

**Labour Relations Board  
Saskatchewan**

**CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES' UNION, LOCAL 342,  
Applicant v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 5999,  
Respondent**

LRB File No. 095-05; January 18, 2006

Vice-Chairperson, Angela Zborosky; Members: Patricia Gallagher and Leo Lancaster

For the Applicant: Colleen Malley

For the Respondent: Vickie O'Dell

**Employer - Status – Employer of less than three employees – Where evidence establishes that lone employee is member of applicant union and that applicant union has members employed by other employers, Board concludes that employer is employer as defined in s. 2(g) of *The Trade Union Act*.**

***The Trade Union Act*, ss. 2(a), 2(g), 3, 5(a), 5(b) and 5(c).**

**REASONS FOR DECISION**

**Background:**

[1] Canadian Office and Professional Employees' Union, Local 342 ("COPE, Local 342" or the "Applicant") filed an application for certification of the employees of Canadian Union of Public Employees, Local 5999 (the "Employer"), a union operating in Weyburn, Saskatchewan. The Applicant seeks a certification order for the following unit of employees:

*... All office employees of the Canadian Union of Public Employee's Local 5999, in the City of Weyburn, in the Province of Saskatchewan, including the Administrative Assistant but excluding the Executive Officers of the Employer.*

[2] The Applicant estimated one employee in the unit and filed evidence of majority support. The Employer did not file a reply but did file a letter with the Board indicating it did not contest the application. The Employer also filed a statement of employment that indicated that there was one employee in the bargaining unit sought by the Applicant.

[3] This is the first certification application filed by COPE, Local 342 seeking to represent a group of employees in Saskatchewan.

[4] COPE, Local 342 is a chartered local of the national union, Canadian Office and Professional Employees ("COPE"). With its application, the Applicant filed a copy of the constitution of COPE and a copy of the charter issued to COPE, Local 342 by COPE.

[5] Following the presentation of the case on behalf of the Applicant, the Board alerted the parties to the possible application of s. 2(g) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "Act") in that this appeared to be the first application filed by COPE in Saskatchewan since its formation. The Applicant requested the opportunity to file further evidence with the agreement of the Employer. The Applicant delivered a letter and documents to the Board on June 22, 2005 and indicated that the Employer was in agreement with their contents and that they could be considered by the Board as evidence on this application. The evidence contained in the documents included a listing of the bargaining units in Saskatchewan represented by COPE as well as a decision of the British Columbia Labour Relations Board regarding a name change from the Office and Professional Employees' Union ("OPEIU") to COPE.

**Evidence:**

[6] Colleen Malley is the vice-president of COPE, Local 342 for the prairie region, which includes Saskatchewan and Manitoba. Prior to June of 2004 she was the vice-president of OPEIU for the prairie region. Ms. Malley testified concerning the origins of COPE. She stated that COPE came into being as a result of a vote by the Canadian members of OPEIU pursuant to a provision in the constitution of OPEIU that its members in Canada could become autonomous if the majority of Canadian members expressed a wish to become autonomous. The constitution did not prescribe a process for such a separation and therefore COPE obtained signed authorization forms from a majority of OPEIU members in Canada. On or around June 21, 2004, COPE presented a letter to OPEIU advising that COPE members would be separating from OPEIU and forming a new union in Canada. Ms. Malley testified that it was at this same time that COPE was created although it did not hold its founding convention until November 2004.

It was at the founding convention that COPE, Local 342 was granted a charter, as were all other previous OPEIU locals, except for two in Ontario. COPE maintained the same structure as had existed within OPEIU, including the use of the same local numbers as were assigned by OPEIU to its locals across Canada.

**[7]** Ms. Malley testified that it was her belief that COPE, Local 342 currently had certification orders in its name in Saskatchewan. Ms. Malley stated that COPE, Local 342 represented employees employed by a number of unions in Saskatchewan (usually one or two person units) and it was her understanding that the Applicant had applied to the Board for name changes in relation to those bargaining units, which were previously represented by OPEIU in Saskatchewan. She stated that, in any event, all the employers in Saskatchewan that had bargaining units previously represented by OPEIU were voluntarily recognizing COPE, Local 342 since the creation of COPE and the Applicant's receipt of its charter. The Board advised the Applicant that the Board's records showed that this application was the first certification application filed by COPE or COPE, Local 342 in Saskatchewan and that the Board had no record of COPE or COPE, Local 342 applying for a name change in relation to any of the certification orders previously held by OPEIU. A review of the Board's records following the hearing confirmed this to be the case.

