

**Labour Relations Board  
Saskatchewan**

**R. SYDNEY GLAS, Applicant v. SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE  
AND DEPARTMENT STORE UNION and LORAAS DISPOSAL SERVICES LTD., Respondents**

LRB File No. 223-03; December 15, 2003

Vice-Chairperson, Wally Matkowski; Members: Leo Lancaster and John McCormick

For the Applicant:	Larry Seiferling, Q.C.
For the Respondent Union:	Larry Kowalchuk
For the Respondent Employer:	Gary Semenchuck, Q.C.

**Decertification – Interference – So long as employer’s actions continue to play role in determining outcome of representation question, true wishes of employees difficult, if not impossible, to determine – Section 9 of *The Trade Union Act* is meant to protect rights of employees under s. 3 of *The Trade Union Act* – Free vote not possible if employer’s actions continue - Board dismisses application for rescission.**

***The Trade Union Act*, ss. 3, 5(k), and 9.**

**REASONS FOR DECISION**

**Background:**

[1] Saskatchewan Joint Board, Retail, Wholesale and Department Store Union (the "Union") was designated as the bargaining agent for a unit of employees at Loraas Disposal Services Ltd. (the "Employer") by a certification Order dated March 25, 1997. On October 30, 2003, R. Sydney Glas (the "Applicant") filed the present application during the "open period" seeking rescission of the certification Order, pursuant to s. 5(k) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"). The Union replied that the application was made as a result of influence by the Employer and that the Board ought to dismiss the application pursuant to s. 9 of the *Act*. The Employer denied that there had been such interference. The application was heard on November 25, 2003.

**Evidence:**

[2] The Applicant has been employed with the Employer as a welder for approximately 20 years. The present application is the sixth attempt to obtain rescission of the certification

Order. The Applicant has been involved in four of the previous attempts, testifying before the Board on two of those occasions.

**[3]** The Applicant testified that he had no contact or communication with representatives of the Employer regarding the making of the present application. He made the application because he does not believe in the philosophy of the Union. He has recently been elected as the assistant shop steward and has attended some Union meetings, though he has not attended the monthly Union meetings.

**[4]** The Applicant testified that the only way to hold the Union accountable for its actions is by allowing employees of the Employer to have a free vote. He complained that two grievances were filed during the past year and that the Union did not consult with him with respect to these grievances. The Applicant also complained that the Union representative had missed sending a notice to bargain to the Employer and, as a result, no collective bargaining had occurred once the collective agreement had expired on November 30, 2002. The parties have set December 9, 2003 as the date when bargaining will commence.

**[5]** The Applicant testified that Ben Schaeffer assisted him in bringing this application and that they would be asking for contributions from employees to pay the legal bill for this application. The Applicant was of the belief that the Union had not contributed anything positive at the workplace and that the Employer could be trusted to deal directly with the employees once the Union was gone.

**[6]** Mr. Glas, a welder, attended drivers' meetings because he was asked to Carman Loraas, the Employer's principal. At these meetings, the issue of who should do relief driving or routes was raised. Mr. Glas testified that the drivers suggested that Kevin Wood, a recently reinstated driver and Henry Franke, a driver who had testified on behalf of the Union at the hearings of previous rescission applications, should be doing this work. Mr. Glas testified that Mr. Loraas agreed that these two individuals should be doing the relief driving work.

**[7]** The Applicant was evasive when he testified about what he had heard or what he knew about Mr. Loraas' thoughts about having a Union.

**[8]** Henry Franke testified for the Union. He has been employed by the Employer for approximately eight years, except for about one and a half years when he was unlawfully terminated following the Employer's closure of its vacuum truck division in 1997, shortly after the Union was certified. He has testified on behalf of the Union at every hearing before the Board with respect to applications relating to the Employer including unfair labour practice applications, the application for first contract assistance and the previous decertification applications. The Board has summarized Mr. Franke's history with and treatment by the Employer in several decisions. He is presently employed as a driver, a position he secured by Order of the Board in 1998, certain matters in relation to which are still outstanding before the Board. (With regard to the outstanding issues, the parties have been exchanging correspondence in an attempt to resolve them. Counsel advised that, if they are not resolved, a further application to the Board will be filed.)

