LABOUR RELATIONS BOARD
Saskatchewan

BILL SLOUGH, Applicant v. UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400 and LUCKY BUCKS BINGO ASSOCIATION INC., Respondents

LRB File No. 308-04; February 7, 2005
Vice-Chairperson, Wally Matkowski; Members: Clare Gitzel and Gerry Caudle

For the Applicant: Ted Koskie
For the Certified Union: Rod Gillies
For the Employer: Leah Schatz

Decertification – Interference – While applicant's marriage to member of employer's executive factor Board can consider in making determination on existence of employer influence, relationship does not automatically taint application – Where applicant's reasons for bringing application sincere and no evidence of influence by applicant's spouse or anyone else on employer's executive, Board declines to draw adverse inference.

Decertification – Practice and procedure – Union asks for decertification vote to be postponed until first collective agreement concluded – No application for first collective agreement assistance filed prior to filing of decertification application – Board declines to postpone vote under circumstances.

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

REASONS FOR DECISION

Background:

[1] United Food and Commercial Workers, Local 1400 (the "Union"), is certified as the bargaining agent for a unit of employees of Lucky Bucks Bingo Association Inc. (the "Employer") by an Order of the Board dated January 22, 2004. The Applicant, Bill Slough, filed the present 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*") on December 21, 2004. The Union opposed the 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 Employer's agent within the meaning of s. 9 of the *Act*.

[2] 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. Mr. Slough filed evidence of support for the application from a majority of employees listed on the statement of employment.

[3] The application was heard at Saskatoon on January 17, 2005.

Evidence:

[4] The Employer is a non-profit organization, which, with the assistance of various organizations, clubs and sports teams, runs bingos at the Employer's Saskatoon location. For their efforts, the organizations and sports teams receive 20% of the profits from the particular bingos for which they provide volunteers. The organizations and clubs elect the executive for the Employer, who are also volunteers.

[5] Mr. Slough commenced employment with the Employer in the concession department in February, 2004. Prior to gaining employment with the Employer, he had also served as a volunteer. Mr. Slough was hired by the concession manager and provided testimony that he did not obtain assistance from anyone in obtaining the job. He also testified that he had managed a concession previously and that he was recently retired.

[6] Mr. Slough testified that his spouse, Linda Slough, is on the executive of the Employer. He testified that he had no discussions with his spouse with respect to supporting the Union or not supporting the Union. He testified that he kept the rescission application a secret from his spouse and other executive members, relying on advice he received from his solicitor to keep his application confidential. He testified that his spouse has nothing to do with the Employer's bargaining committee.

[7] Mr. Slough testified that he was aware of the Union's certification Order and that he did, in fact, attend some union meetings and participated in discussions with the Union's representative servicing the workplace. He was aware of the ongoing collective bargaining sessions between the parties and he was aware a collective agreement had not yet been reached. He testified that he was unhappy that no one

from the concession area was on the Union's bargaining committee and he was unhappy that the Union had appointed a shop steward. He was confident that he could negotiate the terms and conditions of his employment directly with the Employer.

[8] Mr. Slough testified that he and other members of the bargaining unit had some concerns about the Union. They checked the internet as to what their rights were and ultimately Mr. Slough contacted the Law Society of Saskatchewan and obtained the names of two lawyers who specialized in labour law. He then met with his present solicitor, Mr. Koskie, who advised him how to bring forward the rescission application. Mr. Slough testified that he specifically relied on Mr. Koskie's advice to keep the application confidential.

[9] Mr. Slough provided Mr. Koskie with a $1,500.00 retainer by utilizing his credit card, which is on a joint account with his spouse. Mr. Slough testified that he pays the credit card bill and all household bills. Mr. Slough testified that no other employees were financially able to assist him in paying Mr. Koskie's legal bill.

[10] Through his cross-examination of Mr. Slough, Mr. Gillies attempted to demonstrate that the Employer was somehow involved in the making of the application for rescission. Mr. Slough was adamant that he had never discussed anything to do with the Union or decertification with anyone in management. Mr. Slough did state that he talked to one individual about supporting his application in an office at the workplace, but that the Employer knew nothing about his application. He testified that he talked to some fellow union members about his application from home, by telephone, and that he talked to other members at the workplace during breaks. He testified that he did not talk to people who he knew were adamant union supporters as he did not want to harass them and that some people whom he approached for support did not provide their support.

[11] During cross examination, Mr. Slough testified that he had assisted his spouse's accounting business, which did the books for the Employer. He also testified that some new hire employees were related to or had some ties to executive members.