**[8]** The Board questioned the Applicant as to whether it held any certification orders in its name outside of Saskatchewan. Ms. Malley stated that she believed that COPE, Local 342 had applied for certification of some new bargaining units in Manitoba, although she was not certain where COPE, Local 342 was in that process. The Board further asked the Applicant whether COPE held any other certification orders in Canada and, while Ms. Malley believed that COPE had at least one certification order in Ontario and possibly more in Quebec, she had no details with her concerning the names of the employers subject to those certification orders or the number of employees employed by those employers. She stated that she would be able to obtain that information, however, no such information was provided to the Board.

**[9]** Ms. Malley stated that it was her understanding that the bargaining units represented by COPE, Local 342 in Saskatchewan contained one or two persons. She was not aware whether, in any of the workplaces where COPE, Local 342 was

voluntarily recognized by an employer, there were any bargaining units containing three or more employees.

**[10]** Vickie O' Dell, president of CUPE, Local 5999, testified on behalf of the Employer. Ms. O'Dell testified that she believed that CUPE, Local 3967 in Regina had voluntarily recognized COPE, Local 342 and that there were two employees in that unit. Regarding CUPE's regional office in Regina, it was Ms. O'Dell's assumption that it had also voluntarily recognized COPE, Local 342 and that there would be approximately five employees in that unit.

**[11]** Through questioning of the parties by the Board, it became clear there was only one employee employed by the Employer at the date of filing of the certification application and that this employee performed office work. The Employer does not employ any other types of employees and did not anticipate hiring any other type of employee other than a summer student to back fill the office employee during her leave in the summer months. Much of the Employer's work is carried out by elected executive officers and they are not considered to be employees of the Employer. The parties agreed that what was sought was an "all employee" unit.

**[12]** Also in response to questions from the Board, the Applicant stated that it was its intention to apply for the certification order in the name of COPE, Local 342, even though the membership card filed in support of the application indicated that the employee was applying to become a member of COPE. The Applicant clarified that COPE, Local 342 is a composite local, representing a number of employees at several union offices in Saskatchewan and Manitoba, that each employer is considered a separate employer and that a separate collective agreement is bargained with each employer.

**[13]** The documentary evidence, filed by the Applicant with the agreement of the Employer following the hearing, contained a list of the members of COPE, Local 342 and their corresponding employers which, the Board understood from the evidence given at the hearing, had voluntarily recognized the Applicant. There are eleven employers on the list and they all appear to be unions. Each employer has one or two employees who are members of COPE, Local 342 except for the Canadian Union of

Public Employees Saskatchewan Division and the International Brotherhood of Electrical Workers Local 2067, each of which have three employees who are members of COPE, Local 342.

**[14]** The Applicant also filed with the Board the decision of the British Columbia Labour Relations Board in *Aquila Networks Canada (British Columbia) Ltd. and others and Canadian Office and Professional Employees' Union, Local 378 and Office and Professional Employees' Union*, BCLRB No. B408/2004, Case Nos. 52260-52280 and 52282-52291 (December 29, 2004). This decision involved an application filed by COPE, Local 378 on August 18, 2004 requesting orders that all the certifications held by OPEIU, Local 378 be varied to change the union's name to COPE, Local 378. While the application went unopposed by the affected employers, OPEIU opposed the application and sought status as an interested party. The origins of COPE are described in the decision in a manner similar to the evidence presented before this Board, although the decision also indicates that OPEIU commenced law suits in Canada and the United States alleging that the Canadian locals did not follow the appropriate process to separate from OPEIU, that they were operating in contravention of the OPEIU constitution and that COPE's applications should be dismissed because it had not taken appropriate steps under the constitution to change its name. The British Columbia Board found that it did not have jurisdiction to determine whether COPE, Local 378 had complied with the OPEIU constitution and bylaws by taking the proper steps to change its name, decided that it should not await the outcome of the court proceedings in that regard and determined the applications as a matter of course and issued the name changes. This Board observes there is a list of the several employers affected by the application attached to the British Columbia Board's decision; however, there is no indication of the number of employees employed by each of those employers.

**Arguments:**

**[15]** The Applicant requested the issuance of a certification order in the name of COPE, Local 342 for an "all employee" bargaining unit.

**[16]** The Employer did not oppose the application for certification and agreed that an all employee unit would be appropriate.

**Statutory Provisions:**

[17] Relevant provisions of the Act include the following:

2 *In this Act:*

(a) *"appropriate unit" means a unit of employees appropriate for the purpose of bargaining collectively;*

...

(g) *"employer" means:*

(i) *an employer who employs three or more employees;*

(ii) *an employer who employs less than three employees if at least one of the employees is a member of a trade union that includes among its membership employees of more than one employer;*

(iii) *in respect of any employees of a contractor who supplies the services of the employees for or on behalf of a principal pursuant to the terms of any contract entered into by the contractor or principal, the contractor or principal as the board may in its discretion determine for the purposes of the Act;*

*and includes Her Majesty in the right of the Province of Saskatchewan;*

3. *Employees have the right to organize in and to form, join or assist trade unions and to bargain collectively through a trade union of their own choosing; and the trade union designated or selected for the purpose of bargaining collectively by the majority of the employees in a unit appropriate for that purpose shall be the exclusive representative of all employees in that unit for the purpose of bargaining collectively.*

...

