**LABOUR RELATIONS BOARD**
**Saskatchewan**

**JOHN JASNOCH, Applicant v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 529 and SOMMERFELD ELECTRIC (SASKATOON) LTD., Respondents**

LRB File No. 053-05; May 12, 2005
Vice-Chairperson, Wally Matkowski; Members: Marshall Hamilton and Gerry Caudle

For the Applicant: Jean Torrens
For the Certified Union: Drew Plaxton
For the Employer: Scott Wickenden

**Decertification – Interference – Applicant obviously sincere in description of reasons for bringing application – Applicant entitled to hold opinions and beliefs so long as reasons for bringing application not result of employer influence - Board rejects union's argument that employer influenced or interfered with application.**

**Decertification – Petition – Union argues that individual support cards signed in group setting akin to petition support evidence and asks Board to disregard support evidence – Where individual employees signed individual cards, cards not invalidated because signed in group setting.**

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

## REASONS FOR DECISION

**Background:**

**[1]** International Brotherhood of Electrical Workers, Local 529 (the "Union"), is certified as the bargaining agent for a unit of employees of Sommerfeld Electric Limited by an Order of the Board dated April 27, 1961. The Applicant, John Jasnoch, filed the present application relating to Sommerfeld Electric (Saskatoon) Ltd. (the "Employer") for rescission of the certification Order, pursuant to s. 5(k)(i) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*") on March 18, 2005.

**[2]** Counsel for the Applicant sought leave to amend the application, pursuant to s. 19 of the *Act*, to include s. 37 of the *Act*, based on the agreed fact that the Employer was a successor to Sommerfeld Electric Limited. Given this agreement, the Board allowed the amendment and ordered that Sommerfeld Electric (Saskatoon) Ltd. is

a successor employer to Sommerfeld Electric Limited and is bound by the certification Order issued by the Board to the Union and to any collective agreement in force between Sommerfeld Electric Limited and the Union.

**[3]** The Union opposed the rescission application and argued that it ought to be dismissed, alleging that it had been made in whole or in part on the advice of, or as a result of, the influence of or interference or intimidation by, the Employer or an agent of the Employer within the meaning of s. 9 of the *Act*.

**[4]** The present application was filed within the open period specified by s. 5(k)(i) of the *Act*. The Union did not take the position that the statement of employment filed by the Employer was inaccurate. The Applicant filed evidence of support for the application from a majority of employees listed on the statement of employment.

**[5]** The application was heard at Saskatoon on April 12, 2005 and May 4, 2005. The Applicant testified in support of his application. No one testified on behalf of the Union or the Employer. Counsel for the Employer did not take an active role at the hearing.

**Evidence:**

**[6]** The Applicant testified that he commenced employment with the Employer as a labourer in 1999 when the owner of the Employer, Don Jackson, encouraged the Applicant to seek employment with the Employer. To do this, the Applicant had to join the Union, which he did. The Applicant was then name-hired by the Employer and has progressed with the Employer to the position of journeyman electrician. The Applicant has paid dues to the Union since his start date, other than for a period of time when he went to school to obtain his journeyman papers.

**[7]** The Applicant testified that, in approximately 1982, he brought an application for rescission relating to a different union at a different work location. The Applicant testified that he obtained the name of a lawyer to assist him with the 1982 application for rescission (Larry Seiferling) from a union lawyer.

**[8]** The Applicant testified that he started to become unhappy with the Union and attempted to contact Mr. Seiferling in approximately February 2005 to retain Mr. Seiferling to bring a rescission application. While the Applicant did not talk to Mr. Seiferling directly, a representative from Mr. Seiferling's office advised the Applicant that Mr. Seiferling's law firm could not represent the Applicant due to a conflict of interest. The Applicant was advised to contact the law firm MacPherson, Leslie & Tyerman (MLT). The Applicant followed this advice, ultimately retained MLT and received a written quote that the application would cost approximately $1,500.00.

**[9]** The Applicant testified that he was not aware that Mr. Seiferling represented the Employer and that he did not advise anyone with the Employer that he had been involved in a previous decertification application. He testified that Mr. Jackson retired in 2001 or 2002, when he sold out to the new owners.

**[10]** The Applicant testified that he recalled from his 1982 application for rescission that he had to bring the application between 30 and 60 days prior to the anniversary of the effective date of the collective agreement and that he was able to determine this time period from the cover page of the applicable collective agreement.

**[11]** The Applicant testified that he did not talk to anyone from management about bringing the application for rescission and that he did not receive any support, encouragement or promises from management for bringing the application. The Applicant testified that there was a certain level of dissatisfaction with the Union among the employees and that he agreed to bring the application. The Applicant testified that his co-workers advised him that they would assist him with the payment of his legal fees.

**[12]** The Applicant testified that he talked to co-workers about their support or opposition to the Union after work, on the phone and during weekends. The Applicant arranged for a meeting with his co-workers in March 2005 (the "March employee meeting") at a co-worker's house and obtained signed support cards at the March employee meeting. The Applicant testified that the March employee meeting was held after hours and that, as far as he knew, the Employer did not know about the March employee meeting.

