Labour Relations Board
Saskatchewan

SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, Applicant v. STARBUCKS COFFEE CANADA, INC., Respondent

LRB File No. 177-05; January 18, 2006
Chairperson, James Seibel; Members: Leo Lancaster and Pat Gallagher

For the Applicant: Larry Kowalchuk
For the Respondent: Eileen Libby

> **Bargaining unit – Appropriate bargaining unit – Geographic scope – Board's general policy to use municipal boundaries to define geographic scope of bargaining unit as opposed to granting site-specific certification order – Board finds no facts to cause it to deviate from general policy – Certification order granted using municipal boundary to define geographic scope.**
>
> ***The Trade Union Act*, ss. 5(a), 5(b) and 5(c).**

REASONS FOR DECISION

Background and Facts:

[1] On October 12, 2005, Saskatchewan Joint Board, Retail, Wholesale and Department Store Union (the "Union") filed an application with the Board to be designated as the certified bargaining agent for a unit of employees of Starbucks Coffee Canada, Inc. (the "Employer") pursuant to ss. 5(a), (b) and (c) of *The Trade Union Act*, R.S.S. 1978, c. T-17, as amended (the "*Act*").

[2] The proposed bargaining unit was described in the application as follows:

> *All employees employed by Starbucks Coffee Company in or in connection with their places of business in the City of Regina, Saskatchewan, except for the store manager and assistant manager.*

[3] In its application, the Union estimated that there were 22 employees in the proposed bargaining unit, as at the date of filing, and claimed to have the support of a majority of those employees.

[4] The statement of employment filed on behalf of the Employer listed 22 persons in the occupational classifications of barista and shift supervisor. In the reply to the application filed on behalf of the Employer on October 24, 2005, the Employer stated that the exclusions to the bargaining unit should include more than one assistant manager. The Employer also took the position that the geographic scope of the bargaining unit should be restricted to the street address of its sole place of business in the Regina, Saskatchewan.

[5] The application was heard by the Board on November 1, 2005.

[6] At the hearing, counsel indicated that it was agreed that there was more than one assistant manager at the Employer's only location in Regina. Further, counsel on behalf of the Employer represented that the Employer has no plans to open any other places of business in Regina.

[7] Concurrent with the filing of the application with the Board, the Union filed ostensible evidence of support for the application from a majority of the employees.

[8] No other evidence was adduced by either party.

Statutory Provisions:

[9] Relevant provisions of the *Act* include the following:

> *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 the 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 the application of that trade union, considers it advisable to abridge that period;*
>
> *(c) requiring an employer or a trade union representing the majority of employees in an appropriate unit to bargain collectively;*

Arguments:

[10] Ms. Libby, counsel on behalf of the Employer, argued that the bargaining unit description should be restricted to the street address of the Employer's only place of business in Regina, Saskatchewan. Counsel submitted that, although the Employer has no present plan or intention to conduct business at any additional location(s) in Regina, if at some time in the future it does, the Union could file an application to add the employees at the new location(s) to the bargaining unit upon providing evidence of majority support among those employees. Counsel proffered the explanation that, if bargaining rights are assigned beyond the existing location, it effectively disenfranchises employees at other locations that may be established in the future from choosing which, if any, union will represent them in collective bargaining.

[11] Counsel further submitted that if the Employer moved the present place of business the Union could apply to amend the certification order.

[12] In support of her argument counsel referred to the following decisions of the Board: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Custom Built Ag. Industries Ltd.,* [1998] Sask. L.R.B.R. 662, LRB File No. 112-98; *Communications, Energy and Paperworkers Union of Canada v. E.C.C. International Inc.*, [1998] Sask. L.R.B.R. 268, LRB File No. 362-97; *Hotel Employees and Restaurant Employees Union, Local 206 v. Spartan Holdings Ltd.*, [2000] Sask. L.R.B.R. 490, LRB File No. 155-00; *United Food and Commercial Workers v. Burns Philip Food Limited*, [1993] 2nd Quarter Sask. Labour Rep. 162, LRB File No. 120-93; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Sunnyland Poultry Products Ltd.* [1993] 3rd Quarter Sask. Labour Rep. 213, LRB File 001-92.

[13] Mr. Kowalchuk, counsel on behalf of the Union, argued generally that the case law cited in aid of the argument on behalf of the Employer did not support the

propositions alleged. Counsel pointed out that there was no evidence that the Employer ever intends to operate another or other autonomous locations in Regina, nor that there are likely to be more employees in Regina in the future, nor that a certification order with a municipal geographic scope would in any way interfere with the Employer's ability to effectively bargain collectively, nor that, if there are other Regina locations in the future, the Employer conducts its industrial relations at the existing location independent of the corporate head office. Counsel observed somewhat wryly that the Employer's argument essentially rested on its expressed concern for the bargaining rights of possible future employees at possible future locations.