5 *The board may make orders:*

(a) *determining whether the appropriate unit of employees for the purpose of bargaining collectively shall be an employer unit, craft unit, plant unit or a subdivision thereof or some other unit;*

(b) *determining what trade union, if any, represents a majority of employees in an appropriate unit of employees, but no order under this clause shall be made in respect of an application made within a period of six months from the date of dismissal of an application for certification by the same trade union in respect of the same or a substantially similar unit of employees, unless the board, on application of that trade union, considers it advisable to abridge that period;*

(c) *requiring an employer or trade union representing a majority of employees in an appropriate unit to bargain collectively;*

### **Analysis and Decision:**

**[18]** The application before us is an application for certification and, in order to succeed on such an application, the Applicant must establish the elements required by ss. 5(a), (b) and (c) of the *Act*.

**[19]** Through the filing of the constitution of COPE and the charter and the constitution and bylaws of COPE, Local 342, the Applicant has established that it is a trade union within the meaning of the *Act*. The Applicant has applied for an appropriate bargaining unit, subject to our comments below, and has filed evidence of majority support for its application for certification. The primary issue that arises in this application is whether the Board may issue a certification order where the Employer employs only one employee.

**[20]** Section 2(g) of the *Act* defines an “employer” as an employer who employs three or more employees, or, where the employer employs less than three employees, it must be established that “at least one of the employees is a member of a trade union that includes among its membership employees of more than one employer.” Although the language in s. 2(g) has been contained in the *Act* since its inception in 1944, the Board has had few opportunities to consider its application. In *Canadian Union of Public Employees, Local 3990 v. Core Community Group Inc.*, [2000] Sask. L.R.B.R. 617, LRB File No. 015-00 the Board considered an application for certification of an employer with two employees in the bargaining unit. For the purposes of interpreting s. 2(g) the Board, it was necessary for the Board to consider whether “at least one of the employees [in the bargaining unit sought] was a member of the trade

union” and whether the trade union was one “that included among its membership employees of more than one employer.” The Board stated at 630 and 631:

*[52] The next factual issue raised the question of whether there is evidence that Ms. Clarke or Mr. Bjerke are members of the Union. The Union filed membership cards in the form set out above as evidence of support for its application for certification. ... Nevertheless, the material filed with the Board is evidence of union membership, as is the testimony of Mr. Moran. It would seem to the Board that the best evidence of union membership comes from a representative such as Mr. Moran, who testified that CUPE accepted that employees of the Employer into membership when he signed the application for membership cards that were filed with the Board. Trade unions are voluntary, unincorporated associations and the niceties of their constitution and internal workings do not greatly concern the Board. The key factor is whether CUPE considers the employees in question to be members in accordance with the ordinary and usual practices of CUPE. This fact was clearly established by Mr. Moran in evidence. The testimony of Ms. Clarke and Mr. Bjerke was not necessary to establish the point of membership.*

*[53] The third factual issue is whether the Union represents employees of more than one employer. We take notice of the numerous certification orders issued to CUPE by this Board in Saskatchewan and can conclude from those orders that CUPE represents the employees of more than one employer. Mr. Moran testified that the Union to which the Employer’s employees are assigned is a composite local. This evidence also establishes the multi-employer nature of the Union.*

*[54] It is our view that the Union has made out its case under s. 2(g)(ii) of the Act. The limitation contained in the definition of “employer” is, in our view, intended to prevent an organization of one or two person workplaces into in-house unions or associations that would lack the necessary resources to function effectively as collective bargaining agents. This hurdle is overcome if the employees become members of a larger union which represents the employees of more than one employer. A similar view of the requirements of s. 2(g) of the Act was set out in Saskatchewan Government Employees’ Union v. Immigrant Women of Saskatchewan, [1994] 2<sup>nd</sup> Quarter Sask. Labour Rep. 125, LRB File No. 049-94 where the Board concluded:*

*It is our view that Section 2(g) does not preclude the granting of an application on behalf of the employees in this case. Given the view we take of the identity of the employer in this instance, that employer would fall within Section 2(g)(i). In any event, this is a case in which the Union which has filed the application meets*



*the criteria set out in s. 2(g)(ii); these criteria seem to be aimed at ensuring that a viable and stable bargaining relationship will be possible in a bargaining unit which includes less than three employees, by requiring that the trade union involved represent other employees than those covered by the resulting certification Order.*

