

**The Labour Relations Board  
Saskatchewan**

**UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1400, Applicant v.  
SOBEYS CAPITAL INC., operating as PRINCE ALBERT GARDEN MARKET IGA,  
Respondent**

LRB File No. 209-04; September 7, 2004

Vice-Chairperson, Walter Matkowski; Members: Brenda Cuthbert and Bruce McDonald

For the Applicant: Drew Plaxton

For the Respondent: Kevin Wilson

**Bargaining unit – Appropriate bargaining unit – Geographic scope – Board’s general policy to use municipal boundaries to define geographic scope of bargaining unit as opposed to granting site-specific certification order – Board declines to deviate from general policy under circumstances of case.**

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

**REASONS FOR DECISION**

**Background:**

[1] On August 6, 2004 United Food and Commercial Workers Union, Local 1400, (the “Union”) filed an application with the Board pursuant to ss. 5 (a), (b) and (c) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”) to be designated as the certified bargaining agent for a unit of employees of Sobeys Capital Inc., operating as Prince Albert Garden Market IGA (the “Employer”). A hearing of this matter was held in Saskatoon on August 25, 2004.

[2] At the hearing, the Employer did not oppose the certification application so long as the Union filed evidence of support from a majority of the employees. The Union did file support from a majority of the employees listed on the Employer’s statement of employment.

[3] The parties agreed to the following bargaining unit description:

*All employees employed by Sobeys Capital Inc. operating as Prince Albert Garden Market IGA, Prince Albert, Saskatchewan save and except the Store Manager, Assistant Store Manager, Administration Department Manager, Grocery Department Manager, Bakery Department Manager, Produce Department Manager, Deli/Meal Solutions Department Manager, Fish Department Manager, Meat Department Manager and Office Staff.*

[4] The only dispute between the parties centered around whether the Board's certification order should include the store's location at 200-800 15<sup>th</sup> Street East, Prince Albert, Saskatchewan, as suggested by the Employer or whether the certification order should simply reference the city of Prince Albert as requested by the Union.

[5] Counsel agreed that the Board's general policy, as set out in the decision *S.J.B.R.W.D.S.U. v. Roca Jack's Roasting House and Coffee Company Ltd.*, [1997] Sask. L.R.B.R. 244, LRB File No. 016-97, is to accept municipal boundaries as the most reasonable geographic description for an appropriate bargaining unit. Counsel for the Employer argued that, based on the facts of the case, the Board should deviate from this general policy.

**Facts:**

[6] Greg Eyre, a Union official involved in the organizing drive relating to the Employer and Gerald Hayes, vice-president, human resources for the Employer testified before the Board. Mr. Hayes testified that the Employer presently has one corporate store in Prince Albert and that there are no plans to add another corporate store in Prince Albert. The Employer presently carries on business under a number of "banners," including a community store banner. At present, the Employer has no plans to either change the banner under which its corporate store operates in Prince Albert or to change its corporate store's civic address.

[7] The Employer has also granted a franchise to an independent storeowner in Prince Albert. The franchisee store has operated in Prince Albert for a number of years. While it is possible that the Employer could either buy out or take over the franchisee in Prince Albert, Mr. Hayes testified that, at present, there are no plans to take over the Prince Albert franchisee store.

[8] Mr. Hayes testified that the Employer has a new banner that it is operating under called "Sobeys Ready to Serve," but that this banner is presently not utilized in Saskatchewan.

[9] Mr. Hayes testified that there are occasions when the Employer closes an existing store and opens a new store in the same municipality. He provided examples where this had occurred in Yorkton and Lloydminster.

[10] Mr. Hayes testified that, historically, in both Saskatchewan and other prairie provinces, certification orders had been granted for entities of the Employer by listing the actual site location, rather than having a municipal certification order granted.

[11] Mr. Eyre testified that the Union had inadvertently agreed to a site location certification order with the Employer at the Employer's Moose Jaw store at the start of 2004. Mr. Eyre indicated that this had been done in error. Mr. Eyre testified that the Union holds a wide range of certification orders in the province in the food service industry including province wide orders, municipal orders and location orders. In regard to the locations where an employer has more than one store, the Union normally attempts to obtain a certification order based on one location only.

**Relevant statutory provisions:**

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

5 *The board may make orders:*

(a) *determining whether the appropriate unit of employees for the purpose of bargaining collectively shall be an employer unit, craft unit, plant unit or a subdivision thereof or some other unit;*

(b) *determining what trade union, if any, represents a majority of employees in an appropriate unit of employees, but no order under this clause shall be made in respect of an application made within a period of six months from the date of the dismissal of an application for certification by the same trade union in respect of the same or a substantially similar unit of employees, unless the board, on the application of that trade union, considers it advisable to abridge that period;*

(c) *requiring an employer or a trade union representing the majority of employees in an appropriate unit to bargain collectively;*

**Employer's arguments:**

[13] Counsel for the Employer argued that the Board has recognized a number of exceptions to its municipal certification order policy. Counsel took the position that the Board, in considering the appropriate geographical area, attempts to balance the greatest degree of industrial stability with the least interference with the right of future employees to choose their own bargaining unit. In the case at hand, counsel argued that, in the event a municipal certification order was granted and the Employer either took over the franchisee store in Prince

Albert or opened another store in Prince Albert, the Union would be given a windfall of sorts at the expense of future employees' rights to determine if they wished a union to represent them.

**Union's arguments:**

**[14]** Counsel for the Union argued that there was no reason for the Board to deviate from its normal policy of granting a municipal certification order in the case at hand. Counsel argued that one of the purposes of a municipal certification order was to protect a trade union in the event the employer moved civic locations. Counsel argued that there was certainly the possibility that the Employer could change locations in the future, much as it had done in Yorkton and Lloydminster.

**Analysis:**

**[15]** Given the facts of the case, there is no reason for the Board to deviate from the Board's policy of favouring municipal certification orders. In the case at hand, the evidence indicated that it is possible, though not probable, that the Employer could, in the future, move civic locations. As such, following the Board's general policy grants the employees and the Union the protection that is necessary in the event the Employer changes civic locations.

**[16]** While the Employer raised concerns about future employees' rights, and specifically raised the scenario of the Employer taking over the non-corporate owned store that exists in Prince Albert, the Employer testified that such a takeover was not probable and that corporate expansion in Prince Albert was not probable. As such, this Board accepts and adopts the Board's policy in favor of a municipal certification order in that present employee rights must be protected ahead of the rights of non-existent employees.

**Conclusion:**

**[17]** Given that the Union has filed evidence of majority support, the application for certification is granted. A municipal certification order will issue in the form agreed upon by the

parties. Board Member Cuthbert dissents and would have granted a location certification order.

**DATED** at Regina, Saskatchewan, this **7th** day of **September, 2004**.

**LABOUR RELATIONS BOARD**

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Wally Matkowski,  
Vice-Chairperson