**[9]** Mr. Franke testified that he has no dispute with the facts set out by the Board in *Schaeffer v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Loraas Disposal Services Ltd.*, [2002] Sask. L.R.B.R. 657, LRB File No. 196-02 (the "Board's decision in LRB File No. 196-02") – the most recent decision of the Board on an application for rescission relating to this workplace.

**[10]** Mr. Franke testified that, since the Board's decision in LRB File No. 196-02, his situation in the workplace has only worsened. He cited as an example the fact that he and Mr. Wood are the only drivers who have not received the orientation necessary to complete a specific lucrative call. He and Mr. Wood are still the only drivers who do not get weekends off. He does not have a tarp roller which would enhance his ability to complete more work in the day. When he asked Mr. Loraas about this issue, Mr. Loraas advised him that, if he pushed it, all other drivers would lose their tarp rollers.

**[11]** Mr. Franke testified that he receives calls that are less economical and that he faces challenges that other drivers do not. For example, Mr. Franke testified that, on a weekend, his truck broke down and he was not able to obtain a replacement vehicle immediately as he and Mr. Wood are the only drivers who do not possess a key to the building where the vehicles are stored.

**[12]** Mr. Franke testified that Mr. Loraas advised him in front of other employees that, if he had to start his business over and had to rely on both Mr. Franke and Mr. Wood, he would “blow his fucking brains out.”

**[13]** Equally as troubling, Mr. Franke testified that he was hurt at work and that Mr. Loraas came out to assist him. Another driver who also came out to assist Mr. Franke would not take Mr. Franke to his family doctor but rather, on the instruction of Mr. Loraas, took Mr. Franke to Mr. Loraas’ doctor.

**[14]** While Mr. Franke gave more disturbing testimony regarding Mr. Loraas’ conduct toward him, the end result, testified to by Mr. Franke, was that he felt low and not worthy and that it was his belief that Mr. Loraas was trying to get him to quit.

**[15]** Mr. Franke testified that he no longer holds a position with the Union and that he has not filed a grievance relating to the actions of Mr. Loraas. Mr. Franke testified that he is still waiting for the results of a previous Board decision and that he is trying to keep a low profile at the workplace as he does not want any more trouble.

**[16]** Counsel for the Employer called no evidence.

**Statutory Provisions:**

**[17]** Relevant provisions of the *Act* include the following:

*3. Employees have the right to organize in and to form, join or assist trade unions and to bargain collectively through a trade union of their own choosing; and the trade union designated or selected for the purpose of bargaining collectively by the majority of the employees in a unit appropriate for that purpose shall be the exclusive representative of all employees in that unit for the purpose of bargaining collectively.*

...

*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:*

...

*(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;*

...

*9. The board may reject or dismiss any application made to it by an employee or employees where it is satisfied that the application is made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by, the employer or employer's agent.*

#### **Arguments:**

**[18]** Mr. Seiferling, counsel for the Applicant, asserted that, in this application for rescission, the Board should balance the “employee rights” found in s. 3 of the *Act* with the s. 9 rights. Counsel argued that the Board should hold the Union accountable for its actions in representing its members. For example, Counsel argued that the Union had failed to file a notice to bargain and had failed to seek the input of elected Union officials with respect to two grievances.

**[19]** With respect to Mr. Franke’s complaints, counsel asked why he did not file grievances; the collective agreement and not this application for decertification should be the method for resolving his differences with the Employer.

**[20]** Counsel argued that his client simply wants an order allowing a vote on the application and that a secret ballot vote conducted by a Board agent would remove any concerns about influence or intimidation and would ensure a fair process.

