. 0730-18-IO and 0518-18-U, challenging the integrity of the First Vote, and the conduct of members of Local 75 and the Hotel.

18. A second ratification vote ("Second Vote") was scheduled to take place on June 14-15, 2018. By decision dated June 13, 2018, the Board dismissed Unifor's request of June 11, 2018 for an immediate determination in respect to its request for interim relief as well as the imposition of remedial orders on the Second Vote.

19. The Second Vote proceeded. The tentative agreement was accepted by a margin of 410 to 345, with a few ballots segregated and one ballot spoiled. Unifor withdrew its application for interim relief relating to the First Vote.

20. As a result of the ratification of the collective agreement, the "open period" provided for in section 7(4) of the Act has now closed, and no displacement application would be timely until the last three months of its operation.

21. In the main application, however, Unifor seeks to have the Board declare that the ratification of the collective agreement was invalid, such that the "open period" has again "opened" and the bargaining unit could again be the subject of a displacement application. It is in this context Unifor asserts that the remedies it seeks are necessary interim measures to "level the playing field" and ensure that any future ratification or representation vote will be informed and will reveal the true wishes of the employees.

Positions of the Parties

22. As noted above, Unifor requested that I view this interim application in the broader context of an atypical displacement application, in which it says it is seeking orders preserving employees' rights pending the determination of a potential future contest between bargaining agents for the right to represent them. It asks me to consider its allegations of misconduct in the ratification voting process in the context of the shift from the small margin rejecting the Memorandum in the First Vote to the wide margin accepting the Memorandum in the Second Vote, together with its allegations that the Hotel acquiesced in Local 75's campaign for ratification, by showing preference for one bargaining agent over the other.

23. Local 75 and the Hotel ask me to dismiss this application for interim relief in its entirety. Both responding parties deny any breach of the Act and submit that Unifor has failed to plead an arguable case for any of the interim relief requested. They contend that the request for production of documents should be dealt with in the normal course, and that the balance of harm weighs against granting the orders requested given that Unifor's requests would abridge and interfere with Local 75's statutory right to represent the employees in the bargaining unit. Local 75 points out that there is no "open period" for continued organizing, and that Unifor has not sought a stay of the ratification vote. Local 75 also asserts that the allegations concerning employee discipline are untimely, given that the discipline arose before the first application for interim relief and therefore there has been delay, and that the remedies Unifor seeks in any event make no labour relations sense. It urges me to look at this application from the perspective of the remedies requested, and the effects of each of them.

The Board's Approach

24. Section 98 of the Act provides:

Board power re interim orders

98 (1) The Board may make interim decisions and orders in any proceeding.

Conditions

(2) The Board may impose conditions on an interim decision or order.

Reasons

(3) An interim decision or order need not be accompanied by reasons.

25. The Board's approach in considering applications for interim relief under the newly amended section 98 of the Act departs from the approach taken by the Board under previous versions of the Act. In the recent decision in *National Judicial Institute*, 2018 CanLII 51312 (ON LRB) ("*NJI*"), the Board commented on the broad authority given to the Board under the Act; noting however, that the interim order power is not a substitute for the Board's regular hearing process. At paragraph 38, the Board described the assessment as follows:

... Ultimately, the fundamental question is: does the making of an interim order, of whatever kind, make labour relations sense in all of the circumstances? In making that determination, it seems likely the Board will consider any or all of the following factors, when appropriate:

- i) The purposes of the Act;
- ii) The nature of the interim order sought;
- iii) The urgency of the matter;
- iv) The apparent strength of the applicant's case and defence that the responding party may have;
- v) The balance of convenience/inconvenience;
- vi) The balance of labour relations and other harm;
- vii) Whether the alleged damage is irreparable or not;
- viii) Delay;
- ix) Any other labour relations considerations.

