

**Labour Relations Board
Saskatchewan**

**INTERNATIONAL UNION OF OPERATING ENGINEERS HOISTING & PORTABLE &
STATIONARY, LOCAL 870, Applicant v. PRAIRIE CRANE, Respondent**

LRB File No. 268-04; March 3, 2005

Chairperson, James Seibel; Members: Bruce McDonald and Clare Gitzel

For the Applicant: Jim Chisholm and Gladys Downing

For the Respondent: Don Hnatuk

Practice and procedure – Reply – Employer which files no reply to certification application has no standing to participate in certification hearing without leave of the Board – Board grants application for certification.

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

REASONS FOR DECISION

[1] On November 3, 2004, International Union of Operating Engineers Hoisting & Portable & Stationary, Local 870 (the “Union”) filed an application to be certified as the bargaining agent for a unit of employees of Prairie Crane (the “Employer”). The proposed bargaining unit was for the standard “Newbery” description for operating engineers.¹ In its application, the Union estimated there were six employees in the proposed bargaining unit and filed ostensible evidence of support for the application on behalf of a majority of employees.

[2] The Board forwarded a copy of the application to the Employer by facsimile on November 5, 2004 and served the Employer with a copy of the application by double registered mail on November 15, 2004 with the standard cover letter from the Board Registrar that provides as follows:

Enclosed is a copy of an application filed with the Board.

If you wish to reply to this application, please do so on the enclosed Reply form. Your written reply must be in the possession of the

¹ See, *Construction and General Workers Union, Local 890 v. International Erectors & Riggers (a Division of Newbery Energy Ltd.)*, [1979] Sept. Sask. Labour Rep. 37, LRB File No. 114-79.

Board Registrar, at the above address, not later than ten days from the date of this letter.

Enclosed is a Statement of Employment which must be completed by you and returned to the Board Registrar not later than ten days from the date of this letter. The applicant representative is permitted to be present during the obtaining of the specimen signatures. If he/she fails to contact you within two days of receipt of this letter, it will be in order for you to obtain the specimen signatures without him/her. If you are unable to obtain the specimen signatures, it would be in order to file a photocopy of the signature portion of the TD1 form, or other documents bearing the signatures.

PLEASE NOTE THAT IF YOU DO NOT FILE A REPLY AND/OR STATEMENT OF EMPLOYMENT WITHIN THE TIME PERIOD SET OUT ABOVE, THIS APPLICATION MAY BE TREATED AS UNCONTESTED AND AN ORDER MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU.

If you do file a Reply and/or Statement of Employment within the time period set out above, and if a hearing appears necessary, the application will be heard by the Board on Tuesday, November 23, 2004 at the Labour Relations Board Hearing Sturdy Stone Building, 10th Floor, 122 3rd Avenue North, Saskatoon, Saskatchewan. If a hearing does not appear necessary, you will be advised that the Board will consider the application without a hearing.

[3] On November 17, 2004 the Board Registrar received a telephone call from Trent Garneau on behalf of the Union indicating that the Union agreed to a request made of it by the Employer for an extension of time to file a reply to the application and to discuss it with the Union. Accordingly, the hearing set for November 23, 2004 was adjourned by consent. By letter dated November 17, 2004 the Board Registrar forwarded the standard scheduling information forms to the parties. Based upon the representations of the parties as to availability for hearing, the Board Registrar set a new date for hearing of February 28, 2005, of which the parties were advised by letter dated December 9, 2004.

[4] The matter came on for hearing on February 28, 2005. The Employer filed neither a reply to the application, nor a statement of employment. The Union relied upon its application and the ostensible evidence of support filed therewith. When asked whether the Employer disputed the application, Mr. Hnatuk, on behalf of the Employer,

asserted that he did not even know what the application was about. However, he agreed that he had read all the material that had been sent to him by the Board and that he had had various telephone discussions initiated by himself with both the Board Registrar and the Board's Investigating Officer. When asked whether he was requesting an adjournment of the application in order to obtain advice, Mr. Hnatuk shrugged and reiterated that he did not know what the application was for. When he was advised by the Chairperson of the Board that it was for representation of his employees by the Union, Mr. Hnatuk replied that he had no problem with the Union and that he knew that his employees at the time of the application were members of the Union.

[5] Having filed no reply to the application, the Employer is without standing to participate in the hearing without leave of the Board: see, *United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp., et al.*, [2004] Sask. L.R.B.R. ---, LRB File No. 172-04 (not yet reported). In all of the circumstances, we do not accept that the Employer does not know what the application is for and Mr. Hnatuk did not clearly indicate that the Employer did want to adjourn to seek advice. In any event, had he done so, in these circumstances, we would not have granted the adjournment.

[6] Based upon the material filed, the application is granted.

DATED at Regina, Saskatchewan this 3rd day of **March, 2005**.

LABOUR RELATIONS BOARD

James Seibel
Chairperson