Labour Relations Board
Saskatchewan

CITY OF NORTH BATTLEFORD, Applicant v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 287, Respondent

LRB File No. 054-01; May 22, 2003
Vice-Chairperson, James Seibel; Members: Bruce McDonald and Leo Lancaster

For the Applicant: Kevin Wilson
For the Respondent: Harold Johnson

Reconsideration – Criteria – Board discusses and applies criteria for reconsideration – Board panel which heard original application laboured under misapprehension of fact – Board's original Order operates in unintended manner – Application for reconsideration granted.

***The Trade Union Act*, ss. 5(j) and 13.**

REASONS FOR DECISION

Background and Facts:

[1] The City of North Battleford (the "City") applied, pursuant to ss. 5(j) and 13 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"), for reconsideration of part of a decision of the Board respecting the parties dated December 20, 2001, reported at [2001] Sask. L.R.B.R. 943.

[2] North Battleford Firefighters' Association, Local 1756, is the certified bargaining agent for a unit comprising full-time firefighters employed by the City. Canadian Union of Public Employees, Local 287 ("CUPE"), was certified in 1968 as the certified bargaining agent for another unit comprising most civic employees, excepting, *inter alia*, members of the fire and police departments. In the original application in LRB File No. 054-01, CUPE had applied to amend its certification Order to add 20 part-time firefighters and 3 bylaw enforcement officers employed by the City to its bargaining unit.

[3] Until 1968 the City had its own unionized police force represented by the North Battleford Policemen's Association #19 (the "Police Association") originally certified in 1961. The bylaw enforcement officers, then known as "parking meter special

constables," whose main duties include parking violation enforcement, animal control and provincial court liaison, were members of the Police Association. In 1968, the City contracted with the RCMP to provide general policing services. The bylaw enforcement officers remained as part of the Police Association until January 26, 1994 when its certification was rescinded. The bylaw enforcement officers are supervised by the City's fire chief.

[4] The Board dismissed the application to add the part-time firefighters to the bargaining unit represented by CUPE, but did amend the certification Order to add the bylaw enforcement officers. The present application by the City is for reconsideration of the latter part of the Board's decision to add the three bylaw enforcement officers to the bargaining unit without consideration of whether there is majority support for CUPE among them.

[5] At the original hearing, the City admitted that the bylaw enforcement officers had a community of interest with other members of the existing CUPE bargaining unit, but took the position that the Union must demonstrate majority support of the employees to be added to the bargaining unit.

Arguments:

[6] Counsel for the City, Mr. Wilson, argued that for whatever reason the Board in its original decision had assumed that the City did not object to the addition of the bylaw enforcement officers to the existing CUPE bargaining unit. However, he pointed out that notwithstanding that he had taken the position on behalf of the City in oral argument that CUPE must demonstrate majority support of the bylaw enforcement officers for the addition to the bargaining unit, the reply to the application and the written argument filed on behalf of the City at the original hearing clearly made that point. Counsel asserted that the Board's Order operated in an unanticipated manner in that it "swept in" persons who were specifically excluded from the CUPE bargaining unit when it was originally certified without determining the wishes of the majority of such persons. He also argued that the Board's ruling is precedential and amounts to a significant policy change which the Board may wish to reexamine.

[7] Counsel for CUPE, Mr. Johnson, while agreeing that the essential facts regarding the bargaining unit structure of the City's employees and the history of the labour relations representation of the bylaw enforcement officers is as set out above, argued that the Board made no error in law in its original decision and that it ought not to reconsider its decision.

Analysis and Decision:

[8] The Board described the criteria applicable to an application for reconsideration in *Remai Investment Corporation, operating as Imperial 400 Motel v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union et al*., [1993] 3rd Quarter Sask. Labour Rep. 103, LRB File No. 132-93, as follows, at 107-108:

