The Labour Relations Board
Saskatchewan

SCOTT CAVANAGH, Applicant v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1975 AND UNIVERSITY OF SASKATCHEWAN STUDENTS' UNION, Respondents

LRB File No. 047-03; April 17, 2003
Chairperson, Gwen Gray, Q.C.; Members: Marshall Hamilton and Maurice Werezak

For the Applicant:	Scott Cavanagh
For the Union:	Colleen Leier
For the Employer:	Clint Weiland

Vote – Eligibility – Decertification – Collective agreement contains right of recall for laid-off employees – Board finds employees who recently stopped working and who expressed intention to return to work, are employees for purpose of statement of employment – Statement of employment should not list employees who stopped working some time ago and/or are not available to vote due to lack of sufficient connection with workplace and/or potential quorum problems.

Decertification – Interference – Key organizer of application son of lawyer for employer – Fact of relationship by itself insufficient to establish employer influence where no evidence that organizer assisted in efforts by lawyer.

Decertification – Interference – Employer provided seniority list to organizer of application – Seniority list generally available to employees and used for variety of purposes - Employer's provision of seniority list to organizer of application does not, in itself, constitute advice or influence by employer.

Decertification – Interference – Some card signing took place in office used by managers – Managers not generally on premises when student employees on duty – Manager not aware that card signing taking place in workplace – Fact that card signing took place in office insufficient to establish employer influence or interference.

Decertification – Interference – In response to questions, general manager advised employees that employment benefits would not change if rescission application granted – General manager cannot guarantee that employer will not make changes, but responded to questions asked by employees in a manner that she considered to be truthful – General manager's comments not employer influence or interference.

Decertification – Interference – Applicant received award of excellence from employer – Coincidence of receiving award at time rescission application filed might suggest that employer rewarding applicant for bringing application, however, additional evidence of benefit or gain to applicant arising out of award necessary to establish employer interference.

Decertification – Interference – Union argues that applicant failed to demonstrate cogent reasons for bringing application for rescission, however, union did not cross-examine applicant on this matter – Union must establish applicant's reasons or lack thereof for bringing application in order to make this argument.

***The Trade Union Act,* ss. 5(k), 6 and 9.**

REASONS FOR DECISION

Background:

[1] Scott Cavanagh applied for rescission of the certification Order granted to Canadian Union of Public Employees, Local 1975 (the "Union") with respect to employees of the University of Saskatchewan Students' Union (the "Employer"). The Union was certified originally in 1982 for employees of the Place Riel Society, the predecessor of the current Employer. The last collective agreement has an effective date of May 1, 1999. The rescission application was filed on March 26, 2003, within the open period.

Facts and Analysis:

[2] There are two main issues raised in this application. First, the parties disagree over the employees who are eligible to be listed on the statement of employment. The Union raised questions concerning fourteen employees who were excluded from the statement of employment filed by the Employer. Second, the Union argues that the Employer has improperly influenced or interfered with the application, contrary to s. 9 of *The Trade Union Act,* R.S.S. 1978, c. T-17 (the "*Act*"). The Board will address both issues.

Statement of Employment:

[3] The statement of employment is an important document in the processing of any application for certification or rescission. The Board relies on the document to accurately set forth the names of employees who are entitled to take part in the determination of the representation issue.

[4] In the present case, a large part of the bargaining unit is composed of casual employees, many of whom are students. In these circumstances, it is often difficult to determine whether casual employees should be considered to be employees or not, given their often infrequent attendance at work. When dealing with casual employees in relation to certification applications, the Board considers whether or not the individual has a reasonable tangible employment relationship with the employer in order to determine if the individual should be included on the statement of employment: see *Canadian Union of Public Employees, Local 3077 v. Lakeland Regional Library Board,* [1987] Oct. Sask. Labour Rep. 74, LRB File No. 116-86. Often, the Board measures the amount of time spent by the employee at work over a pre-determined period immediately prior to the filing date of the certification application against a pre-determined standard in order to obtain a measure of the significance of the employment relationship. In the *Lakeland Library Board* case, the Board applied the standard of 30 hours over the course of the 12 month period prior to the filing of the certification application as the measure for determining employment status.