**[21]** Mr. Kowalchuk, counsel for the Union, asserted that Mr. Loraas’ actions “speak for themselves,” and that Mr. Loraas has not done anything to rectify the problems which he has had with the Union for the last six years. Pursuant to s. 9 of the *Act*, the Board has the discretion to

dismiss the application if it is satisfied that the application was made in any part as a result of the Employer's influence. Counsel pointed to the Board's decision in LRB File No. 196-02 in which the Board found that the workplace atmosphere created by the Employer was a corrupting influence within the meaning of s. 9, prompting dismissal of the application. Counsel argued that s. 9 of the *Act* and s. 3 of the *Act* are not balanced. Rather, s. 9 is meant to protect s. 3 rights.

[22] Mr. Semenchuck, counsel for the Employer, asserted that the Employer has had no opportunity to respond to the allegations of the Union and that the proper forum for the complaints of Mr. Franke is before an arbitrator, pursuant to the provisions of the collective agreement. Mr. Semenchuck argued that there was no evidence of any intimidation in regard to this application and that a vote should be ordered.

#### **Analysis and Decision:**

[23] In all of the circumstances of the present case, we have determined that the application should be dismissed. Since the Board's decision in LRB File No. 196-02, which dismissed the last rescission application due to the Employer's conduct, Mr. Franke testified that the situation in the workplace has worsened. In its decision in LRB File No. 196-02, the Board reviewed in great detail the nine previous decisions dealing with the parties. The Board specifically stated at 684:

*The broad goal of s. 3 is to foster democracy and human dignity in the workplace through collective bargaining. It does not matter if it is the fifth consecutive attempt to decertify the Union or the fiftieth attempt. If an employer's conduct continues to influence the ability of the employees to exercise their s. 3 rights in an environment free of the apprehension of betrayal, the application must be dismissed.*

[24] The Board's decision in LRB File No. 196-02 is consistent with the logic set out in earlier Board rulings on rescission applications relating to this workplace. So long as Mr. Loraas' actions continue to play a role in determining the outcome of the representation question, the true wishes of the employees will be difficult, if not impossible, to determine. Section 9 of the *Act* is meant to protect employees' rights under s. 3 of the *Act*.

[25] The Board's decision in LRB File No. 196-02 also deals with the issue of the Union not filing grievances relating to Mr. Franke's predicament. Mr. Franke, quite understandably, did

not want to bring any further attention to himself and did not file grievances in response to the Employer's conduct. Just because Mr. Franke or the Union did not file grievances regarding how the Employer was treating Mr. Franke, does not somehow mean that this Board should ignore Mr. Franke's evidence about the Employer's conduct. This conduct has quite correctly been referred to as offensive and egregious conduct. It is because of this conduct, that the true wishes of the employees will be either difficult or impossible to ascertain. The only way that the true wishes of the employees can be ascertained is if the Employer's negative conduct toward the Union and its primary supporters stops.

**[26]** As was evident at the hearing, there is a great deal of frustration by a number of parties as a result of the actions of the Employer. Certainly the Union and Mr. Franke are frustrated by the actions of Mr. Loraas. The Board's comments in its decision in LRB File No. 196-02 with respect to human dignity appear to have fallen on deaf ears. The comments by counsel for the Union relating to the power imbalance that exists at the workplace were again demonstrated to be true. One need only look to the situation where Mr. Franke was forced to attend at Mr. Loraas' physician rather than his own to get a glimpse of the power which Mr. Loraas attempts to hold over his employees.

**[27]** The Applicant is likewise frustrated because the employees have been denied the ability to have a free vote with regard to whether the employees want the Union at the workplace. Unfortunately, a free vote will not be possible if the Employer's actions continue.

**[28]** The Board accepts and applies the following finding of the Board from its decision in LRB File No. 196-02 at 682:

*To say that the intimidation and discriminatory and humiliating treatment of the two most well-known supporters of the Union in the workplace – Mr. Franke and Mr. Wood – would not influence the Applicant or others to make and support the present application and lead the Board to be concerned about the apprehension of betrayal among the employees, is to deny reality.*

**[29]** For the reasons set out above, the application is dismissed.

**DATED** at Regina, Saskatchewan, this **15th** day of **December, 2003**.

**LABOUR RELATIONS BOARD**

---

Wally Matkowski,  
Vice-Chairperson