

**The Labour Relations Board  
Saskatchewan**

**INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA, LOCAL NO. 295, Applicant v. SASKATCHEWAN GAMING CORPORATION (Casino Regina) and PUBLIC SERVICE ALLIANCE OF CANADA, Respondents**

LRB File No. 101-02; February 20, 2003

Vice-Chairperson, Wally Matkowski; Members: Don Bell and Hugh Wagner

For the Applicant:	Merrilee Rasmussen, Q.C.
For Saskatchewan Gaming Corporation (Casino Regina):	Larry LeBlanc, Q.C.
For Public Service Alliance of Canada:	Blaine Pilatzke
For Saskatchewan Joint Board, Retail, Wholesale and Department Store Union:	Mark Hollyoak

**Certification – Carve out – Timeliness – Board determines that application for certification seeks to carve out craft unit from all employee unit – Board rules that application must be brought during open period set out in s. 5(k)(i) of *The Trade Union Act* – Board dismisses application.**

***The Trade Union Act*, s. 5(k)(i)**

**REASONS FOR DECISION**

**Background:**

[1] This is an application by the International Alliance of Theatrical Stage Employees, Moving Pictures Technicians, Artists and Allied Crafts of the U.S., its Territories and Canada, Local No. 295 (“IATSE” or the “Union”), for certification of a number of casual employees who are employed and performing duties associated with a Light and Sound Technician at the Show Lounge located in Casino Regina (the “Casino”), a complex run by the Saskatchewan Gaming Corporation (the “Employer”). The application was filed with the Board on May 31, 2002.

**Facts:**

[2] Bruce Haines, an International Representative with IATSE, Ron Thompson, an IATSE Office Representative, and Perry Smith, an IATSE member and audio technician at the Casino, testified on behalf of IATSE. Ralph Ermel, former labour relations manager for the Casino, testified on behalf of the Employer.

**[3]** The Employer is a Crown corporation established pursuant to *The Saskatchewan Gaming Corporation Act* and operates the Casino, which opened in January 1996. In June 1996, the Public Service Alliance of Canada (“PSAC”) was certified as the collective bargaining agent for a bargaining unit of “all employees employed by Saskatchewan Gaming Corporation in or in connection with the operation of Casino Regina,” with certain exceptions listed in the Board Order (LRB File No. 068-96).

**[4]** The Employer contracted out its food and beverage services at the Casino to Marwest Food Systems Ltd. (“Marwest”). In June 1996, the Saskatchewan Joint Board, Retail, Wholesale and Department Store Union (“RWDSU”) was certified as the collective bargaining agent for the bargaining unit comprising all employees of Marwest (LRB File No. 083-96). In December 1996, the Employer terminated its contract with Marwest, successfully negotiated a first collective agreement with RWDSU and has continued to have two collective agreements in place at the Casino, one with PSAC and one with RWDSU. The last PSAC collective agreement runs from June 1, 2000 to May 31, 2003.

**[5]** In 1996, the Casino operated a restaurant called the Last Spike, which housed an entertainment stage that would host occasional performers. At some time prior to the opening of the Show Lounge, the Last Spike entertainment stage was removed, but Mr. Thompson testified that IATSE members were employed casually at the Last Spike entertainment stage. Mr. Smith testified that he assisted with a show there in 1999 and thereafter, once the Casino purchased a sound system, he entered into a personal services contract with the Employer to work as an audio technician on most weekends and the odd Thursday and Sunday.

**[6]** In November 2001, the Employer opened a new entertainment center (the “Show Lounge”) at the Casino. Mr. Ermel testified that the creation of the Show Lounge resulted in additional employment opportunities at the Casino. The Employer decided to assign the additional food and beverage positions to RWDSU, while PSAC, because it represents an “all-employee” unit, would get the remainder of the positions, including those in technical classifications. The Employer considered the fact that there were already technician classifications in the PSAC collective agreement, though these Casino positions were slot machine technicians.

[7] Mr. Thompson testified that IATSE had a pool of skilled stage, sound and lighting personnel who could fill the Employer's additional employment needs at the Casino. IATSE contacted the Employer and attempted to negotiate a voluntary recognition agreement. However, by letter dated August 22, 2001, the Employer declined IATSE's voluntary recognition offer.

[8] IATSE then contacted PSAC in an attempt to arrive at some agreement regarding the casual technical positions at the Show Lounge but the two unions did not reach an agreement

[9] Unbeknownst to IATSE, the Employer and PSAC entered into a letter of understanding dated October 19, 2001, which provided that Show Lounge positions would fall within either PSAC's or RWDSU's bargaining units. The letter of understanding provides:

*The parties agree that all full time and part-time positions created in connection with the operation of the new show room, except for food and beverage services, shall fall within the scope of the PSAC bargaining certificate and collective agreement.*

*The parties further agree that the new permanent Sound and Light Technician job fall within the PSAC agreement, however, the duties and responsibilities of this job requires additional time to fully develop, making it impossible to properly classify at this time. Therefore the parties agree to allow the Employer to May 31, 2002, to develop a comprehensive job description. The parties further agree that the Employer may advertise in accordance with the collective agreement at a competitive market pay rate between \$17.00 and \$21.00 per hour.*

[10] Once the Show Lounge was completed, the Employer posted the position of "Sound and Lighting Technical Co-ordinator." IATSE suggested that this position was out of scope, while PSAC and the Employer stated that the scope of the position had not been determined. However, at the hearing PSAC stated that the Co-ordinator position was probably out of scope. Mr. Smith applied for and was conditionally offered the position. He refused the conditions and eventually signed another personal services contract to perform duties associated with a technician position.

