

**Labour Relations Board  
Saskatchewan**

**SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant  
v. SASKATOON COMMUNITY MEDIATION SERVICES, Respondent**

LRB File No. 179-04; November 23, 2004

Chairperson, James Seibel; Members: Bruce McDonald and Brenda Cuthbert

For the Applicant: Vern Wicks

For the Respondent: Scott Wickenden

**Certification – Statement of employment – Board reviews whether individual has sufficiently tangible employment relationship to be listed on statement of employment – Where individual identified by employer as volunteer, paid honourarium (without employment deductions or remittances) and absent from Canada with no indication of when she might return, Board concludes that individual should not be listed on statement of employment.**

***The Trade Union Act, ss. 5(a), 5(b) and 5(c).***

**REASONS FOR DECISION**

**Background:**

[1] Saskatchewan Government and General Employees' Union (the "Union") applied to be designated as the certified bargaining agent for a unit of all employees of Saskatoon Community Mediation Services (the "Employer"), except the executive director, pursuant to ss. 5(a), (b) and (c) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "Act"). In the application, which was filed with the Board on June 22, 2004, the Union estimated there were seven employees in the proposed bargaining unit. A reply to the application was filed on behalf of the Employer on July 7, 2004, alleging there were eight employees in the proposed bargaining unit. No issue was joined as to the appropriateness of the proposed bargaining unit. The statement of employment listed eight employees. The Board heard the application on July 12, 2004. The only issues on which evidence was adduced and argument submitted was the composition of the statement of employment – whether one Sathyanarayanan Manohari is an employee for the purposes of determining whether a majority of the employees support the application. No specimen signature was provided for Ms. Manohari.

**Evidence:**

**[2]** The Union relied upon its application and the evidence of support as filed.

**[3]** Helen Smith-McIntyre is the Employer's executive director. The Employer provides educational and other services regarding mediation, conflict resolution and restorative justice. Ms. Smith-McIntyre testified that Ms. Manohari started working with the Employer as a work placement intern from the Saskatchewan Intercultural Association Inc. in the fall of 2001. Ms. Manohari's duties included clerical and resource centre functions. An amended work placement agreement dated January 11, 2002 describes the amended duration of her placement as from January 7, 2002 to March 1, 2002. Subsequently, however, the Employer could not obtain further funding for Ms. Manohari's placement.

**[4]** From September 22, 2002 to March, 2004, Ms. Manohari worked part-time as what Ms. McIntyre-Smith described as a "volunteer" and was paid an honourarium of \$500.00 per month, from which no employment deductions were taken or remittances made. Although Ms. Manohari did not work during most of January through April of 2004, the Employer continued to pay her the honorarium. She returned to work as a volunteer in late April, 2004. During April and May, 2004, Ms. Manohari worked 33 hours and was paid \$231.00 with no employment deductions taken or remittances made. Ms. Manohari never completed a TD-1 form for income tax purposes. Her last day of work was 2.25 hours on May 26, 2004.

**[5]** Ms. Manohari left Canada on June 7, 2004 for an estimated 30-day sojourn to visit family in India. Upon receipt of the application for certification, the Employer attempted to contact both Ms. Manohari and her spouse, who remained in Canada, to no avail. Ms. Manohari had not returned by the date of the hearing of the application. Ms. McIntyre-Smith did not know when Ms. Manohari was expected to return.

**[6]** Under cross-examination by Mr. Wicks on behalf of the Union, Ms. McIntyre-Smith described Ms. Manohari's present employment status as "a permanent

employee on casual” and that she would be required to complete a TD-1 form upon her return.

**Arguments:**

[7] Mr. Wicks argued that Ms. Manohari ought not to be included on the statement of employment for the purposes of determining whether there was majority support for the application as she was, by the admission of the Employer, a volunteer and it was not known when, or even if, she would return.

[8] While admitting that it was a unique situation, Mr. Wickenden, counsel on behalf of the Employer, argued that Ms. Manohari was an employee as recently as May, 2004 and that the proper forms would be completed upon her return in order to reflect that status. Counsel asserted that Ms. Manohari had a real and tangible connection with the workplace and an interest in the application. In support of these arguments, counsel referred to the decision of the Board in *Public Service Alliance of Canada v. Aramark Canada Ltd.*, [2001] Sask. L.R.B.R. 891, LRB File No. 202-01, and, in particular, the following at pp. 892 and 893 thereof:

*Often the Board is required to determine if casual employees should be included on the statement of employment because their pattern of work is not as great and not as predictable as the work of other employees. The Board set out the test for determining when casual employees will be included on a statement of employment in Service Employees' International Union, Local 299 v. Vision Security and Investigation Inc., [2000] Sask. L.R.B.R. 147, LRB File No. 228-99. The Board summarized its approach to this issue at 153 and 154, as follows:*

*Overall, the Board attempts to set the criteria for determining "employee" status to ensure that persons who have a "sufficiently tangible employment relationship" with the Employer are included on the statement of employment: see United Cab Ltd., supra.*

*In the Lakeland Regional Library Board case, supra, Chairman Ball stated the Board's policies in the following terms at 74:*

*It has long been established that larger bargaining units are preferred over smaller ones, and that in an industrial setting all*

*employee units are usually considered ideal. As a general rule the Board has not excluded casual, temporary or part-time employees from the bargaining unit.*

*However, the Board has also applied the principle that before anyone will be considered to be an "employee", that person must have a reasonably tangible employment relationship with the employer. If it were otherwise, regular full-time employees would have their legitimate aspirations with respect to collective bargaining unfairly affected by persons with little real connection to the employer and little, if any, monetary interest in the matter.*

### **Analysis and Decision:**

**[9]** The crux of the matter in the present case is whether Ms. Manohari has a “sufficiently tangible employment relationship” such that she should be included on the statement of employment for the purposes of determining whether there is majority support for the certification application. Clearly, she is not an “employee” in any conventional sense. Ms. McIntyre-Smith initially and repeatedly referred to Ms. Manohari as a “volunteer,” only latterly in her testimony describing Ms. Manohari as a “permanent employee on casual,” a vague description at best. Ms. Manohari was paid what Ms. McIntyre-Smith referred to as an “honorarium,” which, not to put too fine a point on it, is usually a gift for professional services rendered without charge. In any event, the Employer made no employment deductions from Ms. Manohari’s honorarium and made no remittances on her behalf.

**[10]** In *Aramark Canada Ltd., supra*, the casual employees whose status was in dispute – high school students called in to assist catering staff for between 9.5 and 25.5 hours during the three months prior to the application – were found not to have a sufficiently tangible employment relationship. In the present case, Ms. Manohari worked some 33 hours in the three months prior to the application (a typical period used by the Board in such cases) and it was not known when she would return to Canada and hence to work.

**[11]** In all of the circumstances, we find that Ms. Manohari should not be included on the statement of employment for the purposes of determining the level of support for the application.

**[12]** The support evidence filed by the Union indicates that there is majority support for the application. No issue was raised that the proposed unit is not appropriate for the purposes of collective bargaining and we find that it is. The usual order will issue accordingly.

**DATED** at Regina, Saskatchewan this **23<sup>rd</sup>** day of **November, 2004**.

**LABOUR RELATIONS BOARD**

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James Seibel,  
Chairperson