**[13]** The Applicant testified that he is not a supporter of unions and that he brought the application for rescission for a number of reasons. The Applicant testified that he does not believe that he is getting full value for the $1,400.00 in union dues that he pays per year and that he is unable to utilize the entire $1,400.00 as a tax deduction. The Applicant complained about the poor quality of workers sent from the Union's hiring hall and gave an example where a 4th year apprentice who could not even do a simple lighting job was sent to work for the Applicant.

**[14]** The Applicant complained about the poor representation that he was receiving from the Union and testified that he has never seen a union representative at his job site. This made him believe that he "didn't exist" in the Union's eyes. The Applicant complained that he has no say in relation to wages and benefits and testified that he would have no trouble negotiating his salary and benefits directly with the Employer.

**[15]** The Applicant complained about his benefit premiums going up and testified about how he was unhappy about a "banking system" relating to benefits as he was, in effect, subsidizing other members of the Union who were not full-time employees.

**[16]** During cross-examination, the Applicant testified that he lives outside of Saskatoon so the March employee meeting had to be held at a co-worker's house and that no notice was posted of the March employee meeting. The Applicant testified that the March employee meeting lasted between 1 and 1 1/2 hours and that employees discussed a number of issues, such as what would happen if they did decertify. Issues such as job security, wages and benefits and the apprenticeship program were discussed.

**[17]** The Applicant testified that, based on advice he received from his lawyer, he advised people at the March employee meeting that they could sign support cards for the rescission or not, that it was their choice. The Applicant told people at the March employee meeting that they could take the support cards and sign in private, but what happened was that all employees at the meeting signed support cards in front of each

other with everyone present. The Applicant testified that some employees were not at the March employee meeting.

**[18]** During his cross-examination of the Applicant, Mr. Plaxton, counsel for the Union, referred the Applicant to various provisions of the collective agreement and asked what would happen to wages, benefits, seniority provisions, hiring hall rights, the apprenticeship program and various other rights contained in provisions of the collective agreement if the decertification application was successful. The Applicant responded by stating that he did not promise anything to his fellow workers and that he was prepared to take the risk and bargain on his own behalf without the Union. The Applicant testified that he had not conducted any research into the cost of replacing the applicable benefit program, but he believed that some of the benefits were not necessary, such as acupuncture. He agreed that, at present, the Employer pays the total cost for the employee benefit package.

**[19]** Throughout his cross-examination, the Applicant remained adamant that he had never discussed anything to do with the decertification application or the potential after effects of a successful decertification application with anyone in management.

**[20]** With respect to his previous application for rescission, the Applicant testified that he did not recall why he brought the application, but did recall that he did not gain anything from bringing the application except the open period concept and the principle that there could be no management involvement. The Applicant acknowledged that he actually lost money as a result of the previous application, because he had to pay a portion of the legal fees.

**Statutory Provisions:**

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

> *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:*
>
> *(i) there is a collective bargaining agreement in existence 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 of the effective date of the agreement; or*

*…*

*notwithstanding that 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:**

**[22]** Ms. Torrens argued that there was no direct evidence to suggest that the Applicant was motivated or was assisted in any way by anyone in the management of the Employer to make the application for rescission. Ms. Torrens pointed out that the Union did not call any evidence to substantiate its allegation of employer influence. Ms. Torrens argued that the Applicant provided sufficient plausible reasons for bringing the rescission application and, though the Union may not like or agree with these reasons, that does not take away from the fact that the Applicant is entitled to his beliefs and that the employees are entitled to a secret ballot vote.

**[23]** Ms. Torrens argued that there was nothing inappropriate in how the support cards were signed and that there was no requirement for there to be a secret support card signing process to obtain an order from the Board for a secret ballot vote.

**[24]** Mr. Plaxton argued that the application ought to be dismissed on the basis of s. 9 of the *Act*. He said that the Applicant's explanations as to the reasons for making the application were simply not plausible and should lead to the drawing of an adverse inference as to the involvement of the Employer in the making of the application. Mr. Plaxton conceded that there was no direct evidence of employer influence, but attacked the Applicant's testimony as being evasive and untruthful.

**[25]** Mr. Plaxton stated that the Board should not accept the filing of the support cards because most of the cards were obtained at the March employee meeting, where employees who were present all signed support cards in front of each other. Mr. Plaxton argued that this tainted the support cards, as problems could occur because the identities of those employees who signed could be reported back to management and employees may have felt pressured to sign the support cards.

**Analysis and Decision:**

**[26]** Instances of interference or influence by an employer or its agent in matters relating to applications for rescission of a certification order are not uncommon and are rarely overt. (See: *Reddekopp v. UFCW Local 1400 and Newswest Corp*., [2001] Sask. L.R.B.R. 174, LRB File No. 278-00, at 178.) That being said, normally a union calls some evidence to attempt to establish that an employer has had a hand in bringing or causing a rescission application to be filed.