[5] In the context of a rescission application, however, casual employees may have continued employment status as a result of provisions contained in the collective agreement. In the present case, the collective agreement provides as follows:

> ***1.1.3 Less than Full-Time Employees***
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> *A less than full-time employee is an employee other than a permanent part-time employee who works less than full-time. Whenever possible, these employees shall be students at the University of Saskatchewan. Student employees shall be required to make their intentions of employment known each year by April 30th and are also required to update their application for employment upon return in the fall. Termination of less than full-time employees, who have not successfully completed their*

> *probationary period as provided in Article 9.1 are not subject to the grievance procedure.*
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> (emphasis added)

[6] Glen Ross, former president of the Union and a member of the negotiation committee for the employees at the Employer, testified that the underlined words were added in the last round of collective bargaining at the request of management to provide a mechanism for students to inform the Employer of their intent to return. The bargaining unit is composed primarily of students who work on a less than full-time basis in the Louis' Bar and Restaurant. They generally leave campus in April to take other summer employment and return in September. Mr. Ross indicated that if they "quit" their employment at Louis' they do not retain their seniority; however, if they give notice to the Employer of their intent to return, they retain their right to work at Louis' in September. Jason Kovitch, beverage manager at Louis', also indicated that, at the present time, he was trying to get students to indicate if they were planning to return to work in the Fall.

[7] As indicated, at the time of the hearing of this application, there were fourteen casual employees whose status as employees was in dispute between the parties. At the hearing, the Employer submitted evidence of written resignations from two of this group of employees (Lindsay Roenspies and Margaret Trocha). We find that these employees have clearly resigned and have lost any rights to further employment under the terms of the collective agreement.

[8] Mr. Kovitch testified that he had spoken with several of the remaining employees. He indicated that it is rare for the casual employees to provide written notice of resignation. Generally, they give notice by telling their supervisors.

[9] In relation to Lesli Anderson, Mr. Kovitch indicated that she told another manager that she was quitting. He then spoke with her on her second last shift and was informed by her that the next Monday would be her last shift (March 17, 2003).

[10] Mr. Kovitch testified that he overheard a conversation between Michael Anderson and the new manager that Mr. Anderson was returning home to Calgary and, as a result, would no longer be working at Louis'. His last shift was in December, 2002.

[11] Mr. Kovitch testified that James Dessouki told him that he was no longer able to work at Louis'. His last shift is recorded as September 29, 2002.

[12] According to Mr. Kovitch, Amber and Amy Dodds and Sarah Frey all quit their employment at Louis' when they obtained work at a different restaurant. They informed Mr. Kovitch in December, 2002 that they would not be returning in January, 2003. Their recorded last dates of work are December 6, 2002 for Amber and Amy Dodds and December 9, 2002 for Ms. Frey.

[13] Nathan Hoffart, according to Mr. Kovitch, stopped coming to work his regular schedule in February, 2003. Mr. Kovitch has been unable to contact Mr. Hoffart.

[14] Jenelle Kildaw worked until Christmas and then informed Mr. Kovitch that she was taking the next semester off. At that time, she informed him that she might return to work in September. Subsequent to the hearing, Mr. Weiland, counsel for the Employer, provided the Board with a copy of a letter from Ms. Kildaw indicating that she hoped to return to a part-time position at Louis' in the Fall.

[15] According to Mr. Kovitch, Jessica Luc quit her employment. The Employer's records indicate that she quit on March 20, 2003. Mr. Kovitch indicated that Ms. Luc had come into the workplace two hours before a scheduled shift and informed the student supervisor that she would not be working. He also indicated that he has seen Ms. Luc since that time and she indicated to him that she quit her job. On cross-examination, Mr. Kovitch indicated that he would be surprised if Jessica came back in the Fall. He agreed that it was possible that Jessica had quit for the normal seasonal reasons and did intend to return to work in the Fall.