[14] Counsel argued that the geographic description of the bargaining unit sought in the application for certification cohered to the principle expressed by the Board in *Tricil Limited v. Chauffeurs, Teamsters and Helpers Union*, LRB File No. 334-85 (cited in *Burns Philip Food*, *supra*) that bargaining units that bear no reasonable correlation to the employer's operations may be inconsistent with the right of employees to bargain collectively through a trade union of their own choosing, and that the Board favours bargaining units that encompass whatever geographical area will promote the greatest degree of industrial stability with the least interference with the right of future employees to choose their own bargaining agent.

[15] In reply, counsel for the Employer expressed the sentiment that the proposed geographic scope of the bargaining unit does not conform to the principles expressed by the Board in *Tricil Limited*, *supra*.

Analysis and Decision:

[16] The Board considered its historical approach to the definition of the geographical scope of bargaining units in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Roca Jack's Roasting House and Coffee Company Ltd.*, [1997] Sask. L.R.B.R. 244, LRB File No. 016-97. The Board observed as follows at 244 through 246:

> *. . . In Tricil Limited v. Chauffeurs, Teamsters and Helpers Union, [1986] May Sask. Labour Rep. 48, LRB File No. 334-85, the Board made the following comment, at 50:*

> *The Board recognizes that certification orders which bear no reasonable correlation to the employer's operations may be inconsistent with the right of employees to bargain collectively through a trade union of their own choosing, which is protected by Section 3 of The Trade Union Act. It therefore favours bargaining units that encompass whatever geographical area will promote the greatest degree of industrial stability with the least interference with the right of future employees to choose their own bargaining agent.*

In United Steelworkers of America v. Industrial Welding (1979) Limited, [1986] Feb. Sask. Labour Rep. 45, LRB File No. 274-85, the Board observed that the application of these considerations may lead to different conclusions, depending on the circumstances, at 47:

> *This Board's frequently expressed policy favouring larger bargaining units in terms of employee complement is compatible with its preference for units encompassing whatever geographical area will promote the greatest degree of industrial stability with the least interference in employee freedom of choice. Depending upon the facts, an appropriate unit may comprise some or all of the employees of an employer in the entire province, in a portion of the province, in a municipality, or in a combination of municipalities. It may also be (and often is) restricted in area to a particular plant, retail outlet, or shop.*

In a decision in Communications, Energy and Paperworkers Union of Canada v. Prince Albert Community Workshop Society Inc., [1995] 2nd Quarter Sask. Labour Rep. 294, LRB File No. 019-95, the Board followed the passage just quoted from the Industrial Welding decision, supra with the following comment, at 302:

> *In the special circumstances of the construction industry, the Board has accepted that the geographical scope of bargaining units is appropriately described in terms of the province. In many other cases, the Board has recognized municipal boundaries as providing the right balance between the protection of the bargaining rights obtained under the certification order, and the right of employees not currently included in the unit to make their own choice with respect to collectively bargaining at some time in the future.*

In our view, particular attention should be paid to the second sentence of this passage, as we think it captures the position of the Board that bargaining units described in terms of municipal boundaries usually represent the most sensible balance between the stability and viability of the collective bargaining relationship,

and the rights of hypothetical future employees to make a free choice with respect to trade union representation. In some special circumstances, such as those which obtain in the construction industry, the Board has concluded that the balance is best struck by defining bargaining units in province-wide terms. In other cases, the Board may conclude that a single plant or outlet of a number operated by the same employer in one municipality is the appropriate bargaining unit.

[17] The Board described its general policy as follows, at 246 and 247:

In general, however, the Board has accepted municipal boundaries as the most reasonable geographic description for an appropriate bargaining unit. In the case of an employer, such as this one, which operates only one outlet, this protects the trade union in the event the enterprise is moved from one civic address to another.

. . . .

There is no absolute value to describing bargaining units in terms of the boundaries of a municipality, and the Board has shown itself ready to consider alternatives where the circumstances warrant that. On the other hand, it is in our view helpful to have a general policy for the delineation of bargaining units, and the reference to municipal boundaries as a benchmark seems to us to do the least possible violence to the interests which must be considered.

