**The Labour Relations Board**
**Saskatchewan**

**JODY ANN HEEDS, Applicant v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1975 and COUNTRY CLASSIC FASHIONS LTD., Respondents**

LRB File No. 224-02; May 30, 2003
Chairperson, Gwen Gray, Q.C.; Members: Bruce McDonald and Michael Wainwright

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| The Applicant: | Jody Heeds |
| For the Respondent Union: | Don Moran, Colleen Leier |
| For the Respondent Employer: | Debbie Mitchell |

**Decertification – Interference – Employer has complied with collective agreement, has agreed to bargain collectively with union and has not been found in violation of any unfair labour practice provision – Employer's conduct has not created environment where impossible to test employees' wishes – Board orders vote.**

**Decertification – Interference – Applicant's reasons for rejecting union representation not so thin as to cause Board to doubt that applicant formed own view of union independent of applicant's relationship with employer – Board orders vote.**

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

## REASONS FOR DECISION

**Background:**

**[1]** Jody Ann Heeds (the "Applicant"), is a full-time employee at Treats Café Lower Level Place Riel ("Treats"). The Applicant brought an application for rescission on November 12, 2002 to remove the Canadian Union of Public Employees, Local 1975 (the "Union") as the bargaining agent for employees of Treats.

**[2]** In *Heeds v. Canadian Union of Public Employees, Local 1975 and Country Classic Fashions Ltd.*, [2002] Sask. L.R.B.R. 706, LRB File No. 224-02, the Board held that the employees of Treats were entitled to know their status with respect to a collective bargaining agreement that was imposed by the Board on the predecessor employer prior to deciding if they wished to remove the Union as their bargaining agent.

**[3]** At that time, the Union had filed an application for successorship against Country Classic Fashions Ltd. to have the Board determine if Country Classic Fashions

Ltd. was a successor employer to the former employer, Four Star Management Ltd. The main issue in dispute in relation to the successorship application was whether the new employer was bound by the terms of a collective agreement that had been imposed on the predecessor employer by the Board in *Canadian Union of Public Employees, Local 1975 v. Treats at the University of Saskatchewan*, [2001] Sask. L.R.B.R. 715 and [2002] Sask. L.R.B.R. 229, LRB File No. 220-98.

**[4]** In *Canadian Union of Public Employees, Local 1975 v. Country Classic Fashions Ltd.*, [2003] Sask. L.R.B.R. 103, LRB File No. 235-02, a different panel of the Board held that Country Classic Fashions Ltd. is the successor employer to Four Star Management Ltd., and is bound by the terms of the collective agreement imposed on Four Star Management Ltd. and the Union in LRB File No. 220-98.

**[5]** This matter came back to the Board for hearing on May 15, 2003 in Saskatoon.

**Facts:**

**[6]** As indicated, the Applicant is a full-time member of the staff at Treats. She started working at Treats after it was purchased by Country Classic Fashions Ltd. (the "Employer"). The Applicant opposes the Union as she feels that it is not needed in this small workplace. She is happy with her treatment by the Employer and does not see the benefits of the Union.

**[7]** The Applicant is critical of the Union's approach to her workplace. She is suspicious of the Union's waiver of dues and wonders why the Union schedules meetings with little notice to the employees of Treats. The Applicant also complains that the Union did not appoint a shop steward at Treats.

**[8]** Ms. Heeds denies that she was influenced by her manager, Ms. Mitchell, in making this application. She acknowledged that the Employer was not following the wage rates set out in the collective agreement until the Board rendered its decision in LRB File No. 220-98. At that time, the Employer paid retroactive pay to her and other employees in accordance with the terms of the collective agreement.

**[9]** Ms. Mitchell, manager and owner of Treats, was unaware that the Union was certified to represent Treats employees when she purchased the food service operation. She was advised by the previous owner to increase salaries by $0.50/hour as the staff had not had a raise for some time. In *Smith v. Canadian Union of Public Employees, Local 1975 and Four Star Management and Country Classic Fashions Ltd.*, [2002] Sask. L.R.B.R. 1, LRB File No. 256-01, the Board took this increase into account in determining that a previous application for rescission should be dismissed.