[12] Greg Eyre testified on behalf of the Union. He was involved in the Union's organizing drive and was present at a February, 2004 meeting when the Union's bargaining committee was chosen. Originally, four members were chosen for the Union's bargaining committee. Mr. Eyre testified that it would be difficult for the Employer to have approximately one third of its employees on the Union's bargaining committee. Mr. Eyre did not want to exclude anyone, so it was decided that a two member "table committee" would represent the Union at the bargaining table. The table committee would seek input from and report to the bargaining committee. The table committee did not include anyone from the concession department.

[13] Barb Diekema has been the president of the Employer for approximately twelve years and testified on behalf of the Employer. Ms. Diekema indicated that she has met with the Union for 17 days of bargaining and that bargaining has been going well. She testified that a large number of non-monetary issues have been resolved.

[14] Ms. Diekema testified that she herself is a member of the United Food and Commercial Workers Union at another workplace and that she does not care if the workers want or do not want a union. She testified she had been informed by her solicitor that she could not intimidate or influence any employees in relation to their choice to support or not support the Union.

[15] Ms. Diekema testified that the executive runs the bingo hall, sets the games and hires and fires people. She stated that, historically, the executive has hired lots of family members and/or club members and that this practice was common in the industry. Ms. Diekema gave examples of her spouse and son working for the Employer, as well as examples where some of the people who had been hired because they were known by the executive became members of the Union's bargaining committee.

Statutory Provisions:

[16] 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:

[17] Mr. Koskie argued that there was no direct evidence to suggest that Mr. Slough was motivated or was assisted in any way by anyone in the management of the Employer to make the application for rescission. Mr. Koskie argued that Mr. Slough's application for rescission was not automatically tainted just because Mr. Slough was married to someone on the Employer's executive. Mr. Koskie took the position that there had to be something more presented as evidence to permit the Board to infer that there had been employer influence or interference. Finally, Mr. Koskie argued that the practice of the executive hiring family members or people that it knew did not lead to the conclusion that there was any employer interference. He argued that, if these people were good enough to vote for the Union at the certification application stage, they were good enough to be able to vote on a decertification application.

[18] Mr. Gillies argued that the application ought to be dismissed on the basis of s. 9 of the *Act*. He said that Mr. Slough's explanations as to the reasons for and the process of 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.

[19] Mr. Gillies argued that the Board could infer that Mr. Slough was influenced by the Employer to bring the application because Mr. Slough was hired right after the certification application, was related to an executive member and paid his lawyer utilizing a credit card which he held jointly with his spouse.

[20] Mr. Gillies argued, in the alternative, that the Board, if it was prepared to order a vote, should delay the vote until a first contract has been achieved. Mr. Gillies argued that the Union and the Employer have made a tremendous amount of progress toward achieving a collective agreement and that this progress should not be lost. Mr. Gillies argued that the Board should expand principles found in its existing case law to include this fact situation, even though the Union had not filed an application for first collective agreement assistance.

[21] Ms. Schatz argued that there was no evidence of employer influence or even employer knowledge of the rescission application. The evidence indicated an employer who was attempting to arrive at a collective agreement with the Union and an employer whose position was that, if the employees wanted a union, that was their business.

Analysis and Decision:

[22] 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.)

[23] The Board closely examined the evidence adduced, in large part due to the fact that Mr. Slough's spouse is a member of the Employer's executive. It certainly is not surprising that the Union finds it difficult to believe that Mr. Slough received no input from his spouse relating to the rescission application.

[24] However, on the whole of the evidence 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*. Mr. Slough struck us as forthright and honest. The mere fact that Mr. Slough's spouse is on the Employer's executive does not automatically taint Mr. Slough's application.

[25] Mr. Slough was obviously sincere in his description of his reasons for the application. Mr. Eyre took a position in regard to the table committee and bargaining committee that appeared to make a tremendous amount of sense. However, Mr. Slough concluded that, because no one from the concession department was on the table committee, he was dissatisfied with the Union. Whether this conclusion is accurate or reasonable is not the issue. So long as there was no evidence that his reasons for bringing the application were as a result of influence by the Employer, Mr. Slough is entitled to his opinion and beliefs.

[26] The Board was also mindful of the old saying "actions speak louder than words." In this case, the Employer's actions could not be challenged. The Employer was continuing to attempt to reach a collective agreement with the Union. The Employer's witness, who sits on the Employer's bargaining committee herself, is a member of the United Food and Commercial Workers Union at a different workplace. The Board believed her testimony that it was the Employer's position that it is the employees' right to choose or not choose a union.

