

**Labour Relations Board
Saskatchewan**

JENNIFER LOHMEYER, Applicant and COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, Certified Union and SASKATCHEWAN WATERSHED AUTHORITY, Employer

LRB File No. 118-03; April 11, 2005

Chairperson, James Seibel; Members: Gloria Cymbalisty and Ken Ahl

The Applicant: Jennifer Lohmeyer
For the Certified Union: Rhoda Cossar and Debbie Firth
For the Employer: No one appearing

Religious exclusions – Test – Board reaffirms use of four-fold test for determining whether individual should be excluded pursuant to s. 5(l) of *The Trade Union Act* – Employee who does not necessarily object to payment of dues and assessments to unions in general but rather to fact that particular union might use dues for political contributions does not satisfy test – Board dismisses application and directs employer to deduct and remit dues.

The Trade Union Act, s. 5(l).

REASONS FOR DECISION

Background:

[1] Communications, Energy and Paperworkers Union of Canada, Local 820 (the “Union”) was certified to represent a bargaining unit comprising certain employees of Saskatchewan Watershed Authority (the “Employer”) on February 6, 2003 (LRB File No. 141-02). In June, 2003 the Applicant, Jennifer Lohmeyer filed an application with the Board pursuant to s. 5(l) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”), colloquially referred to as the religious exclusion provision, seeking to be excluded from the bargaining unit and payment of dues to the Union. Section 5(l) provides as follows:

5. *The board may make orders:*

...

(l) excluding from an appropriate unit of employees an employee whom the board finds, in its absolute discretion, objects:

- (i) to joining or belonging to a trade union; or*
- (ii) to paying dues and assessments to a trade union;*
as a matter of conscience based on religious training or belief during such period that the employee pays:

- (iii) to a charity mutually agreed upon by the employee and the trade union that represents a majority of employees in the appropriate unit; or*
- (iv) where agreement cannot be reached by these parties, to a charity designated by the board; an amount at least equal to the amount of dues and assessments that a member of that trade union is required to pay to the trade union in respect of such period;*

[2] Although the application was set for hearing in 2003, it was adjourned by agreement of the Applicant and the Union while they attempted to work out a resolution. They were indeed able to partially resolve the matter. The Union agreed that Ms. Lohmeyer, who objected on purported religious grounds to the pledge of allegiance to the Union, would not be required to sign an application for membership in the Union. However, the Union would not agree to exemption from payment of dues to the Union. Ms. Lohmeyer objects to the payment of dues to the Union, because she fears that the Union makes political donations, but she offered to agree to their remittance to a registered charity.

Evidence:

[3] Ms. Lohmeyer is a member of the Jehovah's Witnesses. While she was unable to confirm that the central beliefs or articles of faith of the Jehovah's Witnesses include a prohibition against joining or providing financial support to a trade union, she testified that she personally objected to the fact that a portion of the dues that she would be required to remit might be used by the Union to support a political party. Ms. Lohmeyer stated that she believed this to be in violation of purported biblical injunctions against supporting organizations that might become involved in conflict.

[4] Ms. Lohmeyer stated that she objected to joining any trade union that required a pledge of allegiance as she viewed it as anathema to the concept that there is only one kingdom, that being the kingdom of God. Ms. Lohmeyer further objected to the payment of dues to the Union because she believed that it made political donations. She said that because of her religious beliefs she does not belong to any political party and does not vote in governmental elections.

[5] Rhoda Cossar, a representative of the Union, testified that in fact the Union does

make political donations but, because it is limited to a thousand dollars a year and the Union has more than one hundred thousand members, any contribution that could be notionally allocated to an individual would be miniscule.

Arguments:

[6] Ms. Lohmeyer reiterated her position that it was against her interpretation of scripture to remit funds to the Union that might be used by it in support of a political cause.

[7] Ms. Cossar argued that the facts of the case did not meet the test enunciated by the Canada Labour Relations Board in *Barker v. Teamsters' Union, Local 938*, [1986] 86 C.L.L.C. 16, 031, and adopted by the Saskatchewan Labour Relations Board in several previous decisions. Ms. Cossar confirmed that the Union did not dispute Ms. Lohmeyer's sincerity.

Analysis and Decision:

[8] In *Mary Ann Enns v. Kindersley Union Hospital and Saskatchewan Union of Nurses*, [1993] 3rd Quarter Sask. Labour Rep. 149, LRB File No. 135-93, the Board surveyed the case law across Canada on the principles to be applied to a request of an employee for a religious exemption. In the *Enns* decision, *supra*, the Board referred to *Barker, supra*, where the Canada Board summarized the criteria for dealing with an application of this nature as follows, at 14,288:

(1) *The applicant must object to all trade unions, not just to a particular trade union.*

(2) *The applicant does not have to rely on some specific tenets of a religious sect to base his objections.*

In the same manner as the British Columbia and Ontario boards, we believe it is not for us to disqualify some convictions because they are personal to the applicant. While it will be easier for the latter to convince the Board that his belief is "religious" when this belief forms part of the dogma of a sect, we believe we would misconstrue section 162(2) if we were to get involved with religious orthodoxy.

(3) *An objective inquiry must be made into the nature of the applicant's belief in the sense that they must relate to the Divine or man's perceived relationship with the Divine, as opposed to man-made institutions. . . .*

(4) *Finally, the applicant must convince the Board that he is sincere and that he has not rationalized his objections to the union on religious*

grounds after he was made aware of the provisions of the Code.

[9] In our opinion, the present case does not satisfy the test adopted by the Board. Ms. Lohmeyer does not have any apparent objection to union membership that does not involve a pledge of allegiance. In any event, that is a moot point because the Union has agreed that she is not required to apply for membership. The present case is confined to Ms. Lohmeyer's objection to the payment of dues. Her objection is limited to the fact that a portion of the dues that would be remitted on her behalf to the Union might be contributed by the Union to a political party.

[10] In our opinion, Ms. Lohmeyer does not necessarily object to the payment of dues and assessments to a trade union *per se*, but rather to the use that the Union might make of the dues. That is, the objection is not to the support of any trade union and its membership for collective agreement administration or collective bargaining, but to the fact that the Union in this case has made, and is likely to make, political contributions.

[11] For these reasons the application for exemption from payment of dues to the Union is dismissed. The Employer is directed to deduct and remit to the Union the appropriate dues on behalf of the Applicant pursuant to union security.

DATED at Regina, Saskatchewan, this 11th day of **April, 2005.**

LABOUR RELATIONS BOARD

James Seibel,
Chairperson