

**The Labour Relations Board
Saskatchewan**

INTERNATIONAL UNION OF OPERATING ENGINEERS HOISTING & PORTABLE & STATIONARY, LOCAL 870, Applicant v. RURAL MUNICIPALITY OF MEOTA NO. 468, Respondent

LRB File No. 054-03; July 22, 2003

Chairperson, Wally Matkowski; Members: Gerry Caudle and Clare Gitzel

For the Applicant: Gary Bainbridge

For the Respondent: Kevin Wilson

Collective agreement – First collective agreement – Appointment of Board agent in application for first collective agreement assistance not automatic - Board confirms general practice of appointing Board agent to make recommendations to Board as to whether Board intervention in first collective agreement appropriate and, if so, as to appropriate terms for Board to impose – Board appoints Board agent.

The Trade Union Act, s. 26.5.

REASONS FOR DECISION

Background:

[1] International Union of Operating Engineers Hoisting & Portable & Stationary, Local 870 (the “Union”) was certified to represent employees of the Rural Municipality of Meota No. 468 (the “Employer”) on June 20, 2002. The parties met for the purpose of bargaining a collective agreement on approximately 10 occasions prior to the filing of this application, with the last meeting occurring on March 7, 2003. The Employer submitted its final proposal to the Union on March 18, 2003. This proposal was rejected by the membership and the Union thereafter held a strike vote, where a majority of the employees voted for a strike.

[2] The Union filed this application for assistance in concluding a first collective agreement with the Board on April 4, 2003.

[3] The Employer acknowledges that the Union has taken a strike vote as contemplated by s. 26.5(1)(c) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”), but states in its reply that this is not an appropriate case for the Board’s intervention pursuant to s. 26.5 of the Act.

[4] The matter was heard in Saskatoon on July 10, 2003.

Relevant statutory provision:

[5] Section 26.5(1) of the Act reads as follows:

26.5(1) Either party may apply to the board for assistance in the conclusion of a first collective bargaining agreement, and the board may provide assistance pursuant to subsection (6), if:

(a) the board has made an order pursuant to clause 5(a), (b) or (c);

(b) the trade union and an employer has bargained collectively and have failed to conclude a first collective bargaining agreement; and

(c) any of the following circumstances exist:

(i) the trade union has taken a strike vote and the majority of those employees who voted have voted for a strike;

(ii) the employer has commenced a lock-out; or

(iii) the board has made a determination pursuant to clause 11(1)(c) or 11(2)(c) and, in the opinion of the board, it is appropriate to assist the parties in the conclusion of a first collective bargaining agreement pursuant to subsection (6).

Arguments:

[6] Counsel for the Union asked the Board to follow its normal practice and appoint a Board agent to investigate the differences between the parties on the first collective agreement and to report to the Board as to whether the Board should intervene by way of imposing a first collective agreement.

[7] Counsel for the Employer, while recognizing the Board's normal practice of appointing a Board agent in this type of situation, nonetheless argued that the appointment of a Board agent by the Board should not be automatic and that, in this instance, a Board agent should not be appointed. Counsel argued that the parties had made a tremendous amount of progress while bargaining. Counsel conceded that two significant matters remained outstanding, namely wages and contracting out, but argued that these two major outstanding items did not require the appointment of a Board agent.

Analysis:

[8] The Board has set out its approach to the first collective agreement provisions contained in s. 26.5 of the *Act* in a number of decisions, including *National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) v. Saskatchewan Indian Gaming Authority Inc.*, [2001] Sask. L.R.B.R. 704, LRB File No. 092-00 (the "SIGA decision"). In the SIGA decision, the Board states at 707 and 708:

[7] Over the course of hearing first collective agreement applications, the Board has instituted a practice of appointing Board agents, who generally are senior labour relations officers from the Labour Relations, Mediation and Conciliation Branch, Saskatchewan Labour, to carry out two main tasks: (1) to assist the parties to conclude a first collective agreement; and (2) after a certain number of days, to report to the Board on (a) whether or not the Board should intervene in the collective agreement dispute; and (b) if so, what collective agreement terms should be imposed by the Board. If the Board agent is successful in assisting the parties to conclude a first collective agreement, the Board is informed by the parties that settlement has been reached and the application before the Board for first collective agreement assistance is withdrawn by the party who filed the application. Where the Board agent is not able to assist the parties to resolve all of the outstanding issues, the Board agent will file his or her report with the Board indicating, first of all, his or her opinion on whether the Board should intervene in the dispute and, if so, on what terms. The parties are provided a copy of the Board agent's report by the Board and are asked to advise the Board if they agree or disagree with the Board agent's recommendations, and if so, which recommendations. A hearing is then held by the Board to determine (1) should the Board intervene in the dispute (if this remains an issue between the parties); and (2) if so, what collective agreement terms should the Board impose. In relation to the second issue, the Board directs the parties to focus on the question of why the Board agent's recommendations should not be imposed.

[8] As a result of the practice of appointing Board agents, the Board is provided with recommended terms of settlement from a neutral third party who has been in discussion with the parties and who has a good ability to judge (a) where the parties would settle, if settlement could be achieved; and (b) what is fair and reasonable in the circumstances.

[9] In the SIGA decision, the Board also states at 711:

[11] There are two stages to the process of hearing an application for first collective agreement assistance under s. 26.5 of the Act. In the first stage, the Board must determine if it will provide assistance to the parties. In order to determine this question, the Board must initially determine that

the factors listed in subparagraphs (a), (b), and (c), are present before proceeding further with the application.

[10] In the case presently before the Board, the Board will follow the practice described in the SIGA decision. The Board, by appointing a Board agent, is not making a determination to intervene to assist the parties to conclude a first collective agreement. The Board agent will be asked to make a recommendation in this regard, but the decision on this issue will be made by the Board in the event this issue remains unresolved despite the Board agent's efforts to assist the parties in the resolution of the first collective agreement.

[11] In arriving at its decision, the Board has considered a number of factors. These factors include that the parties have already had approximately ten bargaining sessions, that the parties have not utilized a mediator or conciliator, that the Employer has submitted its final proposal and that the employees have rejected same and taken a strike vote. This is not a situation where one of the parties has come to the Board without some level of effort to obtain a collective agreement.

[12] The Board will therefore grant its usual order appointing a Board agent for the purpose of assisting the parties to achieve a first agreement, and failing agreement, to report to the Board on two questions: (1) should the Board intervene in the dispute or should the parties be left to their own devices; and (2) if the Board agent concludes that the Board ought to intervene, what terms should the Board impose on the parties. The Board agent will be granted a period of 60 days from the date of the Order to provide his or her report to the Board. If further time is required to resolve the matter, the Board agent may seek an extension of time from Vice-Chairperson Matkowski.

[13] Finally, the Board accepts counsel for the Employer's assertion that it is not "automatic" that the Board appoint a Board agent upon the application of either party, pursuant to s. 26.5 of the *Act*. For example, in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Boardwalk Equities (Sask.) Inc.*, [2002] Sask. L.R.B.R. 224, LRB File No. 150-01, the Board refused to appoint a Board agent where the parties had already exhausted conciliation. The Board held that it would not exercise its discretion and appoint a Board agent because one of the purposes in appointing a Board agent, namely to assist the parties in the resolution of a first collective agreement, could not be met. In the case presently

before the Board, the parties have not yet utilized a conciliator and it is possible that an experienced conciliator will be able to assist the parties in arriving at a first collective agreement.

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

LABOUR RELATIONS BOARD

Wally Matkowski,
Vice-Chairperson