Labour Relations Board
Saskatchewan

INTERNATIONAL UNION OF OPERATING ENGINEERS HOISTING AND PORTABLE AND STATIONARY, LOCAL 870, Applicant v. RURAL MUNICIPALITY OF ESTEVAN NO. 5, Respondent

LRB File No. 034-03; December 16, 2003
Chairperson, James Seibel; Members: Marshall Hamilton and Pat Gallagher

For the Applicant: Trent Garneau
For the Respondent: Greg Hoffort

Collective agreement – First collective agreement – Parties have yet to conclude first collective agreement more than eighteen months after certification – Items remaining in dispute relatively minor – Board decides to intervene to impose terms to conclude first collective agreement.

Collective agreement – First collective agreement – After hearing representations from parties, Board imposes collective agreement terms relating to term of agreement and wage rates for one disputed classification – Terms imposed by Board differ somewhat from terms recommended by Board agent.

***The Trade Union Act*, s. 26.5.**

REASONS FOR DECISION

Background:

[1] International Union of Operating Engineers Hoisting and Portable and Stationary, Local 870 (the "Union") was designated by the Board in an Order dated February 1, 2002 (LRB File No. 006-02) as the certified bargaining agent for a unit comprising all employees of Rural Municipality of Estevan No. 5 (the "Employer") except administrators, administrative assistant and building inspector.

[2] The Union applied to the Board on March 17, 2003, pursuant to s. 26.5 of *The Trade Union Act*, R.S.S. 1978, c. T-17, as amended (the "*Act*"), for assistance in concluding a first collective bargaining agreement. On March 27, 2003 the Employer advised the Board that it agreed to the appointment of a Board agent to assist the parties. The Board issued an Order dated March 31, 2003 appointing a Board agent

and directing the Board agent to report to the Board within sixty days as to whether the Board should intervene to assist the parties and, if so, as to what terms the Board should impose in a first collective agreement. The time for reporting was subsequently extended by the Board.

[3] The parties made substantial progress with the assistance of the Board agent. In his report dated August 26, 2003, the Board agent recommended that the Board intervene to impose terms of a first collective agreement with respect to the only two outstanding issues between the parties: (1) the commencement and expiry dates of the term and wording of the clause specifying a term of two years for the agreement; and, (2) whether a grader operator employed on a seasonal basis should be paid at a different and lesser rate than the grader operators working year-round. The rates for all classifications, including the grader operators, were otherwise agreed to by the parties.

[4] No evidence was adduced or argument advanced by either party that the Board should not intervene to impose terms to conclude a first collective agreement.

[5] The issue of the wording of the clause regarding the term of the agreement is essentially a legal question and no evidence was led on the issue.

[6] The Employer led evidence with respect to the issue of the classification and wage rate for a grader operator employed on a seasonal basis.

Whether to Assist the Parties

[7] The Board agent was able to assist the parties to conclude all but two items in dispute. He recommended that the Board intervene to impose terms with respect to the outstanding items.

[8] The parties have yet to conclude a first agreement more than eighteen months after certification. The items that remain in dispute are relatively minor. That was essentially the situation in *International Union of Operating Engineers, Local 870 v. R. M. of Coalfields No. 4*, [1998] Sask. L.R.B.R. 280, LRB File No. 326-97, where the Board determined to intervene to conclude the first collective agreement. In the present

case, likewise, we have determined to intervene to impose terms to conclude a first collective agreement.

Term of the Agreement

[9] While, at the hearing before the Board, the parties did not address the issue of the commencement and expiry dates of the term of a two-year agreement, the report of the Board agent stated that the Employer's position was that the term should commence on January 1, 2002 and terminate on December 31, 2003, while the Union preferred that the agreement commence on January 1, 2003 and expire on December 31, 2004. The Board agent recommended the latter dates in order that the parties had some period of time to adjust to and become familiar with operating under a collective agreement before having to commence negotiations for a renewal.

[10] The reasoning of the Board agent with respect to this issue makes perfect sense to us and we have concluded that the term of the agreement shall commence January 1, 2003 and expire December 31, 2004.

[11] The Board agent recommended that the wording of the clause regarding the term provide, in part, that "either party may…give notice in writing to negotiate a revision of the agreement." Mr. Hoffort, on behalf of the Employer, took the position at the hearing before the Board that the wording of the clause should conform to that of s. 26.5(9) of the *Act* as follows: "either party may give notice in writing to terminate the agreement or to negotiate a revision of the agreement." Mr. Garneau, on behalf of the Union, did not strenuously object to that position.