26. Subsequently, in *Original Cakerie*, the Board adopted and applied the *NJI* factors, noting that not all of the factors will necessarily be relevant in all cases. The Board expanded upon the fourth factor in the *NJI* list, guided in part, by the Board's jurisprudence under the former section 98(3) of the Act. The Board concluded ultimately that it must take at least a high level look to determine the apparent strength of an applicant's case and defense that the responding party may have, because:

21 ... Without adopting such an approach the Board would have no way to address conflicting claims regarding an employer's motivation for terminating a particular employee. It cannot be the case that simply asserting an employee was terminated because of their role in an organizing campaign stops the analysis in its tracks. Such an approach would effectively immunize an employee involved in an organizing campaign. Had the legislature sought to establish such a position it would have said so. Rather, such claims (and counter claims by employers) must be subjected to some review, even if only a preliminary high level review, and even if only to determine the apparent strength, or weakness, of the parties respective claims.

27. I endorse and adopt the Board's analysis in *NJI*, as extended by *Original Cakerie*. In this case, there is an additional consideration. Whether it engages the second factor in *NJI* (the nature of the interim order sought) or is another factor, I am of the view that it is essential that there be a logical and functional link between the pleading of an arguable breach of the Act and the remedies being requested on an interim basis. For example, there is an identifiable link between the allegation that a key union organizer has been terminated contrary to the Act, and a remedial request for reinstatement, in view of the ongoing and immediate nature of an organizing campaign and the purpose of interim relief.

28. The Board must also consider the purpose of interim relief. The Board's jurisprudence recognizes that the imposition of relief before adjudication on the merits is inherently problematic. Nonetheless, in the absence of an effective remedy before the Board, there is no meaningful right provided by the Act. Interim relief is available from the Board to ensure that its own proceedings will provide an effective remedy to an applicant should the main litigation succeed. As summarized in *J.C.V.R. Packaging Inc.* [1993] OLRB Rep. November 1145:

13 In the Board's previous cases dealing with interim orders, the Board has discussed the place of interim relief in the context of alleged unfair labour practices: see, for example, *810048 Ontario Limited c.o.b. as Loeb Highland*, [1993] OLRB Rep. March 197; *Tate Andale Canada Inc.*, [1993] OLRB Rep. Oct. 1019 (unreported). The Board has said that interim relief is warranted where it may serve to "neutralize the potential impact of an ALLEGED unfair labour practice" (see *Tate Andale Canada Inc.*), preserve the right of the union to a meaningful remedy should the complaint be upheld (see *Reynolds-Lemmerz Industries*, [1993] OLRB Rep. March 242) or preserve a "status quo" in order to provide some stability within which litigation over labour relations disputes may proceed (see *New Dominion Stores, a division of the Great Atlantic and Pacific Company of Canada, Limited*, [1993] OLRB Rep. Aug. 783) [emphasis added in upper case text].

The objective of interim relief is, therefore, to preserve the right of the applicant to a meaningful remedy should the main application succeed.

29. The factors which are determinative in this application are the nature of the interim order sought, urgency, delay, apparent strength of the applicant's case and responding party's defence, and the balance of harm. I have also considered the purpose of interim relief. These factors are discussed in relation to the interim orders requested.

30. As I have noted above, it would not be useful to set out the factual disputes contained in the declarations, since most of the assertions of the Unifor are either denied or contested by the responding parties. However, my preliminary review of the information before the Board satisfies me that the responding parties may be able to mount a successful defence to all of the claims in the application.

The Orders Requested

a. Production of Documents

31. Unifor seeks an order requiring the preservation and production of the documents specified above from the Hotel and from Local 75. It points to the Board's powers under section 96(4) and section 111(1), submitting that this is an extraordinary situation in which it is appropriate to order production on an interim basis. Unifor has not submitted why such production is necessary on an interim basis other than to assert that it should be in a position to investigate who voted in both ratification votes before the evidence is lost or destroyed. Unifor contends that the Board's ordinary process is too slow, and in balancing the harm associated with the destruction of documents, with the acknowledgement that many of these documents will likely be produced in the main application, there would be no harm in ordering production now.