> *Though the Board has the power under Section 5(i) to reopen decisions it has arrived at, this power must be exercised sparingly, in our view, and in a way which will not undermine the coherence and stability of the relationships which the Board seeks to foster.*
> *. . .*
>
> *In the three jurisdictions we have alluded to above - Canada, British Columbia and Ontario - the recognition of the need to balance the claim for reconsideration against the value of finality and stability in decision-making is reflected in the procedures adopted by labour relations tribunals. In all of them, the procedure followed in connection with an application for reconsideration departs from the procedure employed for other kinds of applications. In all three cases, the applicant is required to establish grounds for reconsideration before a decision is made whether a rehearing or some other disposition of the matter is appropriate.*
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> *We have concluded that such a two-step approach is appropriate in cases of this kind. We do not agree with counsel for the Employer that we were mistaken in requiring that an applicant who seeks reconsideration of a decision of the Board must persuade us that there are solid grounds for embarking upon that course.*
> *. . .*
>
> *In other jurisdictions, particularly in British Columbia, there has been extensive discussion of the criteria which labour relations boards might use to determine whether an applicant has been able to establish that there are grounds which justify the reopening of a decision. In their decision in the case of Overwaitea Foods v. United Food and Commercial Workers, No. C86/90, the British Columbia Industrial Relations Council set out the following criteria:*

> *In Western Cash Register v. International Brotherhood of Electrical Workers, [1978] 2 CLRBR 532], the Board articulated four criteria in which it would give favourable consideration to an application for reconsideration. Subsequent decisions (Construction Labour Relations Association of British Columbia, BCLRB No. 315/84, and Commonwealth Construction Co. Ltd., BCLRB No. 61/79, [1979] 3 Can LRBR 153), added a fifth and sixth ground:*
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> 1. *If there was no hearing in the first instance and a party subsequently finds that the decision turns on a finding of fact which is in controversy and on which the party wishes to adduce evidence; or,*
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> 2. *if a hearing was held, but certain crucial evidence was not adduced for good and sufficient reasons; or,*
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> 3. *if the order made by the Board in the first instance has operated in an unanticipated way, that is, has had an unintended effect on its particular application; or,*
>
> 4. *if the original decision turned on a conclusion of law or general policy under the Code which law or policy was not properly interpreted by the original panel; or,*
>
> 5. *if the original decision is tainted by a breach of natural justice; or,*
>
> 6. *if the original decision is precedential and amounts to a significant policy adjudication which the Council may wish to refine, expand upon, or otherwise change.*

[9] As explained by the Ontario Labour Relations Board in *Volta Electrical Contractors Ltd.*, [2000] OLRB Rep. Sept./Oct. 1041, the policy behind such a restrictive approach to reconsideration is to accord a serious measure of certainty and finality to the decisions of the Board, while affording "a fulsome degree of flexibility to respond to exigencies of fact and circumstance which may militate against the continued governance of determinations earlier made." At para. 39, the Ontario Board described the purpose of the reconsideration discretion as follows:

> *A request for reconsideration is not a hearing de novo and is not an appeal. It is not an opportunity for a party to reargue a case, raise new arguments or present new evidence. The power to reconsider is typically invoked by the Board solely to allow important policy issues to be addressed, evidence or law that would make a substantial difference to the case that was not previously available to be presented, or errors to be corrected.*

[10] The application by the City for reconsideration of part of the Board's decision is based essentially upon the third, fourth and sixth grounds enunciated in *Western Cash Register*, *supra*.

[11] We have not reviewed a transcript of the *viva voce* evidence adduced at the hearing. However, counsel for CUPE did not disagree with the facts as outlined by counsel for the City on this application as concerns the history of the representation of the bylaw enforcement officers in collective bargaining as summarized above. And we note that counsel for the City is quite right in pointing out that at least the reply and written argument filed on the original hearing sets out the position of the City that any inclusion of the bylaw enforcement officers in the CUPE bargaining unit ought to be subject to the demonstration of majority support for CUPE among that group of individuals.

[12] The panel of the Board that heard the original application for the amendment to add the bylaw enforcement officers appears to have laboured under the misapprehension of fact that the bylaw enforcement officers were members of a new classification that the City had created since the original certification of the CUPE bargaining unit in 1961, in which case it would not have been necessary to establish such majority support. However, as counsel for the parties agree, this is not the case. We appreciate the integrity of counsel for the Union in admitting that the facts governing the issue are as stated above, despite the fact that the correction of the Board's error is against his client's interest.

[13] Accordingly, we have determined that the present application falls within the third criterion for reconsideration in that the Board's original Order in LRB File No. 054-01 as concerns the addition of the bylaw enforcement officers to the CUPE bargaining unit operates in an unintended manner. Review of the evidence of support

filed on the original application demonstrates that there is not majority support for the union among the bylaw enforcement officers and they ought not to have been added to the bargaining unit.

[14] The application is granted and the Order will be amended accordingly.

DATED at Regina, Saskatchewan this **22nd** day of **May, 2003.**

LABOUR RELATIONS BOARD

James Seibel,
Vice-Chairperson