The Labour Relations Board
Saskatchewan

RON BITZ, Applicant v. COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA and SASKATOON STAR PHOENIX GROUP INC., Respondents

LRB File No. 073-04; May 27, 2004
Vice-Chairperson, Wally Matkowski; Members: Gerry Caudle and Joan White

The Applicant:	Ron Bitz
For the Respondent Union:	Tim Rickard
For the Respondent Employer:	Larry Seiferling Q.C.

Decertification – Interference – Fact that applicant for rescission in scope supervisor or lead hand does not, in and of itself, lead to finding of employer influence – Even if evidence did cause Board concern about level of influence wielded by applicant over other employees, secret ballot vote enables workers to freely express support or lack of support for union – Where no evidence of employer influence Board orders vote on representation issue.

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

REASONS FOR DECISION

Background:

[1] Ron Bitz (the "Applicant"), an employee of Saskatoon Star Phoenix Group Inc. (the "Employer"), filed an application to rescind the Order dated December 13, 2000 certifying Communications, Energy and Paperworkers Union of Canada (the "Union") as the bargaining agent for certain employees of the Employer. The application was filed in the open period on April 22, 2004 and the matter was heard in Saskatoon on May 12 and 19, 2004.

[2] The Employer replied to the application and filed a statement of employment listing 77 employees. The bargaining unit comprises all employees of the inserting/distribution department of the Employer, except the distribution manager and the distribution supervisor.

[3] At the hearing, the Union limited its argument to the allegation that the application was made under conditions that constituted employer influence, interference or intimidation pursuant to s. 9 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*").

[4] The Applicant filed what purports to be evidence of support for the application from a majority of the members of the bargaining unit.

Facts:

[5] The Applicant, along with Della Ginther and Martina Friesen, testified in support of the application while Michael Donohue, Kathy Finnigan and Gordon Hunter testified on behalf of the Union. The Employer called no evidence.

[6] The Applicant testified that he is one of a group of individuals who have never been in favor of the Union and that he held a general knowledge of rescission applications as a result of an employee bringing a previous rescission application before the Board in 2001. Some employees in the group contacted the Board and obtained information and the appropriate forms for bringing the rescission application. The Applicant testified that a number of employees in the group had been discussing bringing the application and that he decided to file the application because “somebody had to.”

[7] The Applicant is a member of the bargaining unit and holds the position of lead hand. He is responsible for scheduling part-time employees in the department and is also able to grant part-time employees time off as requested.

[8] Aside from his general belief that the Union is not required, the Applicant was upset that the Union had failed to secure a $1 per hour night shift differential for the night staff as a provision in the negotiated collective agreement. The Applicant’s anger increased when he read in the newspaper that the Union was able to secure a night shift differential for its members at a different workplace.

[9] The Applicant was also unhappy about comments made at a union meeting dealing with fining members who did not attend union meetings or shunning employees who did not support the Union.

[10] Ms. Friesen testified that she attended two union meetings and the issue of fining members for not attending union meetings and shunning members who did not support the Union were discussed.

[11] Mr. Donohue testified that it is the Union's belief that lead hands hold a position of influence over new employees in that they determine when the employees get their breaks and they train new employees. Mr. Donohue conceded that there had been some discussion about imposing fines on union members who failed to attend union meetings and some discussion about shunning individuals who did not support the Union. The Union rejected these measures at the meeting. Mr. Donohue confirmed that there was a division at the workplace between union supporters and those who did not support the Union and that the Union had attempted a number of measures to garner more active support from its membership.

[12] Ms. Finnigan testified that she saw the Applicant asking employees to sign for the rescission application at the workplace, near offices of the supervisor. When she questioned the Applicant about his asking people to sign cards, given her perception that he held a position of influence as a lead hand, the Applicant advised her that he was "signed out" and that he was "a member of the Union and entitled to participate in the rescission application." Ms. Finnigan testified that she did not hear the Applicant attempt to exert any undue pressure or influence on any individuals.

[13] Mr. Hunter testified that the relationship between the Union and the Employer has at times been difficult, marked by a number of appearances before both the Board and the Saskatchewan Court of Queen's Bench. After a difficult round of bargaining, the parties were able to arrive at a collective agreement. Mr. Hunter testified that it was the Union's position that even though the collective agreement did not contain language providing for the $1 per hour shift differential for the night staff, the Union had been led to believe by the Employer that this benefit would not be taken away. The Union therefore filed a grievance and took the matter to arbitration in April, 2004. The arbitrator advised the parties that he would attempt to provide a timely decision and that he hoped the decision would be rendered by the end of April, 2004.