[16] Mr. Kovitch testified that Robert Nesdole indicated in a meeting that he was not cut out for serving and he quit his employment. The Employer's records indicate that his last shift was February 4, 2003.

[17] In relation to Jason Schell, Mr. Kovitch indicated that Mr. Schell told another manager that he was quitting his job. Mr. Kovitch later confirmed that directly with Mr. Schell. His last shift is recorded as March 21, 2003.

[18] Mr. Kovitch also indicated that Erin Warner quit her employment. Her last shift is recorded as February 27, 2003.

[19] On cross-examination of Mr. Kovitch, the Union's representative, Colleen Leier raised the issue of whether employees who quit their employment were aware of their right to provide the Employer with notice of their intention to return to work in the Fall.

[20] In relation to this issue, the evidence at the hearing was less than satisfactory. As a result, subsequent to the hearing, the Board's Investigating Officer contacted as many of the fourteen individuals, whose status is in dispute, as was possible by telephone to inquire into the circumstances of their employment at Louis' and their intentions to return. The Investigating Officer related the results of the conversations to the parties by fax. At the same time, the Investigating Officer asked the parties to indicate if they would agree to allow the Board to consider the facts set out in his report as evidence in the hearing. The parties agreed to do so. The Board took this step as a mechanism for ensuring that it had accurate information on the status of the individuals in question prior to determining their employment status.

[21] The additional information indicates clearly that Mr. Hoffart, Ms. Anderson, Ms. Amber Dodds, Ms. Amy Dodds and Ms. Warner have quit their employment at Louis' and do not intend to return in the Fall.

[22] The Investigating Officer was unable to reach Ms. Kildaw directly but she did express her intention to return in her letter to the Employer referred to earlier. Mr. Anderson indicated that he was offered an opportunity to return when he left in December and that he would be letting the Employer know his intention to return before April 30, 2003. Mr. Schell indicated to the Investigating Officer that he quit "about three Fridays ago" after giving one week's notice because the Employer had cut his hours. He

was mad about the change in hours and was unsure if the Employer would hire him back. He thought that he would let the Employer know by April 30, 2003 if he intends to return in the Fall. Mr. Nesdole indicated that he was "released due to poor management." Mr. Cavanagh indicated in response to the Board that Mr. Nesdole had been released during his probationary period. Mr. Dessouki's spouse told the Investigating Officer that it was unlikely that Mr. Dessouki would return in the Fall as he is too busy. The Investigating Officer was unable to obtain any information regarding Ms. Frey.

[23] In *Ennis v. Con-Force Structures Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 1985; Construction and General Workers, Local 180 v. Con-Force Structures Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 1985,* [1992] 4th Quarter Sask. Labour Rep. 117, LRB File Nos. 185-92 & 188-92, the Board at 121 set forth the general rule for determining eligibility on rescission applications where employees have rights of return under collective agreements as follows:

> *The only reported decision in which the Saskatchewan Board has considered the eligibility of laid-off employees who have unexpired recall rights under a collective bargaining agreement is Northern Telecom Company Ltd. (1985) October, Sask. Labour Rep. 31. In this decision, the Board neither ruled out, nor unconditionally accepted, the proposition that laid-off employees with unexpired recall rights are eligible to vote. The Board considered the practice in British Columbia, Ontario and in the federal jurisdiction, as it existed at that time, and stated:*
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> > *Although a right of recall under a collective agreement is an important factor to be considered when determining if laid-off employees retain a sufficient continuing interest in the bargaining unit so as to justify their continued participation in the representation question, that factor may be displaced by persuasive evidence that the employees will not likely ever have the opportunity to exercise their contractual rights.*
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> > *In the present case, considering the length of the lay-offs and the forecast for the company's future, the Board is satisfied that all of the laid-off employees have no reasonable expectation of rejoining the bargaining unit. Notwithstanding their unexpired recall rights, the Board has concluded that*

