Labour Relations Board
Saskatchewan

MAYNARD SEVERIGHT, Applicant v. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL 739 and NU TONE DEC. (SASK) LTD., Respondents

LRB File No. 094-05; June 22, 2005
Chairperson, James Seibel; Members: John McCormick and Ken Ahl

The Applicant:	Maynard Severight
For the Union:	Terry Parker
For the Employer:	Todd Davis

Decertification – Interference – While applicant's perception that he derives no benefit from collective agreement and benefit plans mistaken, Board cannot say that applicant's stated reasons for making application so implausible or lack such credibility as to lead to inference that applicant being disingenuous – Further, no evidence to indicate that employer engaged in course of conduct intentionally designed to shape workforce to facilitate decertification.

Decertification – Practice and procedure – Where applicant sole employee in bargaining unit who would be eligible to vote were Board to order vote, Board grants application without necessity of secret ballot vote.

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

REASONS FOR DECISION

Background:

[1] By Order of the Board dated October 7, 1997 in LRB File No. 264-97, International Union of Painters and Allied Trades, Local 739 (the "Union") was certified to represent a standard bargaining unit for the painters' trade division of employees of Nu Tone Dec. (Sask) Ltd. (the "Employer"), which also carries on business as Fine Finishes Painting & Protective Coatings. At all material times, the Applicant, Maynard Severight, was an employee in the bargaining unit and a member of the Union. On May 25, 2005, the Applicant filed an application 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*"). Section 5(k)(i) provides as follows:

> *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.*

[2] The application was filed within the appropriate "open period" under the provincial collective agreement for the painters' trade division (the "collective agreement"). At the time of both the filing and the hearing of the application on June 14, 2005, Mr. Severight was the only employee in the bargaining unit. In its reply to the application, the Union alleged employer interference in the making of the application – specifically, that the Employer had purposely laid off union supporters to facilitate the success of a decertification application – and requested that the Board dismiss the application pursuant to its discretion under s. 9 of the *Act*. Section 9 provides as follows:

> *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.*

Evidence:

[3] Mr. Severight testified that he has been employed as a painter by the Employer for nine or ten years and that he has been the only employee for over a year. He also said that, because of poor weather this spring, exterior painting work has been scarce. In his application, Mr. Severight averred that his reason for making the application for rescission was that "there are no benefits for [him]" from unionization. In cross-examination by Mr. Parker, Mr. Severight conveyed his impression that, as a First Nations person, he received no additional benefit from the collective agreement or the benefit plans administered by the Union. While he acknowledged that he received regular wage increases under the terms of collective agreement, Mr. Severight maintained a belief that they were no greater than he could have negotiated with the Employer on

his own. He seemed particularly unconcerned about the potential for loss of benefits consequent on decertification. And, he was somewhat upset by what he perceived to be insensitivity by the Union during a period of personal loss a few years ago.

[4] Mr. Severight maintained that he learned how to make the application from a friend, one Roy Num (phonetic), and some other unidentified acquaintances who are also union members. He also consulted Board staff. While he acknowledged that he and the Employer's principal, Todd Davis, have become friends over the years, he denied that Mr. Davis had ever encouraged the filing of a rescission application. He said that he mentioned to Mr. Davis that he was making the application, but Mr. Davis refused to speak to him about it.

[5] Terry Parker is the Union's business agent. He testified that the Employer had dilatorily submitted remittances for dues and benefits contributions to the Union for the past three months on the morning of the hearing. He referred to a series of remittance records that he said showed that the Employer had an average of three employees for each month between June 2003 and February 2005, a period of some 20 months.

[6] Todd Davis, who declared the statement of employment on behalf of the Employer, is the Employer's principal. The Employer is a small company and Mr. Davis' spouse prepares the remittances. Although Mr. Davis did not know why the remittances for the past three months were submitted late, he testified that in the past they certainly had not always been submitted on time.

[7] Mr. Davis testified that he had never spoken to Mr. Severight about making an application for rescission. He forthrightly admitted that if he had lower labour costs he could probably secure more work.

Arguments:

[8] In a very brief argument, Mr. Severight reiterated his position that the Union was of no benefit to him.

[9] Also in a very brief argument, Mr. Parker, on behalf of the Union, submitted firstly, in essence that Mr. Severight's alleged reasons for making the application for rescission were not

plausible, and, secondly, that the Employer had influenced the making of the application and that the application ought to be dismissed.

Analysis and Decision:

[10] With respect to the issue of the Applicant's reasons for making the application for rescission, while we agree that he is mistaken with respect to his perception that he derives no benefit from the collective agreement and benefit plans, we accept that he is nonetheless sincere and is not dissembling – in our opinion he has not thought through the potential negative consequences to which he might be exposed upon decertification. However, we are also of the opinion that the Applicant is also motivated by feelings of disappointment, if not outrage, at what he perceived to be callous treatment by the Union in his time of personal loss. While we have insufficient evidence to form an opinion as to whether his feelings are in fact justified, or possibly merely result from a mechanical application of health and welfare plan rules by the Union (that is, result from poor communication), we find that the Applicant's perception is sincere. This may be contrasted with the situation considered by the Board 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, where the Board found that the applicant's averred reasons for seeking rescission of the certification order had nothing to do with her real reasons for doing so and were likely suggested to her by someone else. In all of the circumstances of the present case, we cannot say that the Applicant's stated reasons for making the application are so implausible or lack such credibility as to lead to an inference that he is being disingenuous.

[11] With respect to the allegation of employer influence, we find that there is not sufficient evidence to allow us to draw the necessary inference. The dues and benefit plan remittance records indicate that Mr. Severight has been the Employer's sole employee since November 16, 2004 and that, in fact, he was laid off from January 16 to February 15, 2005, during which period the Employer had no employees. While, as was stated by the Board in *Nadon v. United Steelworkers of America and X-Potential Products Inc*., [2003] Sask. L.R.B.R. 383, LRB File No. 076-03 (application for judicial review dismissed [2004] Sask. L.R.B.R. c-1 (Q.B.)), at 386-87, it is necessary to be vigilant regarding the exercise of influence by an employer because such influence is rarely overt, there is no evidence to indicate that the Employer has been engaged in a

course of conduct intentionally designed to shape its workforce to facilitate decertification and influence the making of the application.

[12] Because the Applicant is the sole employee in the bargaining unit who would be eligible to vote were we to order a vote, there is no sense in doing so. The application is granted without the necessity of a secret ballot vote.

DATED at Regina, Saskatchewan, this **22nd** day of **June, 2005.**

LABOUR RELATIONS BOARD

James Seibel,
Chairperson