32. Local 75 characterizes Unifor's production request as an attempt to weaponize the interim power and evade the Board's normal process of adjudicating on issues of production, in a situation where it has not sought to obtain the documents in the normal course. It argues that the purpose of an interim order is to preserve the status quo pending a hearing, not to duplicate the Board's processes. The Hotel, in supporting this argument, points out that Unifor has pleaded no facts suggesting that the Board's regular processes are insufficient, nor has it made any allegation that there is a risk of destruction.

33. I agree with the responding parties that it makes no labour relations sense to order the preservation of documents and the production requested by Unifor, having regard to the nature of the order

sought, and the urgency associated with the request. The interim order is an extraordinary remedy. There may be situations where the Board might make such production orders on an extraordinary or emergency basis, such as when an employer is shutting down an operation and leaving the jurisdiction, and there exists a risk that documents may be destroyed or lost. I am not so persuaded as to the urgency of the requested orders to substitute them for the normal processes of the Board. It appears that some of the documents will contain personal or confidential information and there may be preliminary objections and disputes to be adjudicated. In my view, the Board's regular adjudicative process is appropriate and sufficient to protect the parties' interests until the hearing on the merits. Moreover, there are no allegations in the declarations upon which to assume or conclude that documents will be destroyed or lost. The Board will not make an order on the basis that presumes bad faith on the part of one party (See, for example, *Flynn Canada Ltd.*, 2015 CanLII 16403). Finally, I reject Unifor's submission that since it will likely be provided with some of these documents in any event, there would be no harm in ordering them now. That is not a reason to jettison the normal hearing process. On a request for an interim order, Unifor must establish a reason for its request, based on the purposes for interim relief, as to why the relief sought is necessary on an *interim* basis. It has not done so.

b. Preferential Access and Revision of Policies

34. Unifor requests an order that the Hotel cease and desist providing preferential access to UNITE HERE organizers and that the Hotel revise its policies and practices to allow equal access to bargaining unit members to discuss representation issues, on the basis that there is no harm in providing same. It makes no claim of urgency. At the consultation, Unifor clarified that it is not seeking to become a "shadow bargaining agent" as Local 75 argues, but is seeking the opportunity to campaign in the workplace. Such an order, Unifor submits, is a measure necessary to preserve its position. Unifor provides no legal authority to support such a request, other than the Board's statutory power to make such an order.

35. Not surprisingly, the responding parties vehemently resist the request for this order. It is not disputed that Unifor acceded to the conditions the Hotel placed upon its organizing activity. The Hotel submits that the delay factor envisioned by *NJI* does not weigh in favour of granting the access order. It clearly is not urgent, since there is no vote contemplated at this time. Moreover, UNITE HERE's right to access

the Hotel and to wear buttons are freely negotiated rights which have been contained in the collective agreement since 2005. The access the Hotel provides the exclusive bargaining agent is entirely consistent with its collective agreement obligations and prior to the ratification votes, the mutual agreement of the Hotel and Local 75 to garner support for the Memorandum. Local 75 points to the obvious labour relations issues which would result if the Board were to sanction access by a rival union and allow some participation in the workplace by non-elected representatives. It warns the Board not to grant Unifor a "free ride" on the rights negotiated by Local 75 in the collective agreement. There would be devastating harm to the incumbent union if it were forced to deal with a shadow. Such damage would be irreparable.

36. Having regard to the declarations of the Hotel, I am satisfied that it may be able to mount a strong defence to Unifor's allegations that it has breached the Act by granting preferential access to UNITE HERE representatives. Moreover, even if I were to accept all of Unifor's allegations as true, and I make no such finding, I cannot grant the relief it requests for hotel access and policy changes. To do so would cause labour relations harm, perhaps mayhem, which I accept would be irreparable. At this point in time, there is no "open" or campaign period. Open period or not, there exists no equivalency between the incumbent and the suitor. Local 75 is the exclusive bargaining agent and there is no lawful basis for the Board to order access for Unifor representatives to represent employees or campaign in the workplace. The Board's case law does not support the notion that a union seeking to displace the incumbent has equivalent access rights as an incumbent. (See *R.W.D.S.U., Local 414 v. New Dominion Stores*, [1993] O.L.R.B. Rep. 880). The Hotel, in administering the collective agreement, must deal with the exclusive bargaining agent on day-to-day issues, without interference by a rival union. Having regard to the *NJI* factors, in my view, the balance of harm weighs against granting the orders requested, no claim of urgency is advanced, and there may be strength in the Hotel's defence. Regardless of the *NJI* factors, Unifor has made no arguable case for these interim remedies.