[11] Mr. Smith was unwilling to accept the Co-ordinator position for a number of reasons, including the wage rate, the lack of a job description and the fact that he might have to join PSAC, something he was not prepared to do. From June 1, 2002, Mr. Smith worked at the Casino on weekends. He has not been asked to join PSAC and he has had no union dues deducted from his pay. He and another individual obtain the vast majority of technician hours that would have been associated with the unfilled Light and Sound Technician position.

[12] The Employer also developed the job description for the position of Light and Sound Technician, which is the position that IATSE is attempting to claim. The Employer is waiting until this application has been determined before it posts and fills the position.

[13] The position would be the equivalent of 1.5 full time positions and would be responsible for the lighting and sound for the shows that are held every weekend at the Show Lounge.

[14] IATSE has developed as a craft union. Its members are usually employed in stage, film and theatre venues for short periods. IATSE holds certification Orders for the technical, light, sound and stage crews at facilities such as the Saskatchewan Science Centre and the Regina Exhibition Association.

[15] IATSE, Local 295 has approximately 125 members, ten of whom are full-time employees; the rest are casual employees. Employers in the facilities where IATSE holds representation rights use IATSE's hiring hall to obtain employees.

**Relevant statutory provision:**

[16] Relevant statutory provisions are as follows:

5 *The board may make orders:*

(k) *rescinding or amending an order or decision of the board made under clause (a), (b) or (c) where:*

(i) *there is a collective bargaining agreement in existence and an application is made to the board to rescind or amend the order or decision during a period of not less than 30 days or more than 60 days before the anniversary of the effective date of the agreement; or*

*(ii) there is no agreement and an application is made to the board to rescind or amend the order or decision during a period of not less than 30 days or more than 60 days before the anniversary date of the order to be rescinded or amended;*

*notwithstanding a motion, application, appeal or other proceeding in respect of or arising out of the order or decision is pending in any court;*

**Applicant's arguments:**

[17] The Applicant applies for certification of the technical positions attached to the operation of the Show Lounge on the basis that these positions are not covered by PSAC's certification order. The Applicant acknowledges that its application for certification is not made within the open period but argues that this fact is irrelevant. In support of its position, IATSE argues that the Show Lounge was not contemplated as a component of Casino Regina when PSAC was certified in 1996. In the alternative, IATSE argues that employees working the technical positions in the Show Lounge are not working in or in connection with Casino Regina. Finally, IATSE argues that employees to which this certification application applies are not covered by the PSAC collective agreement and have not been requested to join PSAC, nor have union dues been deducted from them.

**Employer's and PSAC's arguments:**

[18] Both the Employer and PSAC argue that the Applicant's application is barred because of the fact that the application was not brought within the open period. In the alternative, the Employer argues that the proposed craft unit, which would be the equivalent of 1.5 full time positions, should not be carved out from the existing PSAC bargaining unit and is not an appropriate unit for the purpose of collective bargaining.

**Analysis:**

**A. Is the application barred because it was not brought within the open period?**

[19] The Applicant concedes that its application is not brought within the open period and as stated earlier, takes the position that the PSAC certification Order does not and never

contemplated covering the particular employees of the Show Lounge and that the open period does not apply.

**[20]** This is a difficult argument to accept. This Board can only rely on the clear wording of the PSAC certification Order, which grants PSAC an “all employee” unit. For the Board to consider carving out a unit or a classification of employees from the PSAC “all employee” unit, the application must be brought within the open period. In the decision *International Brotherhood of Electrical Workers, Local 2038 and Monad Contractors Ltd. and Construction Workers Association (CLAC) Local No. 151 Affiliated with the Christian Labour Association of Canada*, [1985] April Sask. Labour Rep. 49, the Board states at p. 50:

*This application is essentially intended to “carve out” a craft unit of employees from the all employee unit which the intervenor was certified to represent on October 3, 1984. That being the case, the application must be made during the “open period” created by Section 5(k) of the Trade Union Act.*

(See also: *Canadian Union of Public Employees, Local No. 7 v. City of Regina and Regina Civic Middle Management Association*, [1986] May Sask. Labour Rep. 46 at p. 47 and *Canadian Union of Public Employees, Local No. 3926 v. Board of Education of Deer Park School Division of Saskatchewan and Deer Park Employees Association*, [2000] Sask. L.R.B.R. 349).

**[21]** The Board also rejects the Union’s arguments that the Light and Sound Technician position in the Show Lounge is not a position that is “in connection with the Casino Regina” or that the Show Lounge was not contemplated as a component of the Casino when PSAC was certified in 1996. The position is one that is clearly associated and in connection with the Employer’s ongoing enterprise. In the decision *Service Employees’ International Union and Cadillac Fairview Corporation Limited*, [1986] April Sask. Labour Report 32, the Board considers the concept of expanding bargaining units and states at p. 32:

*It has long been an established policy of this and other Labour Relations Boards to prefer large bargaining units. Generally speaking, bargaining units in an industrial setting will include all employees. This description provides the parties with a unit that can facilitate expansions and contractions in the scope and complexity of the employer’s enterprise and avoid unnecessary fragmentation and instability as job classifications come and go.*

**[22]** Given that the application was not made within the time specified by section 5(k)(i), the application is dismissed.

**DATED** at Regina, Saskatchewan, this **20th** day of **February, 2003**.

**LABOUR RELATIONS BOARD**

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Wally Matkowski,  
Vice-Chairperson