

**Labour Relations Board  
Saskatchewan**

**UNITED STEELWORKERS OF AMERICA, Applicant v. VARSTEEL LIMITED,  
Respondent**

LRB File No. 070-03; June 26, 2003

Vice-Chairperson, James Seibel; Members: Mike Carr and John McCormick

For the Applicant: Craig Johnson

For the Respondent: Kerri Froc

**Employer – Status – Employer of less than three employees –  
Evidence that employee is union member tendered by union – Union  
represents employees of more than one employer – Board  
concludes that employer is “employer” within meaning of s. 2(g) of  
*The Trade Union Act*.**

***The Trade Union Act*, ss. 2(g), 5(a), 5(b) and 5(c).**

**REASONS FOR DECISION**

**Background:**

[1] United Steelworkers of America (the “Union”) applied, pursuant to ss. 5(a), (b) and (c) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”) to be certified as the bargaining agent for a proposed unit of employees of Varsteel Limited (the “Employer”) comprising all employees in Estevan, Saskatchewan except office staff, salespersons, branch manager and those above the rank of branch manager.

[2] In its application filed with the Board on April 25, 2003 with ostensible evidence of majority support, the Union estimated there was one employee in the proposed bargaining unit. The Employer filed a statement of employment listing one employee. The reply filed by the Employer, however, objected to the application in the following terms:

*. . . only one employee is sought to be designated as an appropriate bargaining unit. While Varsteel Limited acknowledges that the United Steelworkers of America includes among its membership employees of more than one employer, it has no knowledge as to whether the one employee [employee name] sought to be designated as an appropriate bargaining unit in the present application, was a member of the applicant Union as at April 25, 2003, being the date of the application for certification. Such information is necessary to determine whether or not*

*Varsteel Limited is an "employer" within the meaning of s. 2(g)(ii) of The Trade Union Act . . . Varsteel Limited therefore requires proof of the same.*

**[3]** Section 2(g) of the Act provides as follows:

2 *In this Act:*

(g) "employer" means:

(i) *an employer who employs three or more employees;*

(ii) *an employer who employs less than three employees if at least one of the employees is a member of a trade union that includes among its membership employees of more than one employer;*

(iii) *in respect of any employees of a contractor who supplies the services of the employees for or on behalf of a principal pursuant to the terms of any contract entered into by the contractor or principal, the contractor or principal as the board may in its discretion determine for the purposes of this Act;*

*and includes Her Majesty in the right of the Province of Saskatchewan*

**Evidence:**

**[4]** Craig Johnson has been an organizer with the international Union for one and a half years and a member of the Union for eight years. He conducted the organizing of the Employer in the present case. He testified that, when a person signs a membership card for the Union, he or she is accepting an offer of membership in the Union. The Union's form of application for membership, which is signed by the applicant member, witnessed and dated, provides in part as follows:

*I hereby request and accept membership in the United Steelworkers of America, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, and to enter into contracts with any employer covering all such matters,*

*including contracts which may require the continuation of my membership in the United Steelworkers of America as a condition of my employment.*

[5] The Union issues a temporary membership card to applicants at the time the application is signed that denotes that the person named thereon “is a member of United Steelworkers District 3.” The office of the international Union in Pittsburgh, Pennsylvania, USA, issues a permanent card sometime after the application is processed by that office. It is the usual practice of the Union, as provided for in its constitution, not to collect any initiation fee and to waive dues until after a first collective agreement is in place.

[6] The Union’s constitution includes certain membership eligibility requirements barring members of racist and subversive organizations. In the present case, Mr. Johnson testified that, while he did not question an applicant as to whether they belonged to such organizations, he had no reason to believe that any applicant for membership in the present case was ineligible for such reason.

[7] No evidence was called on behalf of the Employer.

**Argument:**

[8] Mr. Johnson, on behalf of the Union, relied upon the decision of the Board in *Canadian Union of Public Employees, Local 3990, v. Core Community Group Inc.*, [2000] Sask. L.R.B.R. 617, LRB File No. 015-00, to submit that the limitation contained in the definition of “employer” in s. 2(g)(ii) of the *Act* is intended to prevent the organization of one or two person workplaces into in-house associations that would lack the necessary resources to function effectively as a collective bargaining agent. This problem is abrogated if the employees become members of a larger union that represents the employees of more than one employer. Given the evidence of support filed with the application, Mr. Johnson asserted that the certification ought to be granted.