> *they lack a sufficient continuing interest in the bargaining unit, and should not be considered employees.*
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> *It is evident from this passage that the Board accepts that long-term employees build up a tangible and valuable interest in their employment and the question of which union, if any, will represent them, and that this interest does not dissipate just because they happen to be laid off when the application was filed, or when the vote was held, or on both dates. At the same time, the Board recognized that the very interest which it is attempting to protect, could actually be injured if the Board permitted every employee with unexpired recall rights to vote, regardless of any other factors. That is why this Board, like the Ontario, British Columbia and Canada Labour Relations Boards, has indicated that it will take into consideration evidence which establishes that, notwithstanding an employee's contractual recall rights, he has no significant continuing interest in the representation question. In Northern Telecom, the Board applied those considerations and refused eligibility status when it was established that, notwithstanding the employees' contractual right, there was no true prospect of recall.*
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> *There is another reason why the Board must be careful about extending voting rights to any employee who has unexpired recall rights under a collective bargaining agreement. Section 8 of The Trade Union Act provides that a majority of the employees eligible to vote shall constitute a quorum. Accordingly, the Board must be careful to ensure that the voting constituency does not include a large number of persons who are not reasonably likely to vote. If this precaution is not taken, it might be extremely difficult to achieve a quorum.*

[24] In the present case, the Employer regularly re-hires students who return to the University in the Fall and this is, no doubt, a benefit for both students and the Employer. The collective agreement enshrines the practice in the notice requirements set out in Article 1.1.3. In our view, the employees who have recently stopped working and who expressed some intention of returning to work, ought to be considered employees for the purpose of this application. These employees have until April 30, 2003 to make their decision known to the Employer. Accordingly, the Board finds that Ms. Luc and Mr. Schell fit this category and they will be added to the statement of employment.

[25] Mr. Anderson, Mr. Dessouki and Ms. Kildaw all stopped working at Louis' prior to January, 2003. Although they may have rights under the collective agreement to enable them to return in the Fall, we find that their connection with the workplace at this time is too remote to consider them employees for the purpose of the representation question. Two of the three are not available to vote due to their absence from Saskatoon and their inclusion could potentially cause quorum problems on a vote. They will not be included on the statement of employment.

[26] We find that Ms. Anderson, Ms. Amber Dodds, Ms. Amy Dodds, Ms. Frey, Mr. Hoffart Mr. Nesdole, Ms. Roenspies, Ms. Trocha and Ms. Warner are no longer employees. Our determination in relation to Ms. Frey is based on the evidence of Mr. Kovitch, which indicated that she had obtained work elsewhere and had quit her employment at Louis'.

[27] As a result of this determination, there are 91 employees in the bargaining unit. The applicant has filed support from a majority of those employees.

Employer Interference:

[28] The Board must also decide on this application if the application was made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by, the Employer or Employer's agent contrary to s. 9 of the *Act.*

[29] The Union points to a number of factors to support its argument that the Board should dismiss the application as a result of improper employer influence or interference.

[30] First, the Union noted that a key organizer of the rescission application was Steve Seiferling, who is the son of Larry Seiferling, Q.C. Mr. Larry Seiferling is a labour lawyer and normally represents the Employer in its arbitration and labour relations matters. Mr. Weiland, who appeared as counsel for the Employer in these proceedings, works with Mr. Larry Seiferling. The evidence also indicated that Mr. Steve Seiferling obtained an up-to-date seniority list from the Employer's confidential secretary.

According to the Union, his list of employees was more accurate than the one provided by the Employer to the Union.