c. Rescission of Disciplinary Suspension

37. Unifor requests that the thirty-day suspension of Gee Manalastas be rescinded on an interim basis. Ms. Manalastas declares that she is an open supporter of UNIFOR and has campaigned for UNIFOR amongst the room attendants. Counsel argues, citing *810048 Ontario Ltd. (Loeb IGA Highland)*, 1993 CanLII 7835 (ON LRB), that

momentum is critical in an organizing drive, and disciplining a supporter sends a chilling message. This chill, according to Unifor, must be balanced against the harm to the Hotel rescinding a suspension outside the regular collective agreement process. Clearing Ms. Manalastas' record would, in counsel's submission, result in no practical harm to the Hotel.

38. There is no basis for the order sought. Considering the balance of harm requires balancing the effect of the allegedly chilling message against the harm to the Hotel rescinding a suspension outside the regular collective agreement process and the harm to Local 75 since the order essentially undermines the collective agreement to which they are a party. It is not appropriate for the Board to interfere in the disciplinary process under the collective agreement. Unifor has not asserted improper grievance handling by Local 75, nor has it pleaded in the application or its declarations that there is a continuing breach. I see no reason why the grievance and arbitration procedures are insufficient to address the grievances. The suspension was issued on April 25, 2018 and Ms. Manalastas returned to the workplace on May 25, 2018. This remedy was only requested as at June 22, 2018. Clearly there is no urgency. Moreover, I do not see the discipline of a supporter as analogous to the termination of a key union organizer, as was the case in *Loeb IGA Highland*, since termination removes the organizer from the workplace altogether, not only sending a chilling message but also, more significantly, effectively disabling the campaign. Here, Ms. Manalastas, a supporter whose function in the campaign is not that of an organizer, hasn't been removed from the workplace and has already served the suspension. The logical and functional link between the pleading of an arguable breach of the Act and the interim remedy requested is not present.

d. Cease and Desist Order

39. Similarly, I find that there is no basis for the request for an interim order that UNITE HERE representatives cease and desist from attending at the houses of all Unifor representatives and supporters. Unifor argues that such an order would mitigate the "chill" to a degree, and again submits "What's the harm?" As indicated above, that is not the question. The question is whether Unifor has established that its request is necessary to achieve the purposes of interim relief. I find that it has not. Leaving aside the practical question as to how anyone would necessarily know what "representatives and supporters" this order would pertain to, the apparent strength of the claim is low. The

basis for this claim relates to events involving David Sanders, a Unifor organizer. In his declaration, he has stated that he believes that his involvement as a leader in the campaign at the Hotel has resulted in personal attacks and vandalism of his Jeep outside his house attributable to UNITE HERE supporters and representatives. There is no link other than belief. Further, Mr. Sanders is not an employee of the Hotel. Even if it were true that Mr. Sanders' vehicle was vandalized by UNITE HERE supporters or representatives, it is not obvious that such action would constitute a violation of the Act. Furthermore, and more importantly, the Board is not satisfied that the order requested would achieve the purposes of interim relief which is to neutralize the potential impact of alleged statutory violations until the main application is heard.

e. Deletion of Images on Social Media

40. Unifor asks for an order that posts on UNITE HERE's website showing bargaining unit members in their Hotel uniforms demonstrating their support for ratification of the collective agreement be taken down as an interim measure. It contends that such an order will mitigate the harm of continued preferential treatment towards Local 75.

