The Labour Relations Board
Saskatchewan

INTERNATIONAL UNION OF OPERATING ENGINEERS, HOISTING AND PORTABLE AND STATIONARY, LOCAL 870, Applicant v. RURAL MUNICIPALITY OF WALLACE NO. 243, Respondent

LRB File No. 194-02; September 24, 2003
Vice-Chairperson, Wally Matkowski; Members: Brenda Cuthbert and Maurice Werezak

For the Applicant: Katherine E. Bilson and K. Lily Arvanitis-Ballantyne
For the Respondent: Larry F. Seiferling, Q.C.

Unfair labour practice – Interference – Communication – Scope of employer's right to communicate – Employer placed newspaper advertisement inviting proposals to contract out bargaining unit work where no first collective agreement concluded – Board utilizes objective test and concludes that employer violated s. 11(1)(a) of *The Trade Union Act*.

***The Trade Union Act*, ss. 11(1)(a), 11(1)(c) and 11(1)(m).**

REASONS FOR DECISION

Background:

[1] International Union of Operating Engineers Hoisting and Portable and Stationary, Local 870 (the "Union") filed an unfair labour practice application in which it alleged that the Rural Municipality of Wallace No. 243 (the "Employer") committed an unfair labour practice when it placed ads in the Regina Leader Post and a local Yorkton newspaper inviting proposals to contract out work of the members of the bargaining unit represented by the Union, contrary to ss. 11 (1)(a), (e), (i), (j) and (m) of *The Trade Union Act*, R.S.S.1978, c.T-17 (the "*Act*").

[2] The Employer agreed with the facts set out in the Union's application, but denied that its action in placing the ads amounted to an unfair labour practice.

Facts:

[3] The Union was certified by the Board to represent all employees of the Employer, with certain exceptions, by Order of the Board dated September 24, 2001. The bargaining unit

consists of two full time grader operators, two part time grader operators and one utility person. Thereafter, the parties bargained in an attempt to reach a collective agreement.

[4] The parties bargained on January 30, 2002, February 11, 2002 and April 25, 2002, but were unable to arrive at a collective agreement. The Union took a strike vote on April 25, 2002.

[5] On May 2, 2002, the Union asked that a conciliator assist the parties in arriving at an agreement. Meetings were held with a conciliator on June 27 and 28, 2002, July 24, 2002 and August 1 and 13, 2002, to no avail. The next bargaining date was set for November, 2002.

[6] On approximately September 28, 2002, John Peterson, the business manager for the Union, received a number of phone calls from his members relating to an ad placed in a local newspaper by the Employer. The members were very excited about the ad because the ad, in essence, dealt with their jobs.

[7] The ad read as follows:

> *RURAL MUNICIPALITY OF WALLACE NO. 243*
>
> *CALL FOR PROPOSALS*
> *MUNICIPAL ROAD MAINTENANCE*
>
> *The Council of the Rural Municipality of Wallace No. 243 invites proposals for summer road grading of approximately 340-400 miles of municipal roads, and winter snow plowing of approximately 250-300 miles of municipal roads. The proposal should stipulate the cost for the supply of equipment, 2 motor graders, including all fuels, oils, repairs and maintenance, and labour to operate them on a 12-month per year basis. Proposals must be mailed or delivered to the R.M. of Wallace No. 243, 26-5th Avenue North, Yorkton, Saskatchewan on or before October 9th, 2002 at 4: p.m., local time. Council reserves the right to reject any or all proposals. Authorized by Resolution of the Council of the R.M. of Wallace No. 243*

[8] Mr. Peterson immediately sent a letter to the Employer dated October 2, 2002, complaining about the ad and alleging that the ad amounted to a violation of s. 11 of the *Act*. Mr. Peterson requested that the Employer cease and desist from placing any further ads, failing which the Union would file an unfair labour practice application.

[9] The Employer did not contact Mr. Peterson and, as a result, by letter dated October 11, 2002, Mr. Peterson provided the Employer with a copy of the unfair labour practice application filed with the Board. Mr. Peterson testified that, while there was nothing illegal about contracting out work, the ad was taken as a serious threat to the Union.

[10] By letter dated October 18, 2002, Ron Walton, the Employer's administrator, advised Mr. Peterson as follows:

> *In response to your letter dated to Reeve Fred Philips regarding the R.M. of Wallace No. 243 advertising for a Call for Proposals for Municipal Road Maintenance, this letter is to advise you the R.M. was only seeking to ascertain the cost of this kind of work, but would not contract out the work without a Collective Bargaining Agreement without first discussing it with the Union.*

[11] The Employer took the position that the ad was placed "only for the purpose of finding out if there was any interest" and that the Employer "was seeking to ascertain the cost of this kind of work." The Employer's position was that the ad "was not a call for tenders for the purpose of contracting out work."

[12] Mr. Walton testified that the Employer wanted to find out what it would cost to contract out the work and then compare that cost to the in-house cost of doing the work. He assumed the Employer would use this information in bargaining.