[31] Leslie Harden, general manager of the Employer, was not sure which list Mr. Steve Seiferling received as the Employer had prepared two seniority lists within a short time span. The first list, which was prepared at the request of the Union, contained 103 names, while the second one contained 85 names. The Applicant noted in the rescission application that there were approximately 85 employees in the bargaining unit. The coincidence of this estimate with the production of a new seniority list shortly after the Employer had provided a seniority list caused the Union to be suspect that the Employer was assisting with the rescission effort.

[32] Ms. Harden denied any suggestion that the second list had been prepared for improper purposes. She testified that the first list was provided to the Union as a result of a request forwarded to her from the Local President. After this list was provided to the Union, Ms. Harden reviewed the list with the management at Louis' and removed names of individuals who had resigned their employment. The second list was provided to the Union on April 3, 2003, after the application for rescission was filed with the Board.

[33] Neither Mr. Steve Seiferling or the confidential secretary testified at the hearing. There is no direct evidence before the Board that Mr. Steve Seiferling was assisted in his efforts by Mr. Larry Seiferling. Outside of the relationship between the two individuals, there is no circumstantial evidence that would lead the Board to infer that the application was made on the advice of or as a result of influence by Mr. Larry Seiferling. We note that Mr. Steve Seiferling has been an employee at Louis' for some time and no previous attempt had been made to decertify the Union. In our view, the evidence arising from the relationship between the Seiferlings is insufficient to establish employer influence.

[34] In relation to the Employer's provision of a seniority list to Mr. Steve Seiferling, Ms. Harden testified that the Employer informally knew the purpose of providing the list to Mr. Steve Seiferling – that is, to enable the organizers of the rescission application to obtain a statement of employees presumably for the purpose of

ensuring a sign up of majority support. The Board dealt with a similar circumstance in *Saranchuk v. United Steelworkers of America and Capital Pontiac Buick Cadillac GMC Ltd.,* [1998] Sask. L.R.B.R. 756 at 763 as follows:

> *USWA was also concerned that Capital influenced or interfered in the making of this application by providing Mr. Saranchuk with the list of employees, including occupations, addresses and telephone numbers. Mr. Saranchuk testified that he simply asked for a list without explaining why he needed a list of employees. Mr. Lunn testified that he thought it was proper to provide employees with the seniority list when there was no shop steward in the workplace. Mr. Lunn acknowledged, however, that he suspected the list was being used by Mr. Saranchuk to obtain support for the rescission application although he denied having any direct knowledge of the application. Mr. Saranchuk testified that the list was not totally up-to-date, in any event, as it contained the names of employees whom he knew had resigned their employment.*
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> *The Board does not conclude from this evidence that Capital improperly influenced or interfered with the application. Normally, the seniority list would be posted in the workplace and would be available on a bulletin board for employees to copy. Mr. Lunn concluded that, in the absence of a shop steward, he was required to provide the information to USWA members who requested it. In the absence of a shop steward, Mr. Lunn's conclusion does not appear to be unreasonable. There is no evidence that he was selective in choosing which employees he would assist by providing them with the seniority list. We would assume that USWA, on request, would be provided with the same information.*

[35] We are of the same view in this instance. The seniority list is generally available to employees and can be used by them for a variety of purposes. The provision of the list to employees in the circumstances of a rescission application does not, in itself, constitute advice or influence. Ms. Harden explained the circumstances of preparing two seniority lists in short order and there was no suggestion in her evidence or in cross-examination that the purpose of the second list was to assist the rescission effort.

[36] The third matter raised by the Union in relation to employer influence relates to the signing of rescission support cards in the manager's office on work time. Nancy Bassendowski testified that she was approached at work by Mr. Steve Seiferling and Deidre Halbgewachs, both student supervisors, to speak to them after her shift.