41. It is difficult to see how Local 75's social media posts which concern Unifor would result in a finding that the Act has been breached. Local 75, as the incumbent union and exclusive bargaining agent, posted photos of its members holding signs depicting a statement "I'm voting yes because..", the latter part presumably filled in by the member. I agree with counsel for Local 75 that there is nothing about these posts that appears intimidating or coercive. Local 75 has every right, to garner support for ratification of the collective agreement, and indeed it agreed to do so in its Memorandum with the Hotel. The Board generally does not intervene to referee campaign disputes (see, for example, *Stratford Shakespearean Festival Foundation of Canada*, 2000 CanLII 11899). As a result, it appears that the responding parties are able to mount a strong defence to Unifor's allegations that the Act was breached. Further, given that the Second Vote has occurred, there appears to be no urgency to this request and it is unclear what labour relations harm is claimed. In my view, it is not necessary for the Board to concern itself with this sort of communication, and I decline to make the order requested.

Disposition

42. In summary, the applicant has not convinced me that this is an appropriate case to order any of the interim remedies requested. I have reached this conclusion having considered the purpose of interim relief, the nature of the interim remedies sought, delay, urgency, the balance of labour relations and other harm, and my assessment that the responding parties may be able to successfully defend the allegations in the main application.

43. For the reasons above, this application for interim relief is dismissed.

"Gita Anand"

for the Board

APPENDIX A

Dewart Gleason LLP
366 Adelaide Street W
Suite 102
Toronto ON M5V 1R9
Attention: Chris Donovan
Tel: 416-583-5790
Fax: 416-971-8001
Email: cdonovan@dglip.ca

Unifor
205 Placer Court
Toronto ON M2H 3H9
Attention: Lisabeth Pimentel
Tel: 416-458-3273
Fax: 416-495-3764
Email: josh.coles@unifor.org; lpimentel@unifor7575.org

Michelle Williams c/o: Unifor
205 Placer Court
Toronto ON M2H 3H9
Tel: 416-458-3273
Fax: 416-495-3764

Grace Guanzon c/o: Unifor
205 Placer Court
Toronto ON M2H 3H9
Tel: 416-458-3273
Fax: 416-495-3764

Gee Manalastas c/o: Unifor
205 Placer Court
Toronto ON M2H 3H9
Tel: 416-458-3273
Fax: 416-495-3764

Myleen Piansay c/o: Unifor
205 Placer Court
Toronto ON M2H 3H9
Tel: 416-458-3273
Fax: 416-495-3764

Jorge Junio c/o: Unifor
205 Placer Court
Toronto ON M2H 3H9
Tel: 416-458-3273
Fax: 416-495-3764

Dewart Gleason LLP
366 Adelaide Street W
Suite 102
Toronto ON M5V 1R9
Attention: Tim Gleason
Lawyer
Tel: 416-583-5751
Fax: 416-971-8001
Email: mmorana@dglp.ca; tgleason@dglp.ca

Dewart Gleason LLP
366 Adelaide Street W
Suite 102
Toronto ON M5V 1R9
Attention: Brett Hughes
Associate
Tel: 416-583-5751
Fax: 416-971-8001
Email: mmorana@dglp.ca; bhughes@dglp.ca

Carol Tulodc/o: Unifor
205 Placer Court
Toronto ON M2H 3H9
Tel: 416-458-3273
Fax: 416-495-3764

Cavalluzzo LLP
474 Bathurst Street
Suite 300
Toronto ON M5T 2S6
Attention: Ryan White
Counsel
Tel: 416-961-1115
Fax: 416-964-5895
Email: fdasilva@cavalluzzo.com; rdwhite@cavalluzzo.com

Unite Here Local 75
15 Gervais Drive
Suite 301
Toronto ON M3C 1Y8
Attention: Ian Robb
Trustee
Tel: 416-384-0983
Email: ian@irhere.ca

McCarthy Tétrault LLP
66 Wellington Street W
Suite 5300, TD Bank Tower
P.O. Box 48
Toronto ON M5K 1E6
Attention: Trevor Lawson
Lawyer
Tel: 416-601-8227
Fax: 416-868-0673
Email: tlawson@mccarthy.ca

Fairmont Royal York Hotel
100 Front Street W
Toronto ON M5J 1E3
Attention: Anna Chartres
Director, HR
Tel: 416-860-4511
Fax: 416-860-4560
Email: achartres@fairmont.com