**[21]** The first factual issue for determination, that is, whether the employee of the Employer is a member of the Union, has in our view been proven. The form of the card filed with the application states that it is an application for membership in COPE and that the individual is authorizing COPE to act as his or her exclusive bargaining agent in collective bargaining with the employer. Below the signature line is an indication that the application is in relation to COPE, Local 342. Other pertinent information is required including the member's name, address, occupation, employer's name, date of hire and date of signing. All portions of the application for membership card filed in support of this application were completed. The provisions of the constitution of COPE provide for the eligibility of an individual to become an active member if he or she is employed by an employer that is the subject of an active organizing drive. Although there was no evidence that the individual had taken the oath of membership contained in the constitution, the evidence, in particular the form of the membership card, implied that COPE considered the employee to be a member in accordance with its practice of using a membership card with the wording described above. In our view, for the purposes of s. 2(g)(ii), it matters not whether the employee was a union member in a technical or legal sense under the constitution at the date of the signing the membership card or the date of the application, when it follows that she would become a member upon certification of the Employer. In these circumstances, and due to the fact that the Employer did not contest the status of union membership of the employee, we find that, for the purposes of s. 2(g)(ii), the employee is a member of a trade union.

**[22]** The final factual issue for determination examined in the *Core Community Group* case, *supra*, is whether the trade union represents employees of more than one employer. In the present case, COPE or COPE, Local 342 does not hold any certification orders in Saskatchewan which would provide the Board with a basis for concluding that COPE or COPE, Local 342 represents the employees of more than one

employer. As noted above, this is the first application for certification by either COPE or COPE, Local 342, in Saskatchewan. Similarly, there was no evidence before the Board that COPE, Local 342 holds any certification orders in Manitoba. While we have some evidence, through the *Aquila Networks* case, *supra*, that COPE, Local 378 holds certification orders for several employers in British Columbia, for the purposes of this decision it is not necessary for us to decide the issue of whether certification orders held by sister locals of a national union in another province provide a basis for concluding that the trade union represents employees of other employers under the *Act*. In our view, the present case may be decided on the basis of consideration of whether COPE, Local 342 represents employees of more than one employer.

**[23]** The precise wording of the limitation in s. 2(g) is whether the trade union “includes among its membership employees of more than one employer.” In our view, this limitation would be met by establishing that COPE, Local 342 has other members who are employees of other employers, whether or not it holds certification orders in relation to those employers. While the *Act* does not afford the same status to voluntary recognition arrangements between employers and unions as it does to certification orders, to interpret of the limitation in s. 2(g)(ii) (i.e. that the trade union have *among its membership* employees of more than one employer) as requiring the existence of a certification order establishing representation is unduly limiting and not in accordance with the plain meaning of the language. What is necessary to consider is whether the trade union has members who are employed by other employers, regardless of the form of the union’s representation of those members. This interpretation is in accordance with the purpose of the provision, namely, to ensure that there is a viable and stable bargaining relationship and to avoid the certification of in-house unions or associations that would lack the necessary resources to function effectively as collective bargaining agents. This interpretation also promotes employees’ rights to trade union representation in accordance with the purpose of the *Act* as expressed in s. 3 of the *Act*. The Applicant provided evidence that it had several members working for several employers in Saskatchewan that voluntarily recognized the Applicant as exclusive bargaining agent and we therefore find that the limitation in s. 2(g)(ii) has been met.

**[24]** Further support for this proposition is evident in the Board’s conclusion in the *Core Community Group* case, *supra*, where the Board found that the employees of

the employer were “members” of the trade union, in circumstances where there was not yet a certification order in place designating the trade union as the employees’ bargaining agent.

**[25]** The Applicant described the bargaining unit it sought as all office employees of the Employer including the administrative assistant but excluding the executive officers of the Employer. It was clarified at the hearing of the application that the Applicant was seeking an all employee unit and that the Employer employed only one employee on a regular basis (and a casual employee to replace that employee during her vacation), who was employed as an administrative assistant. In these circumstances, the Board finds an appropriate bargaining unit to be an all employee unit. It was established in evidence that the executive officers of the Employer are not employees of the Employer but rather are the elected officers of the Employer. It is on this basis that they are automatically excluded from the all employee bargaining unit. The appropriate bargaining unit is therefore described as “all employees employed by Canadian Union of Public Employees, Local 5999, in Weyburn, Saskatchewan.”

**[26]** For these reasons, the Board finds that the bargaining unit described above is appropriate, that the Applicant filed majority support for its application and that the Employer is an “employer” as that term is defined in s. 2(g)(ii) of the *Act*. As a result, a certification order will issue.

**DATED** at Regina, Saskatchewan, this **18th** day of **January, 2006**.

**LABOUR RELATIONS BOARD**

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Angela Zborosky  
Vice-Chairperson