She met with them at the elevators and was told that they were trying to get everyone to sign something to get rid of the Union. Ms. Bassendowski testified that she asked Mr. Steve Seiferling what would change without the Union and she recalled that he said nothing would change except that employees would make more money because they would not pay union dues. Ms. Bassendowski went to the manager's office with Mr. Steve Seiferling and Ms. Halbgewachs to sign a support card for the application.

[37] The office is used by the beverage and kitchen managers and the student supervisors when they are on shift. Staff members have limited access to the office to obtain swipe cards and floats at the beginning and end of shifts. Keys are kept by the managers and by student supervisors, when they are on duty. Ms. Bassendowski testified that the forms used for support cards were kept in a file cabinet in the office. A second employee, Joseph Adjei-Nimah also testified that he signed a support card in the manager's office.

[38] Mr. Kovitch testified that he had no knowledge that the student supervisors were using the office to sign support cards for the rescission application. He indicated that the filing cabinet apparently used to store the forms was one that was used for storing seldom used items, like cords and brackets. He indicated that he and other managers are not generally on the premises when the student supervisors are on duty; as a result, he would not see the card signing going on in the office. Mr. Kovitch knew that card signing was going on but he did not know that it was taking place in the workplace.

[39] Again, the Union is asking the Board to draw an inference from these facts that the Employer has supported or influenced the filing of the rescission application. We find that the facts do not support the drawing of the inference. The student supervisors had access to the office. It is rare for a manager to be present when student supervisors are on duty. There is no evidence that suggests that the Employer permitted the card signing to take place in the office or approved of the use of the office for such purpose. Without some additional evidence, the fact that card signing took place in the office is insufficient to establish employer influence or interference.

[40] The fourth aspect of the Union's arguments on employer influence relate to comments made by the general manager during the rescission campaign. The Union alleges that Ms. Harden told employees that there would be no changes in the benefits and working conditions if the Union was removed.

[41] Glenda Graham, president of the Union, testified that she attended at the Employer's place of business on April 5, 2003, to be present during the taking of specimen signatures for the statement of employment. One employee who attended to sign the statement of employment asked her what would happen to the full-time employees. Ms. Graham indicated to her that the collective agreement was the only thing that protected the benefits and wages of employees. When the employee asked again, Ms. Harden told her that the Employer cannot go back on wages and take away benefits as it was against *The Labour Standards Act*, R.S.S. 1978, c. L-1.

[42] Ms. Graham indicated that she then went and checked with her Union representative to see if that was the case and was informed that it was not the case. At the next signing session, she informed Ms. Harden that she had been mistaken regarding her opinion to the employee and that there was no guarantee in *The Labour Standards Act* regarding continuing the employees' benefits and wages. Ms. Harden indicated that she had been advised differently by her lawyer.

[43] Rhonda Heisler, first vice-president of the Union, testified that she attended the signature taking for the statement of employment at the Employer's place of business on Friday, April 4, 2003. Ms. Heisler testified that Ms. Harden informed an employee that she (Ms. Heisler) was present on behalf of the Board. Ms. Heisler corrected Ms. Harden and informed the employee that she was there on behalf of the Union. During the discussion, the employee asked if signing the form meant that he wouldn't get his raise. Ms. Heisler testified that she told him words to the effect that the only thing guaranteeing his raise was the collective agreement. According to Ms. Heisler, Ms. Harden interjected by telling Ms. Heisler that she was misleading the employee. Ms. Heisler then took the employee out of the room to discuss the matter with him. She reported that Ms. Harden walked by them two times and she interpreted Ms. Harden as attempting to influence the employee.