**[10]** After the Board determined that the first collective agreement applied to Treats, Ms. Mitchell made various attempts to comply with the terms of the collective agreement and to meet with the Union concerning the implementation of the agreement. She had various complaints relating to the Union's approach to the collective agreement. First, when she asked the Union president to provide her with an up-to-date seniority list, as provided for in the collective agreement, the Union president, Glenda Graham, indicated that the provision was in error and that the Employer should prepare the list. This matter was finally resolved through the intervention of Ms. Leier, a Union staff representative. Ms. Mitchell also complained that the Union did not correctly calculate the seniority of one employee.

**[11]** Ms. Mitchell indicated that she is aware that most employees do not support the Union. She indicated that she was aware of this fact from overhearing conversations at work among staff, not as a result of any conversations initiated by her. She testified that she has been careful to follow the terms of the collective agreement and to refrain from influencing or interfering with staff in relation to the application for rescission.

**[12]** Ms. Mitchell did indicate that she promoted an employee who brought an earlier rescission application. Ms. Mitchell indicated that Linda Smith, the baker, indicated that she did not want to remain at Treats if there was a union. As a result, after the first rescission application (LRB File No. 256-01), Ms. Mitchell promoted Ms. Smith to assistant manager to run the business when Ms. Mitchell is away. No application was made to the Board to exclude the position from the scope of the Union's certification Order.

**[13]** Jim Holmes was formerly the staff representative of the Union assigned to Treats employees and is now the Union's regional director for Saskatchewan. Mr. Holmes testified as to the long and arduous process the Union endured to obtain certification, the first collective agreement and the re-establishment of collective bargaining rights for Treats after its sale to the Employer. The records indicate that the Union was certified on November 24, 1997 and bargaining commenced in late January, 1998 with Ron Cummings, former owner of Treats. The Union found the bargaining process to be unproductive and, in the fall of 1998, it conducted a successful strike vote. On November 3, 1998, in LRB File No. 220-98, the Union applied to the Board for first collective agreement assistance pursuant to s. 26.5 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the *"Act"*). Initially, the Board deferred the application to a conciliation process under s. 26.5(6) of the *Act.* When conciliation was unsuccessful, the Union referred the matter back to the Board for a hearing in June, 2000. Final arguments were filed with the Board on August 18, 2000. The Board's decision on the first collective agreement was not rendered until September 18, 2001 and it was subject to a further hearing and Reasons issued on April 24, 2002. Subsequently, the Employer brought an application for judicial review, which was dismissed in *Four Star Management Inc. v. Canadian Union of Public Employees, Local 1975 and Saskatchewan Labour Relations Board*, [2002] Sask. L.R.B.R. c-62, LRB File No. 220-98 (Sask. Q.B.) on December 12, 2002. In addition, during the same period, the Lower Level Treats was sold to the Employer without notice to the Union. Ms. Mitchell took the position that the Employer was not bound by the terms of the imposed first collective agreement. This matter required a further determination by the Board. As well, the Union has faced three applications for rescission, including the present application.

**[14]** During this time, an employee of Treats approached the Union for assistance in dealing with her termination from Treats. Mr. Holmes approached Ms. Mitchell to discuss the termination and to suggest that the parties resort to a provision of the *Act* which permits an arbitrator to hear and determine dismissal cases that occur prior to the conclusion of the first collective agreement. Mr. Holmes described the complications that arose out this matter between him, Ms. Mitchell and the former employer, Mr. Cummings, over the issue of retroactive pay.

**[15]** By November, 2001 the parties were also required to serve notice to bargain a renewal of the collective agreement as the imposed agreement had reached the end of its term.

**[16]** Mr. Holmes noted that, although the employees have been entitled to bargain collectively since 1998, they did not receive the benefits of collective bargaining until 2003 when the Employer finally paid employees the retroactive pay required under the terms of the imposed collective agreement.

**[17]** Don Moran, the staff representative assigned to Treats employees for a period of time, complained that the Employer issued "General Staff Rules for All Employees" without consulting with or advising the Union. While Ms. Mitchell thought that the matters touched on in the document were consistent with the terms of the collective agreement, Mr. Moran was of the view that two of the items were not consistent with the collective agreement.