Relevant statutory provision:

[14] Section 9 of the *Act* provides:

> *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:

[15] The Applicant argued that he is a member of the bargaining unit and, even though he is a lead hand, he is not management and is therefore entitled to bring this rescission application. The Applicant argued that he is part of a large group that does not want the Union and that the wishes of this group should be respected and his application should be allowed.

[16] Mr. Rickard, counsel for the Union, argued that there was some evidence of influence of part-time employees by the lead hands and that the application ought to be dismissed for employer influence. In the alternative, counsel for the Union argued that any vote should be postponed until the arbitration ruling is released.

[17] Mr. Seiferling, counsel for the Employer, argued that there was no evidence of employer interference or influence in relation to this application and that the Employer did not oppose a vote being postponed until the arbitration ruling was released.

Analysis:

[18] The Board must determine if the application was made in whole or in part on the advice of, or as a result of, influence of or interference or intimidation by the Employer.

[19] As noted by the Board in *Shuba v. Gunnar Industries Ltd*. *and International Union of Operating Engineers, Hoisting, Portable and Stationary, Local 870*, [1997] Sask. L.R.B.R. 829, LRB File No. 127-97, at 832, the Board must balance the democratic right of employees to choose to be represented by a trade union pursuant to s. 3 of the *Act*, against the need to ensure that the employer has not used coercive power to improperly influence the outcome of that choice.

[20] In the case at hand, there was no evidence that the Employer used its power to improperly influence the employees. The Union's only argument relating to employer influence stemmed from the fact that, because the Applicant was a lead hand – in effect an in scope supervisor - some of the part time employees whose schedules are set by the Applicant may have been influenced to support the Applicant's application.

[21] The Board dealt with this issue in two recent decisions and rejected the proposition that, because an applicant for a rescission application is an in-scope supervisor,

employer influence must follow (see: *Matychuk v. Hotel Employees and Restaurant Employees Union, Local 206 and El-Rancho Food & Hospitality Partnership o/a KFC/Taco Bell*, [2004] Sask. L.R.B.R. ---, LRB File No. 242-03 (not yet reported), and *Ferguson v. Hotel Employees and Restaurant Employees Union, Local 206 and El-Rancho Food & Hospitality Partnership o/a KFC/Taco Bell*, [2004] Sask. L.R.B.R.---, LRB File No. 024-04 (not yet reported)).

[22] In the *Matychuk* decision*, supra,* the Board states at paragraph 29:

> *With respect to the argument that the Applicant is an "agent of the employer" because she was shown to have exercised a disciplinary function with respect to one employee, supervisors, sometimes also called "working forepersons" or "lead hands," are often included in a certified bargaining unit, frequently upon the application of the bargaining agent. Such persons commonly "supervise" employees with whom they work side-by-side doing virtually the same job. However, they may be charged with the duty and authority to carry out functions such as preparing certain paperwork, ensuring that the shift they supervise is appropriately staffed and exercising a minor admonitory function with respect to fellow members of the bargaining unit. In the present case, the only evidence in this regard is that the Applicant provided a verbal warning to an employee for being late for a shift. She was not otherwise cross-examined as to the nature and extent of her authority. We are not of the opinion that the Applicant is an agent of the Employer or identified as a manager by the employees such that the evidence of support filed for the application is tainted.*

[23] Even if there had been evidence led in this case that caused the Board to be concerned about the level of influence wielded by the Applicant over fellow workers, a secret ballot vote enables all workers to express freely whether or not they support the Union.

[24] As there was no evidence whatsoever of employer influence and given that majority support for the application has been filed, we order that there shall be a vote with respect to the representation issue. A Direction for Vote will issue in the usual form.

[25] Counsel for the Union requested that the vote be delayed until the arbitration award dealing with the shift differential was released. The Applicant rejected this request while counsel for the Employer did not oppose the Union's request. The Board is not prepared to delay the vote until the Union and Employer receive the arbitration award for the following reasons. Firstly, there is no guarantee when the arbitrator will render his decision. As such, to delay the vote could result in a lengthy denial of the employees' democratic right to choose to be

represented by a trade union pursuant to s. 3 of the *Act*. Secondly, if the Board were to delay the vote, should the Board delay the vote until all legal appeals have been taken with respect to the arbitration award? If this were the case, the delay could be extremely lengthy. Thirdly, the Applicant was adamant that he and a large number of employees do not support the Union no matter what the result of the arbitration award. Therefore, a delay would arguably serve no useful purpose.

DATED at Regina, Saskatchewan this **27th** of **May, 2004.**

LABOUR RELATIONS BOARD

Wally Matkowski,
Vice-Chairperson