[44] The third incident relating to Ms. Harden's role was relayed by Robert Gould, a full-time caretaker at the Employer's place of business. Mr. Gould recalled a conversation with another full-time member concerning a toothache. Mr. Gould mentioned the toothache to the other employee, Mr. Campbell, and remarked that he better get it looked after before they lost their dental benefits. According to Mr. Gould, Mr. Campbell told him that everything would be okay. Mr. Campbell assured him that if anything was going to happen to their benefits, he would withdraw his support for the rescission application. However, according to Mr. Gould, Mr. Campbell indicated that he had asked Ms. Harden if benefits would be lost if the Union was decertified and he had been reassured by Ms. Harden that nothing would happen to the benefits for full-time employees. The following day, Mr. Gould reported that Mr. Campbell kept insisting that he shouldn't worry about losing benefits if the Union was decertified. The conversations between Mr. Gould and Mr. Campbell occurred after the application for rescission was filed. There is no evidence as to when the conversation took place between Mr. Campbell and Ms. Harden. The second-hand nature of this evidence is also noted.

[45] Ms. Harden indicated in her testimony that she was advised by her lawyer that she could provide accurate information to employees engaged in the rescission debate. According to her, it was not the intention of the Employer to reduce benefits for full-time employees as all full-time employees of the Employer, both union and non-union, are part of the same benefits package and nothing would be changed if the Union was decertified.

[46] Ms. Harden believed that she was providing accurate information to the employees but, on cross-examination, she did agree that the wages and work conditions would be determined by the executive of the Employer, not by her, and that she was unable to really guarantee that "nothing would change." However, she responded to questions asked by employees in a manner that she believed to be truthful. There is no evidence that Ms. Harden undertook a campaign or went out of her way to speak to employees on this subject and all reported incidents come about from questions asked by employees. In our view, however, Ms. Harden's role in this matter did not constitute influence or interference.

[47] The Union also drew the theme from the evidence that Ms. Harden and Mr. Campbell both used the phrase “nothing will change” to reassure employees that their choice to oust the Union would not result in the loss of benefits for the full-time employees. We do not find the use of this phrase to be “telling” of employer influence although it may support the conclusion that Mr. Campbell and Ms. Harden did speak about the matter. Ms. Harden was not questioned about this conversation on cross-examination.

[48] A further incident relied on by the Union was the fact that the applicant, Mr. Cavanagh, received an USSU experience in excellence award from his employer, which was announced in the Sheaf, the campus newspaper, on March 27, 2003 around the time that the application for rescission was filed. Ms. Harden explained that the recipients of this award are chosen by the student executive of the Employer from names submitted to them from anyone on campus and the award is handed out to persons who improve the spirit of students on campus. She indicated that Mr. Cavanagh was chosen by the student executive a couple of weeks prior to March 25, 2003. We find that this evidence is not sufficient to lead to an inference of employer influence or interference. The award appears to be a regular event at the Student’s Union. Student employees are also members of the student body and may be involved in various aspects of student life. The coincidence of receiving the award at the time the rescission application is filed may suggest that the Employer was rewarding Mr. Cavanagh for bringing the application. In our view, however, there would need to be some additional evidence to establish some benefit or gain for Mr. Cavanagh arising out of the award to establish an inference of employer influence.

[49] The Union also led evidence concerning a conversation between Elliott Lang, a supervising cook and member of the full-time staff at Louis’ and shop steward, and Mr. Kovitch, the beverage manager. Mr. Lang testified that he learned of the application for rescission from Mr. Kovitch at work one morning when he was having coffee with Mr. Kovitch. Mr. Lang indicated that he was discussing his recent reprimand with Mr. Kovitch and explained to Mr. Kovitch that the matter of the reprimand was now in the hands of the Union. He testified that Mr. Kovitch responded by telling him that there wouldn’t be a union much longer as they have someone heading up a decertification drive. Mr. Lang questioned Mr. Kovitch about the matter as he knew from

past experiences that an employer is not permitted to be involved with a decertification campaign and he told Mr. Kovitch as much. Mr. Lang recalled that the conversation ended abruptly. Mr. Lang also noted that Mr. Cavanagh, the applicant, and Mr. Kovitch are good friends.