[12] Sections 26.5(9) and (10) of the *Act* provide as follows:

> *26.5(9) Notwithstanding section 33 not less than 30 days or more than 60 days before the expiry date of a collective bargaining agreement concluded pursuant to this section, either party may give notice in writing to terminate the agreement or to negotiate a revision of the agreement.*
>
> *(10) Where a notice is given pursuant to subsection (9), the parties shall immediately bargain collectively with a view to the renewal or revision of the agreement or the conclusion of a new agreement.*

[13] Having regard to those provisions we have determined that the clause regarding the term of the agreement shall provide as follows:

> *4.01 This Agreement shall be effective from January 1, 2003 to and including December 31, 2004. Either party may, not less than 30 days or more than 60 days before the expiry date of the Agreement, give notice in writing to the other party to terminate the Agreement or to negotiate a revision of the Agreement, and where notice is given the parties shall immediately bargain collectively with a view to the renewal or revision of the Agreement or the conclusion of a new agreement.*

Classifications and Wage Rates

[14] The Board agent provided recommendations as to all classifications and wage rates, including a bonus for each employee upon implementation of the collective agreement. The Union accepted the recommendations of the Board agent in their entirety. The Employer accepted the recommendations except as concerns the classification and wage rates for the "grader operator" classification. To be precise, the Employer accepted the recommended wage rates as applicable to year-round (referred to by the parties as "full-time") operators, but took the position that a grader operator working only part of the year – that is, the approximately seven or eight non-winter months when snow clearing is not required – (referred to by the parties as "seasonal"), should be paid at a lesser rate.

[15] The Employer employs three persons that operate graders: the foreman, Blaine Stropko, Gordon Schwab and Deanne Harkins. Mr. Schwab is employed full-time year-round. Mr. Stropko and Mr. Schwab perform essentially the same duties except that Mr. Stropko has certain supervisory duties. During the summer months, they grade roads, build approaches and, occasionally, construct roads; during the winter months, they maintain and repair equipment and plow snow as required. Ms. Harkins is employed as a grader operator during the non-winter months, performing the same summer grader work as Mr. Stropko and Mr. Schwab, except that she does not have as much direct involvement in building approaches or roads. Mr. Stropko is currently paid $18.75 per hour; Mr. Schwab, $15.90 per hour; and, Ms. Harkins, $13.85 per hour.

[16] The Board agent recommended that all persons employed as grader operators (that is, currently, Mr. Schwab and Ms. Harkins) be paid a single rate as follows:

	January 1, 2003	January 1, 2004
Year 1	$14.85	$15.36
Year 2	$15.85	$16.36
Year 3	$16.85	$17.36

[17] Pursuant to the Board agent's recommendations, Mr. Schwab and Ms. Harkin both would fall to be paid at the highest rate – Mr. Schwab has been with the Employer for approximately six years and Ms. Harkins for some fifteen or more non-winter seasons.

[18] The Employer maintained that the work performed by the full-time year-round grader operator is substantially more difficult and requires a higher degree of skill than that performed by an operator performing grading only during the non-winter months – that is, the grading of snow with a vee-plow and snow wing is a special skill that ought to be reflected in the wage rates.

[19] Several witnesses were called to testify on behalf of the Employer who testified that the grading of snow with the specialized equipment referred to above requires skill and steady nerves. Apparently, many persons who try to perform high-speed snow plowing are either unable to master the task and frequently end up in the ditch or damage the equipment, or are unable to handle the stress of working in the low-visibility conditions and the risk of catching obstacles that the work entails. Bruce Petterson, a councilor on the Employer's council, who himself has experience operating a grader in the nearby Rural Municipality of Benson, described in detail the differences between winter snowplowing and non-winter grading.

[20] In 1996, Ms. Harkins asked the Employer's council for the opportunity to plow snow. Over three days in October and November that year, when the snow was relatively light she trained for some twenty or more hours with the foreman, Mr. Stropko, and another employee. Blaine Stropko, the foreman, testified that Ms. Harkins did well

and just required more training to work into it properly. However, Greg Hoffort, the Employer's administrator, established through minutes of the Employer's council meeting of January 13, 1997 that, in fact, Ms. Harkins had considerable difficulty and asked to be relieved of such duties and to revert to non-winter grading. However, Mr. Stropko did attest to the excellent skills possessed by Ms. Harkins with respect to general non-winter grading, stating that she was perhaps the most skilled at such work, as among himself, herself and Mr. Schwab – this was not disputed by any of the other witnesses.