[27] This is not a situation where an employer is committing unfair labour practices or is delaying or attempting to avoid arriving at a collective agreement with a union. When these actions occur, employees receive the subtle or in some cases not so subtle message that supporting the union will be a difficult and exasperating exercise, met with resistance from the employer at every step.

[28] Counsel for the Union attempted to argue that the case at hand had some similarities to the Board's decision in *Glas v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union,* [1999] Sask. L.R.B.R. 36, LRB File Nos. 031-99 to 034-99 in that an "apprehension of betrayal" existed and the Employer's conduct had "compromised the ability of the employees to decide whether or not they wish to be represented by the union."

[29] With respect, there was no evidence that an apprehension of betrayal existed or that the Employer's conduct had compromised the ability of the employees to decide the representation issue.

[30] Counsel for the Union also argued that Mr. Slough was one of a number of people hired by the Employer who had ties to the Employer's executive. As such, the Board could accept this fact as another sign that Mr. Slough was under the influence or control of his spouse. This argument ignores the evidence of Ms. Diekema, who testified that it has been a common practice for the Employer to hire individuals who the executive know through the various clubs and sports organizations that fundraise at the various bingos held at the Employer's location.

[31] All parties referenced the decision *Newnham v. International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 and Earl's Mechanical Insulation Ltd.*, [2004] Sask. L.R.B.R. 37, LRB File No. 014-04 with respect to how the Board should analyze the relationship between Mr. Slough, as the Applicant, and Ms. Slough, as the Applicant's spouse and a member of the Employer's executive. As set out in *Newnham, supra*, at 42:

> *. . . not every suspicious or questionable act or circumstance will necessarily lead to the conclusion that an application has been made as a result of influence or intimidation by the employer.*

[32] The fact that Mr. Slough is married to a member of the Employer's executive is a factor that the Board can consider in making its determination whether there has been employer influence.

[33] In *Newnham, supra*, the Board found, based on a number of factors, that it could infer employer influence. The Board set out the factors that it considered at 43 and 44:

> *. . . the parent and daughter relationship between the Employer's principal and its registered directors and the Applicant; the comments made and views expressed by the Employer's principal to the Applicant regarding the Employer's operation as a unionized employer and*

> *complaints about the Union over time; the Applicant seeking the opinion of the Employer's principal as to whether she should make the application; the Employer's attempt to individually negotiate directly with one of the employees shortly before the application was made with respect to circumventing union security obligations and contribution to industry benefit plans; the Employer's failure to remit some required deductions and contributions for industry benefit plans on behalf of the Applicant and others; the Employer's failure to abide by its collective agreement obligations with respect to the use of the Union's hiring hall procedure in the hiring of employees; and all Employer's apparent failure to abide by collective agreement obligations with respect to the layoff of an employee shortly before the application was made.*

[34] In the present case, the Union's argument that there was employer influence revolved around the fact that the Applicant was married to someone on the Employer's executive. There was no evidence that Ms. Slough made anti-union comments to anyone, that she provided her opinions to Mr. Slough, or that she, or anyone else from the Employer's executive, did anything improper. Counsel for the Union suggested that the Board could conclude that Mr. Slough was not being entirely honest in his testimony, but, as stated earlier, the Board accepted Mr. Slough's testimony as truthful.

[35] Counsel for the Union argued in the alternative that the Board should postpone ordering a vote until the parties had concluded their first collective agreement. In support of this argument, counsel for the Union pointed to the fact that the parties had met on a great number of occasions and had experienced positive results towards achieving a collective agreement. Counsel for the Union conceded that the Union had not filed a first contract application with the Board. In the decision *Evans v. National Automobile, Aeropspace, Transportation and General Workers Union of Canada (CAW-CANADA) and Saskatchewan Indian Gaming Authority cob as Northern Lights Casino,* [2002] Sask. L.R.B.R. 313, LRB File No. 258-00, the Board stated at 330:

> *. . . because under s. 26.5 an applicant union must either have a strike mandate or successfully assert that the Employer is guilty of a failure to bargain in violation of s. 11(1)(c) of the Act, and forfeits its right to strike while the first contract application is pending, the Board should not*

> *entertain a rescission application until after a first contract is achieved.*

[36] The Board accepts the reasoning set out in *Evans, supra*, and will not expand the principles therein and delay a rescission application when the Union has not filed a first contract application before the Board.

[37] As Mr. Slough 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 **7nd** day of **February, 2005.**

LABOUR RELATIONS BOARD

Wally Matkowski, Vice Chairperson