[18] The general policy, however, is not applied slavishly, but rather, any decision concerning the geographic scope of a certification order is subject to considerations that may cause the Board to deviate from the policy. The most obvious situation is that reflected in the comments above regarding the construction industry, where, because of special considerations that pertain as a result of the way in which business is carried on in that industry, it is customary to certify bargaining units on a province-wide basis. Similar customary and historical considerations apply to the entertainment production industry, which is also organized along craft lines. And special considerations also apply to the health sector to which specific legislation applies.

[19] In the present case, counsel for the Employer cited some decisions in an attempt to persuade the Board to deviate from the general policy. In *Roca Jack's*, *supra*, the Board specifically commented on the decision in *Burns Philip Food Ltd.*, *supra*, and

explained that it did not derogate from the general policy, stating as follows, at 246 and 247:

> *Counsel for the Employer referred us to the decision of the Board in United Food and Commercial Workers v. Burns Philip Food Limited, [1993] 2nd Quarter Sask. Labour Rep. 162, LRB File No. 120-93. The trade union in that case had applied for a bargaining unit described in terms of the Saskatoon location operated by the employer "or any replacement for such business." The Board made the following comment, at 165:*
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> > *In this case, the employer operates at one location in the City of Saskatoon. It has done so for some time, and no expansion or change of location is anticipated. To allow the description sought by the Union would be in effect to recognize a province-wide unit. This would be somewhat unusual, in terms of Board practice. It would tilt the balance against freedom of employee choice in the event that there are changes in the configuration of the business carried on by this Employer, and would do so at a point where the Union can demonstrate no concrete or even imminent countervailing interest. The Union failed to persuade us that there would be any significant prejudice to them arising from the necessity of applying for an amendment to their certification order should that become appropriate in the future.*
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> *It seems clear from this statement that the concern of the Board was not with describing the bargaining unit by reference to municipal boundaries - indeed, the certification Order which was issued described the bargaining unit in those terms. What was of concern to the Board was the proposition that the trade union might be permitted to track the employer beyond the municipal boundaries should the enterprise be moved to another location altogether.*

[20] In *E.C.C. International Inc.*, *supra*, the employer's operation was the only one of its kind, physically located adjacent to its only customer, the Weyerhauser paper mill outside Prince Albert, Saskatchewan to which the employer supplied a special chemical produced for use in the paper-making process. In its application, the union sought a province-wide certification order; in its reply, the employer objected that the scope should be restricted to the city environs. By the time of hearing before the Board, the parties had agreed that the scope of the order should be restricted to the employer's plant only. The only issue specifically considered by the Board at the hearing was that of a confidential exclusion.

[21] In *Custom Built AG Industries Ltd.*, *supra*, the union applied for certification of a province-wide bargaining unit of the production employees of a trailer manufacturer at its only plant which was located in Gravelbourg, Saskatchewan. While the employer took the position that a unit of all of its employees – both production and office employees – was appropriate, it did not take issue with the request for a province-wide certification order. The Board determined that a bargaining unit comprising only the production employees was an appropriate unit. The production facility was housed in a building geographically separated in the town from the building where the office employees were located. Citing the decision in *Tricil*, *supra*, Board considered it appropriate to limit the certification order to the production employees at the production facility.

[22] The general policy favouring municipal certification orders was recently applied by the Board in *United Food and Commercial Workers, Local 1400 v. Sobey's Capital Inc. o/a Prince Albert Garden Market IGA*, [2004] Sask. L.R.B.R. 224, LRB File No. 209-04, a case in which the geographic scope of the bargaining unit was in issue. The Board found no reason to deviate from the policy stating as follows, at 227:

> *Given the facts of the case, there is no reason for the board to deviate from its normal policy of favouring municipal certification orders. In the case at hand, the evidence indicated that it is possible, though not probable, that the Employer could, in the future, move civic locations. As such, following the board's general policy grants the employees and the Union the protection necessary in the event the Employer changes civic locations.*
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> *While the Employer raised concerns about future employee rights, and specifically raised the scenario of the Employer taking over the non-corporate store that exists in Prince Albert, the Employer testified that such a takeover was not probable and that corporate expansion in Prince Albert was not probable. As such, this Board accepts and adopts the Board's policy in favour of a municipal certification order in that present employee rights must be protected ahead of the rights of non-existent employees.*

[23] In the present case, we are of the opinion that the facts are on all fours with the situation in *Roca Jacks*, *supra*, and similar to those in *Sobey's Capital Inc.*,

supra. We find that there are no facts that should cause us to deviate from the general policy. The Union has filed evidence of majority support for the application. Accordingly, a certification order will issue defining the geographic scope of the bargaining unit on the basis of the municipality.

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

LABOUR RELATIONS BOARD

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James Seibel,
Chairperson