[21] The Employer then hired one Gordon Hanson as a full-time grader operator for, at that time, snow removal work. However, Mr. Hanson apparently proved incapable of satisfactorily performing such work and effective October 15, 1997, after the summer grading season, he was terminated. In September, 1997, the Employer placed a newspaper ad for a full-time grader operator capable of performing "snow removal operations and summer road grading and maintenance," pursuant to which it eventually hired Mr. Schwab. In March, 1998, when Ms. Harkins had left the Employer's employ to take a position with another employer, the Employer advertised for a "grader operator (seasonal)" for the period mid-April to October 31. However, shortly afterwards, Ms. Harkins asked to come back and the Employer re-hired her to her former seasonal duties.

[22] The Employer adduced evidence that some rural municipalities – none of them unionized – did have different wage rates for full-time year-round grader operators and non-winter (seasonal) grader operators. In contrast, in his report, the Board agent referenced a review of some twelve collective bargaining agreements showing that each had a single grader operator classification with several levels of pay based on seniority. No evidence was adduced to counter the inference that this is the norm in the industry, as among unionized municipal employers at any rate.

[23] We are persuaded that there is a difference between the work of snow removal and that of road grading and maintenance. We are not persuaded that the Employer is motivated by gender bias in seeking to maintain a wage differential between the full-time and seasonal grader operator positions it currently has but, rather, believe that the motivation proceeds from the desire to take advantage of an historical cost

saving and nothing more. That being said, we are not persuaded that snow plowing is a greater skill so much as a different skill from road grading and maintenance. And, we do not find that a year round wage premium is logically justified for the ability to plow snow when it is performed for only four or five months of the year. We are persuaded on the evidence that non-winter road grading and maintenance is likewise a skill at which one may excel. Indeed, it was admitted by some of the Employer's witnesses, and not disputed by any, that Ms. Harkins does excel at such duties.

[24] Given that it seems to be common in the industry amongst unionized municipal employers to have a single grader operator classification, we accept the Board agent's recommendation on that point. However, given that a seasonal operator will not acquire skill and experience at the same rate as a full-time year-round operator, we are not persuaded that it is logically justified to tie the steps in the wage rate for the classification to years of employment based on the anniversary date of first employment. Rather, steps based upon total hours of work would seem to make more sense and be more equitable as between full-time and seasonal employees. We propose to use the standard full-time work year of 2080 hours as the basis for the steps within the classification.

[25] Accordingly, we have determined that there shall be a single grader operator classification. We have also determined that the three steps within the classification shall be as set forth by the Board agent in his report excepting as follows: for step "Year 1", it shall read "0 to 2080 hours"; "Year 2" shall read "2081 to 4160 hours"; and "Year 3" shall read "More than 4160 hours". The corresponding hourly rates remain unchanged. In order to maintain consistency, the wage steps for all other classifications in the Board agent's report "Schedule 'A' Employee Classification and Hourly Rates of Pay" (with the exception of "Temporary Labour/Students/Unskilled") shall likewise be changed to reflect such hours worked as above rather than refer to "Year 1," "Year 2" and "Year 3." And, accordingly, the reference in the Board agent's recommendation to graduation "from year 1 to year 2 to year 3, etc." shall be deleted. In all other respects, the Board agent's recommendations as to "Schedule 'A' Employee Classification and Hourly Rates of Pay" are confirmed including the bonus to be paid upon implementation of the Agreement.

[26] The Union shall prepare a final draft of the collective agreement in accordance with the terms already agreed to and these Reasons within 30 days of the date of these Reasons to be signed by the parties. The Board retains jurisdiction to adjudicate any dispute between the parties as to the wording of the agreement upon application by either party. Should either party refuse to sign the final draft, and if neither party has applied to the Board to adjudicate a dispute regarding wording within 30 days of the delivery of the final draft of the agreement by the Union to the Employer, the final draft shall be deemed to be in force from that date and shall be implemented forthwith.

DATED at Regina, Saskatchewan this **16th** day of **December, 2003.**

LABOUR RELATIONS BOARD

James Seibel,
Chairperson