BRITISH COLUMBIA LABOUR RELATIONS BOARD

BETTER BUY MARKET LTD., LARRY HYETTE HOLDINGS LTD. AND P.M. SHERBA INC., A REGISTERED PARTNERSHIP DOING BUSINESS AS SHOPPERS WHOLESALE FOOD COMPANY

(the "Employer")

-and-

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 1518

(the "Union")

PANEL:	Allison Matacheskie, Vice-Chair
APPEARANCES:	Lindsie M. Thomson, for the Employer Chris Buchanan, for the Union
CASE NOS.:	55356 and 55394
DATE OF DECISION:	October 12, 2007

DECISION OF THE BOARD

I. NATURE OF THE APPLICATION

1 In *Better Buy Market Ltd.* et al., BCLRB No. B220/2007 (Leave for Reconsideration of BCLRB No. B84/2007) (the "Reconsideration Decision"), the Board accepted the Employer's submission that *Better Buy Market Ltd. et al.,* BCLRB No. B84/2007, 135 C.L.R.B.R. (2d) 190 (the "Original Decision") wrongly states that the evidence of Union organizer Glenn Toombs ("Toombs") was not challenged in cross-examination. The Original Decision granted a remedial certification as a remedy for unfair labour practices committed by the Employer. The Reconsideration Decision remitted the matter of remedy back to me to consider the cross-examination with respect to the Union organizer's evidence as it relates to campaign momentum.

II. ANALYSIS AND DECISION

2 There was an error in the Original Decision where I stated that "[t]he Union organizer's statements that he experienced a severe change in the employees' reaction to him and he filed at the Board 'to stop the bleeding' were not challenged in cross-examination": Original Decision, para. 94. The Employer did cross-examine Toombs on his evidence on the drop in support for the Union.

3 In the Original Decision, at paragraph 28, I summarized Toombs' evidence of campaign momentum in the following manner:

> Glenn Toombs, the Union organizer testified at the hearing. He testified that the campaign began slowly in mid July with the Union gathering information for the purpose of conducting the campaign. The active solicitation and meetings with employees were in August. Toombs approached almost all the employees. He said it was going well and then there was a clear turn in the campaign about three or four days after the meeting he attended at Seminuk's home. He said he was able to pull things back around and was obtaining some support again. However, he noticed a severe drop in support at the end of August and beginning of September when Lavallee returned to work after his holidays. Toombs said employees who had appointments to meet with him, cancelled the appointments. He also said that employees who told him to call them back at a later time, now refused to talk to him at all. One employee who talked with Toombs on three previous occasions and introduced him to other employees now refused to talk to him.

4 The Original Decision only provided a summary of Toombs' evidence. As noted above, "employees who had appointments to meet with him, cancelled the appointments". In his evidence, Toombs quantified the number of cancelled

appointments. He stated eight to ten employees cancelled appointments with him and four or five employees cancelled appointments with the other organizer. As noted above, Toombs also stated "employees who told him to call them back at a later time, now refused to talk to him at all". In his evidence, Toombs also stated employees were hanging up the telephone and closing doors on the Union organizers. Finally, "[o]ne employee who talked with Toombs on three previous occasions and introduced him to other employees now refused to talk to him".

5 In cross-examination, as set out in the Reconsideration Decision, some of Toombs' statements concerning membership support were challenged. The Reconsideration Decision reproduces portions of the cross-examination set out in the Employer's statutory declaration in support of its application for reconsideration:

> 7. On cross examination, Mr. Toombs was asked about his evidence concerning how he viewed the campaign after Larry Lavallee returned from vacation. He stated that he had arranged quite a few appointments on the day the certification application was filed. He said that the icing on the cake was when an individual who he thought was very supportive in his actions and in the way they had associated with each other just turned [away from supporting the Union]. Mr. Toombs gave evidence that this reaction told him that two other individuals turned as well.
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> 8. Mr. Toombs was then asked whether he had been told directly by these two individuals that they no longer supported the Union. Mr. Toombs admitted that he had surmised this. He stated: if someone leads two people to the union and is the leader in the group, then history shows us they will follow suit.
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> 9. Mr. Toombs was then asked: who else he had spoken with who had "turned" away from supporting the Union. He stated that he tried to talk to one person and that he had no first hand knowledge about any others. (Reconsideration Decision, para. 5)

6 As set out in the Reconsideration Decision, the Employer states Toombs "...admitted that he 'surmised' that when one supporter refused to meet with him, two other individuals had also stopped supporting the Union", (para. 10). As well, Toombs admitted that he did not speak to those two individuals directly.

7 While these statements accurately reflect a portion of the cross-examination, they focus on the strong supporter and the two individuals he brought to the Union. I do not infer from his concession regarding these two individuals that he had no first hand knowledge about other employees turning away from supporting the Union. Toombs remained consistent in cross-examination that generally employees refused to speak with him or the other Union organizer. He also remained consistent in his evidence that eight to ten people cancelled scheduled appointments with him. Toombs testified about

comments employees made while cancelling appointments. I did not place any weight on these comments as they are hearsay about subjective evidence from employees. However, I take from the evidence concerning these conversations that Toombs spoke directly with employees.

8 It is the totality of Toombs' evidence which led to my finding in paragraph 94 of the Original Decision that there was:

> ...a significant drop in support for the Union evidenced by employees who had previously expressed an interest, or at least an invitation for the Union organizer to come back and see them at a later time, changing their minds and refusing to talk to the Union organizer.

9 The error in the Original Decision was stating that Toombs' evidence was not challenged in cross-examination. While there was some cross-examination on Toombs' evidence, I was not persuaded by the cross-examination of Toombs that there was not a drop in support for the Union. In particular, the cross-examination did not affect Toombs' evidence that numerous employees cancelled appointments and refused to talk to the Union organizers. As such, Toombs' evidence that there was a severe drop in campaign momentum was not successfully challenged. This drop in campaign momentum followed a manager making threats to employees' job security.

10 With respect to the issue of the appropriate remedy, after considering the totality of the evidence, including the cross-examination of Toombs, I find that a remedial certification is the appropriate result. At paragraphs 98 and 99 of the Original Decision, I summarized the reasons for granting a remedial certification.

> In summary, the Employer told employees there would be lay-offs, reductions to part time and possible closure of the business if the Union is certified. These are threats to job security and are of the utmost seriousness. It is not an isolated incident. The communications by the Employer in the pamphlets it distributed would not alleviate the fear instilled by Lavallee's statements to the employees. Although the Union obtained sufficient cards to be able to file its application for certification, there was a significant drop in support for the Union following the Employer's conduct and prior to the representation vote. I conclude that this drop in support is a direct result of the Employer's threats of adverse job consequences. There is insufficient evidence of any other possible reason for the drop in support.
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> I find that but for the Employer's unlawful conduct, it is likely that the Union would have achieved the requisite majority support. As well, I find in the circumstances of this case, it is reasonable to conclude that the vote does not reflect the true wishes of the employees concerning unionization. For these reasons, a remedial certification is warranted.

11 For these reasons, and the reasons stated in this decision, I grant a remedial certification.

LABOUR RELATIONS BOARD

"ALLISON MATACHESKIE"

ALLISON MATACHESKIE
VICE-CHAIR