**[18]** Colleen Leier who currently is the staff representative assigned to Treats employees, had met with Ms. Mitchell on a number of occasions since the Board issued its decision on the successorship application. Ms. Leier indicated that the Union and Employer have discussed and worked out various issues pertaining to the implementation of the collective agreement. The parties have also agreed to bargaining dates.

**Arguments:**

**[19]** The Applicant argued that the Board should grant a rescission order as a majority of employees support the application. The Applicant does not understand why the Union wants to continue to represent Treats employees when the Treats employees do not want to be represented by the Union.

**[20]** Mr. Moran for the Union argued that the Employer created the climate that caused employees to conclude that there were no benefits to collective bargaining. The Employer delayed implementation of the collective agreement until the Board issued its Order on the successorship application. The Union was also critical of the Board's delay in issuing the first collective agreement. In this environment, it was difficult for the

Union to represent employees as the Employer placed many barriers in the way of effective representation.

**[21]** Mr. Moran argued that the Union did address the workplace concerns of Treats employees by taking forward their complaints through the legal channels open to the Union, such as the arbitration of the dismissal case.

**[22]** The Union noted that there have been eight applications before this Board dealing with the certification, rescissions and collective bargaining for Treats employees.

**[23]** In these circumstances, the Union asked the Board to dismiss the application under s. 9 of the *Act*. In support of its argument, the Union filed a number of prior Board decisions.

**Analysis and Decision:**

**[24]** In our previous decision in this matter, *supra*, we held, at 711, that:

> *. . .the employees are entitled to know if the imposed collective agreement applies to them prior to considering whether they will vote to rescind the Union's certification. If the agreement does apply to them, they are also entitled to experience the benefits of the agreement. For these reasons, the Board will defer a decision on the application pending a hearing and determination of the successorship application.*

**[25]** Since then, the Board held that the collective agreement did apply to the employees at Treats. The Employer has subsequently paid retroactive pay to the employees and has sat down to discuss other implementation issues with the Union. The Employer has also agreed to dates for collective bargaining. In the period since the Board issued the above decision, the Employer appears to have taken its collective bargaining responsibilities seriously and to have responded in an appropriate manner to Union officials.

**[26]** Mr. Moran pointed to the issuance of the General Staff Rules for All Employees as an example of the Employer not following the collective agreement. In

our view, however, although the issuing of the General Staff Rules may be a violation of the collective agreement (we make no ruling on this issue), it is not so egregious as to lead the Board to conclude that the Employer has repudiated the collective agreement.

**[27]** The Union argues that the Employer has created an environment in which Union representation has become impossible. Mr. Moran referred the Board in particular to its decision 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, where the Board found that the employer's conduct made it impossible to determine the true wishes of the employees in the bargaining unit.

**[28]** In this case, however, the Employer has complied with the provisions of the collective agreement. It has not been found in violation of any unfair labour practice provision relating to the representational issue and has agreed to bargain collectively with the Union. The environment is considerably different from the facts found in the *Schaeffer* case, *supra*.

**[29]** Overall, we do not find that the Employer's conduct has created an environment where it is now impossible to test the wishes of the employees.

**[30]** The Applicant is not convinced that the Union is a positive force for her and other employees at Treats. Her opinion is formed at least in part from the absence of union structures, particularly in regard to shop stewards and membership meetings. The Board sensed that the Applicant and other employees find it difficult to understand the Union's structures. It is a large and sophisticated composite local composed primarily of university employees.

**[31]** We find that the Applicants' reasons for rejecting union representation are not so thin as to cause the Board to doubt that the Applicant formed her own view of the Union independent of her relationship with the Employer, unlike the case, for instance, in *Swan v. Canadian Union of Public Employees, Local 1975 and Treats at the University of Saskatchewan,* [2000] Sask. L.R.B.R. 448, LRB File No. 258-99.

**[32]** As a result, the Board directs that a vote be conducted among those employees of Treats who were listed on the statement of employment and who are employed on the date the vote is conducted. The list shall include those employees who are entitled to be recalled to work in the future in accordance with any recall provisions contained in the collective agreement. The Employer shall provide the Union with the list of names, addresses and current telephone numbers for all employees listed on the statement of employment.

**DATED** at Regina, Saskatchewan this **30th** day of **May, 2003.**

**LABOUR RELATIONS BOARD**

Gwen Gray, Q.C.
Chairperson