

**Labour Relations Board
Saskatchewan**

**AARON BERES, Applicant v. SASKATCHEWAN JOINT BOARD, RETAIL,
WHOLESALE AND DEPARTMENT STORE UNION and LORAAS DISPOSAL
SERVICES LTD., Respondents**

LRB File No. 263-04; February 1, 2005

Chairperson, James Seibel; Members: Leo Lancaster and John McCormick

For the Applicant: Larry Seiferling, Q.C.

For the Certified Union: Larry Kowalchuck

No one appearing for the Employer

Decertification – Practice and procedure – Board will only grant order for rescission without vote of affected employees in extraordinary circumstances, such as where single employee in bargaining unit is applicant for rescission – Parties seek conditional order of rescission to be effective on possible occurrence of event at unspecified future time – Board declines to grant conditional rescission order and adjourns application *sine die* until parties prepared to have Board deal with application in final manner.

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

REASONS FOR DECISION

Background:

[1] Saskatchewan Joint Board, Retail, Wholesale and Department Store Union (the “Union”) is certified as the bargaining agent for a unit of employees of Loraas Disposal Services Ltd. (the “Employer”). The Applicant, Aaron Beres, a member of the bargaining unit, applied during the appropriate “open period” for rescission of the certification Order dated March 25, 1997. The Applicant filed ostensible evidence of support for the application from a majority of the employees in the bargaining unit with the Board. In its reply to the application the Union alleged, *inter alia*, that the application ought to be dismissed pursuant to s. 9 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”) as being made as a result of influence or interference by the Employer, and asserted that three unfair labour practice applications brought by the Union against the Employer that remain outstanding – LRB File Nos. 143-00, 077-04 & 183-04 – ought to be disposed of before an application for rescission is entertained.

[2] The matter was scheduled for hearing by the Board on December 20, 2004. However, at that time, the parties advised the Board that they had agreed to jointly request that the Board grant the application for rescission without ordering a vote, to be effective only upon the outstanding unfair labour practices being disposed of by the Board or otherwise resolved and withdrawn.

[3] Mr. Seiferling, counsel for the Applicant, cited nine Board files where the Board apparently issued Orders rescinding certification Orders without a secret ballot vote where the applications were not contested by the certified union.

Analysis and Decision:

[4] The Board files cited as precedent by counsel for the Applicant, all decided in a two-year period between 1988 and 1990 under the imprimatur of one particular Chair and Vice-Chair of the Board, resulted in the granting of final Orders of rescission. None was accompanied by reasons for decision. Certainly, in the last ten to fifteen years, it would be extraordinary for the Board to grant any order for rescission without a vote of the affected employees and, in our estimation, this has been done on only a few occasions in the restricted circumstances where there is a single employee – the applicant for rescission – in the bargaining unit.

[5] In any event, the order sought in the present case is anomalous – there is no precedent for same that this panel is aware of. The parties do not seek a final order for rescission, but a *conditional* order; that is, the order sought is not to be effective except upon the occurrence of an event that may occur at some unspecified time in the future or perhaps not at all – the outstanding unfair labour practices being heard and disposed of by the Board or otherwise resolved and withdrawn.

[6] In our opinion there is an issue as to whether the Board has jurisdiction to make such a conditional order but, as it was not argued before us and given our disposition of this matter, we decline to determine that issue.

[7] The application is adjourned *sine die* to be brought back on notice by either party, once they are prepared to have it dealt with in a final manner.

DATED at Regina, Saskatchewan this **1st** day of **February, 2005**.

LABOUR RELATIONS BOARD

James Seibel,
Chairperson