[50] On cross-examination, Mr. Lang indicated that the conversation between him and Mr. Kovitch occurred in January, 2003 but he did not report it to the Union until he was asked by the Union within the last two weeks prior to this hearing. Mr. Lang explained that there was no point in raising the matter with the Union because he knew that Mr. Kovitch was not permitted to lead a rescission campaign.

[51] Mr. Lang also testified that there are many friendships among employees at Louis', including friendships with managers.

[52] Mr. Kovitch recalled the circumstances and the content of the conversation in a different manner. He recalled talking to Mr. Lang after the last increase in minimum wage. The conversation took place sometime in January, 2003. At that time, the change in minimum wage required an increase in the hourly wages of servers. He noted that the servers were complaining about receiving minimum wage and being required to pay union dues on top. He suggested to Mr. Lang that the Union should let people know what it does and that it wouldn't surprise him if people wanted to get rid of the Union. According to Mr. Kovitch, Mr. Lang responded by saying that there was bargaining opening up at the end of the year. Mr. Kovitch did not view the conversation as anything more than a normal workplace conversation about workplace complaints. Mr. Kovitch acknowledged being a friend of Mr. Cavanagh's but denied having anything to do with the rescission application.

[53] In the context of the workplace issue, that is, the low wages paid to servers, we do not find that either reported version of the conversation between Mr. Lang and Mr. Kovitch raises issues of employer influence or interference. On Mr. Lang's version, Mr. Kovitch is reporting to him on the fact of a rescission campaign. There may be some suggestion that Mr. Lang would be intimidated by this remark in the context of his pending discipline grievance but, if he was, he did not find it necessary to inform the Union's executive of the matter. Mr. Lang understood that Mr. Kovitch was indicating to

him that he (Mr. Kovitch) was leading the campaign for rescission; however, Mr. Lang's report of the conversation itself does not lead necessarily to that conclusion. We accept that Mr. Kovitch was raising the workplace problems caused by the low rate of pay for servers and their complaints about having to pay union dues when they were receiving minimum wage. In this context, discussion of a rescission application would not be unusual or unexpected.

[54] Finally, in its arguments, the Union argued that the Applicant had failed to demonstrate that he had cogent reasons for bringing the application for rescission. We note, however, that the Union did not cross-examine the Applicant on this matter. In relation to the onus of proof, the Union bears the responsibility for establishing some evidence from which the Board may infer that the Employer encouraged or influenced the rescission application. If the Union wants to rely on evidence relating to the Applicant's reasons or lack thereof for bringing the application, then it must establish those reasons in evidence. Generally, this is achieved by cross-examining the Applicant. In any event, in this case, the Applicant established through cross-examination of the Union's witnesses that student employees were unhappy with their wages and benefits as compared to the wages and benefits achieved by the Union for the full-time employees.

[55] On this point, Jim Holmes, regional director of Canadian Union of Public Employees, and negotiator of the last collective agreement between the Union and the Employer, testified that Ms. Harden told the Union at the bargaining table that Louis' was losing money and encouraged the Union to accept low rates of pay for the student employees. The Union was not persuaded by these representations and it took the Employer's offer to a vote expecting to receive a strike mandate from the employees. However, the student employees did not show up for the vote and the contract was accepted. Afterwards, he indicated that he was informed by Mr. Ross that Ms. Harden's information on the financial health of Louis' proved to be incorrect. Mr. Holmes' testimony suggested that the Employer's hard bargaining stance led to the circumstance where employees ended up receiving less than minimum wage under the wage rates established in the collective agreement.

[56] Overall, however, for the reasons stated, we find that there is not sufficient evidence to draw an inference of employer influence or interference.

Conclusion:

[57] The Board directs that a vote be taken among employees listed on the statement of employment and including Ms. Luc and Mr. Schell.

[58] Board Member, Maurice Werezak, dissents from these Reasons for Decision.

DATED at Regina, Saskatchewan this **17th** day of **April, 2003.**

LABOUR RELATIONS BOARD

Gwen Gray, Q.C.
Chairperson