[13] The Employer did not contact SARM or any other rural municipality to find out what wage costs were elsewhere. The Employer has never contracted out work. The Employer received no response to the ad.

[14] On October 23, 2002, the Union applied for first contract assistance. A Board agent was appointed and meetings with the Board agent were held on January 14 and 15, 2003. The parties, as of the date of the hearing, still did not have their first collective agreement.

Relevant statutory provisions:

[15] Sections 11 (1)(a) and (m) provide:

> *11(1) It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer:*
>
> > *(a) in any manner, including by communication, to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act;*
>
> . . .
>
> > *(m) where no collective bargaining agreement is in force, to unilaterally change rates of pay, hours of work or other conditions of employment of employees in an appropriate unit without bargaining collectively respecting the change with the trade union representing the majority of employees in the appropriate unit;*

Union's arguments:

[16] The Union argued that the placement of the ad by the Employer, when viewed from a reasonable or objective basis, had an intimidating effect on the Union's new members *vis a vis* their relationship with the Union. Counsel argued that the Union's relationship with the Employer had to be considered when determining if the ad had an intimidating effect. In this case, because the Union was certified in September, 2001 and as at September, 2002 had nothing to show its members by way of a collective agreement, the ad was extremely threatening to the Union and its members and had a coercive and chilling effect on the employees, contrary to s. 11(1)(a) of the *Act*.

[17] In the alternative, counsel for the Union argued that the Employer should have disclosed the ad to the Union prior to the placement of the ad. The Employer's failure to do this constituted a breach of s. 11(1)(m) of the *Act*.

Employer's arguments:

[18] Counsel for the Employer did not argue that the placement of the ad did not have a coercive and chilling effect on the employees. Rather, counsel argued that the Employer was just looking for information and never went ahead with any plans to contract out work. As such, given that no decision had been made to contract out work, there was no duty on the Employer to advise the Union of the ad. Counsel argued that, if it had disclosed the ad in these circumstances, when no decision had been made to contract out the work, the disclosure would have been perceived as a threat toward the Union.

[19] The Employer argued that s. 11(1)(m) of the *Act* did not apply in that there had been no unilateral change to trigger that section of the *Act*.

Analysis:

[20] Under normal circumstances, an Employer is entitled to obtain information to assist it in determining what wage rates it proposes to offer to pay its employees. However, the Board's inquiry must go beyond this general proposition. In this case, the Board's role is to concentrate on whether, in the particular circumstances, the ad has likely interfered with, coerced, intimidated, threatened or restrained an employee in the exercise of any right conferred by the *Act.*

[21] As stated earlier, the Employer did not challenge the assertion that employees of a newly certified bargaining unit, who have yet to obtain a first collective agreement, would be threatened by an ad which, on its face, sought to eliminate their jobs.

[22] The Board can understand why the employees were excited once they reviewed the ad. The Board can also understand how the employees would be less than enthusiastic toward the Union if their jobs would now be lost or how the employees could ask the Union to lower its wage demands and why both the Union and the employees felt threatened by the ad. From a common sense perspective, the fear and apprehension that arose because of the ad can be understood. Therefore, in the circumstances of this case, the Employer did violate s. 11(1)(a) of the *Act* when it placed the ad.

[23] The Board has stated on numerous occasions that unions and employers are required to make every reasonable effort to conclude collective bargaining agreements. The placement of the ad did nothing to advance this goal and, in fact, fundamentally threatened to interfere with this goal.

[24] There was limited evidence before the Board as to why the Employer placed the ad. Supposedly, the Employer was looking for information relating to wage costs which it could then use in bargaining. What is puzzling is that the Employer did not contact SARM or any other rural municipality with respect to wage rates, especially given the fact that the Employer did not receive any response to its ad. Given these facts, it is difficult to accept the proposition that the

Employer was only trying to obtain information when it placed the ad. The Employer took no other less intimidating steps to gain any wage cost information and took no steps to gain wage cost information after it received no response to its ad.

[25] One could easily conclude that the sole purpose of the ad was to intimidate the employees who had yet to obtain their first collective agreement. However, the determination of the Employer's motivation in placing the ads is not necessary for the Board's finding that the Employer has breached s. 11(1)(a) of the *Act* by placing the ad. So long as the Board concludes, utilizing an objective test, that the ad interfered with, coerced, intimidated, threatened or restrained an employee in the exercise of any right conferred by the *Act*, the Employer has breached s. 11(1)(a) of the *Act*.

[26] The Employer did not breach s. 11(1)(m) of the *Act* as there was no unilateral change implemented. Likewise, there was no breach of s. 11(1)(c) of the *Act*, which imposes on the Employer a duty to disclose information that is vital to the bargaining process. As stated earlier, the Employer had made no decision in regard to contracting out work.

[27] The Board finds that the Employer violated s. 11(1)(a) of the *Act* by placing the ad in the Regina Leader Post and a local Yorkton newspaper. An Order will issue accordingly.

DATED at Regina, Saskatchewan this **24th** day of **September, 2003.**

LABOUR RELATIONS BOARD

Wally Matkowski,
Vice-Chairperson