**[27]** The Board closely examined the evidence given by the Applicant and, on the whole, we find that there is little that would lead us to draw an adverse inference such as to cause us to exercise our discretion to dismiss the application on the basis that the application was made, in whole or in part, as a result of management influence pursuant to s. 9 of the *Act*.

**[28]** The Applicant was obviously sincere in his description of his reasons for bringing the application. The Applicant admittedly is not a big union supporter, as is evident given the fact that this is the second rescission application that he has brought before the Board. So long as there was no evidence that his reasons for bringing the application were as a result of influence by the Employer, the Applicant is entitled to his opinions and beliefs.

**[29]** In the present case, the Union's primary argument that there was employer influence revolved around the Union's belief that it made no sense for the Applicant to give up a secure, existing collective agreement without some assurances from the Employer as to what would occur if the rescission application was successful. Counsel for the Union asked the Board to find that the Applicant was being untruthful and to assume or conclude that the Employer was behind the rescission application.

**[30]** The Board found nothing to indicate that the Applicant was being untruthful before the Board. The Applicant acknowledged that he is taking some level of risk if the secret ballot vote results in the loss of the Union and there was no evidence whatsoever to indicate that the Applicant had any contact with the Employer in relation to the rescission application.

**[31]** Based on the evidence, the Board rejects the Union's argument that there has been employer interference or influence in relation to the Applicant's application.

**[32]** Counsel for the Union argued that the Board should dismiss the application based on the fact that most of the individuals who supported the rescission application signed support cards in front of each other, following the March employee meeting. Counsel for the Union argued that this method of obtaining support cards is akin to having a petition signed and that it has been the Board's practice to reject petition form evidence on both certification and decertification applications.

**[33]** In *International Brotherhood of Boilermakers v. Metal Fabricating and Construction Ltd.*, [1988] Fall Sask Labour Rep. 53, LRB File No. 072-88, the Board stated at 53 and 54:

> *It [the Board] has consistently rejected evidence of support in petition form on applications for bargaining rights as well as applications for rescission (see, for example, Capri Motor Hotel, LRB File No. 300-78, dated February 26, 1979) because the names of those affixing their signatures to the petition are visible to all who sign thereafter. That in turn violates the principle of confidentiality of evidence of support or non-support, and can place undue pressure on employees to sign or not to sign because they are aware that their views can easily become public knowledge. The most common form of petition is one document bearing signatures of all employees supporting the application. However, any document signed by more than one employee, be it two, a group, or all those in the unit, is to at least some degree subject to the deficiencies of a petition. The simple requirement that evidence of employee support be in the form of individual cards signed by each employee is not an onerous one and there is no reason why it cannot easily be met. The evidence of employee support in the nature of a petition is therefore rejected and the application is dismissed.*

**[34]** In *Berner v Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Loraas Disposal Services Ltd*, [2000] Sask. L.R.B.R. 776, LRB File No. 034-00, the Board stated at 782:

> *In any application to the Board for decertification or rescission, the Board strives to maintain the confidentiality of the employees who support the application. This practice is adopted to prevent employers from discriminating against employees who support the union and to permit employees to have the freedom to support or not support an application for certification or rescission without fear of consequences. In a rescission setting, confidentiality is maintained for two purposes: (1) to allow employees to freely choose to support a campaign in opposition to the union; and (2) to allow employees to freely choose to support the union, without fear, in either case, of retaliation from the employer or the union. In this case, the method of applying for rescission violated the principle of confidentiality by disclosing to the Employer the names of all of the employees who purported to support the application for rescission. This approach also identifies those employees who do not support the application and places employees in the rather vulnerable position of knowing that if they do not sign an application for rescission, the Employer will know that they support the Union. The method of gathering support for the applications filed, that is, by having employees publicly declare their support for the rescission application, places undue pressure on employees to support the application for fear of employer reprisal. It is an untenable practice.*

**[35]** In the case at hand, we are not dealing with a petition type of application as individual employees signed their own support cards. Neither the Employer nor the Union is aware of who supported or did not support the application. There was no evidence, for example, that a representative of the Employer was present at the March employee meeting. Support cards are not invalidated just because employees sign individual support cards, either for a rescission application or a certification application, following a meeting in a group setting.

**[36]** Given that the Board will order a secret ballot vote, employees are guaranteed the opportunity to arrive at their decision to support or not support the Union in a confidential setting, removed from any pressures that they may have experienced. As such, there is no reason for the Board to reject the individually signed support cards filed with this application.

**[37]** As the Applicant has filed evidence of majority support for his application, we direct that a vote be conducted among the members of the bargaining unit in the usual manner.

**DATED** at Regina, Saskatchewan, this **12th** day of **May, 2005.**

**LABOUR RELATIONS BOARD**

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Wally Matkowski,
Vice Chairperson