[9] Ms. Froc, counsel on behalf of the Employer, argued firstly that the Union ought to be required to follow the terms of its constitution with respect to eligibility for membership, inferring that, as the organizer did not investigate the proposed member’s eligibility, this had not been done. Secondly, counsel argued that s. 2(g) of the *Act*

required that at least one of the persons among the purported supporters of the application must be a member of an applicant union as at the date the application for certification is filed with the Board. Counsel argued that there is no evidence that such is the case in the present instance.

**Analysis and Decision:**

[10] In our opinion, the Employer in the present case is an “employer” within the meaning of s. 2(g)(ii) of the *Act*. The decision of the Board in *Core Community Group Inc., supra*, is supported by the Board’s earlier decision in *Saskatchewan Government Employees’ Union v. Immigrant Women of Saskatchewan*, [1994] 2nd Quarter Sask. Labour Rep. 125, LRB File No. 049-94, where the Board stated:

*It is our view that Section 2(g) does not preclude the granting of an application on behalf of the employees in this case. Given the view that we take of the identity of the employer in this instance, that employer would fall within Section 2(g)(i). In any event, this is a case in which the Union which has filed the application meets the criteria set out in Section 2(g)(ii); these criteria seem to be aimed at ensuring that a viable and stable bargaining relationship will be possible in a bargaining unit which includes less than three employees, by requiring that the trade union involved represent other employees than those covered by the resulting certification Order.*

[11] There is no issue that the Union includes, among its membership, employees of more than one employer. The evidence filed in support of the application demonstrates that at least one of the employees is a member of the Union. The Board has consistently treated support evidence as being highly confidential. The crux of the issue of membership is whether the union considers an employee to be a member in accordance with its usual practices – the details of the union’s internal mandate are not of great moment. The Board stated as follows in *Core Community Group Inc., supra*, at 630-31:

*The Board ... will not disclose the evidence to any party even when it can be presumed from the facts or evidence of the case that the employee supported the Union. No employee can be compelled to testify as to whether or not they support the Union. The privilege rests with the employee, not with the Union: see Saskatchewan Joint Board, Retail, Wholesale Department Store Union v. Remail Investments Corporation (Imperial 400 Motel –*

*Swift Current*), [1997] Sask. L.R.B.R. 303, LRB File Nos. 014-97 & 019-97. Nevertheless, the material filed with the Board is evidence of union membership, as is the testimony of Mr. Moran. It would seem to the Board that the best evidence of union membership comes from a representative such as Mr. Moran, who testified that CUPE accepted employees of the Employer into membership when he signed the application for membership cards that were filed with the Board. Trade unions are voluntary, unincorporated associations and the niceties of their constitutions and internal workings do not greatly concern the Board. The key factor is whether CUPE considers the employees in question to be members in accordance with the ordinary and usual practices of CUPE. This fact was clearly established by Mr. Moran in evidence.

**[12]** In the present case, the evidence of Mr. Johnson established that the Union considered the signing of the application for membership to be acceptance of an offer of membership by the Union. The terms of the temporary membership card issued immediately after signing the application indicates that the membership applicant has been accepted as a member by the Union. In the absence of any evidence of actual ineligibility for union membership, in proceedings for certification as a bargaining agent we are not particularly concerned with the details of a union's constitution regarding eligibility or the conditions upon which the union may revoke membership already granted. A union applying for certification is not required to prove a negative in such circumstances, i.e., that ostensible members of the union are not ineligible for membership under its constitution.

**[13]** The proposed bargaining unit is appropriate. The Union has filed evidence of majority support for the application. A certification Order will issue in the usual form.

**DATED** at Regina, Saskatchewan, this **26th** day of **June, 2003**.

**LABOUR RELATIONS BOARD**

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James Seibel,  
Vice-Chairperson