

**Labour Relations Board
Saskatchewan**

SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, Applicant v. WINNERS MERCHANTS INTERNATIONAL L.P., Respondent

LRB File No. 225-05; February 22, 2006
Chairperson and Executive Officer, James Seibel

For the Applicant: Larry Kowalchuk
For the Respondent: Susan Barber

Collective agreement – First collective agreement – Practice and procedure – Form of application as letter of request acceptable under current rules and regulations – List of disputed issues and statement of position of party on issues must be actual list rather than copy of agreement-under-discussion.

The Trade Union Act, s. 26.5.

REASONS FOR DECISION

Background:

[1] By Order of the Board dated October 27, 2004, Saskatchewan Joint Board, Retail, Wholesale and Department Store Union (the “Union”) was designated as the certified bargaining agent for an all-employee unit of employees of Winners Merchants International L.P. operating as Winners at the Golden Mile Shopping Centre, Regina, Saskatchewan (the “Employer”). The parties commenced collective bargaining in March 2005, but have been unable to conclude a first collective bargaining agreement.

[2] On November 30, 2005, the Union filed the present application pursuant to s. 26.5 (1.1) of *The Trade Union Act*, R.S.S. 1978, c. T-17, as amended (the “Act”), for assistance in the conclusion of a first collective bargaining agreement.

[3] Section 26.5 (3) provides that the application “must include a list of disputed issues and a statement of the position of the applicant on those issues, including the applicant’s last offer on those issues.” Section 26.5 (5)(a) provides in turn that the responding party “must file with the board a list of issues in dispute and a

statement of the position of the party on those issues, including the party's last offer on those issues."

[4] In the present case, the Union's application, in the form of a letter addressed to the Board, was accompanied by a tri-colour copy of the collective agreement in the form then under discussion between the parties. The three colours of print identified the respective clauses that, in the opinion of the Union, were agreed to, remained in issue as far as the Union was concerned and remained in issue as far as the Employer was concerned.

[5] The Employer refused to file its statement pursuant to s. 26.5 (5)(a) of the *Act* on the grounds: (1) that the application was not in the form of a statutory declaration; and, (2) that the tri-colour copy of the agreement-under-discussion did not properly constitute "a list of disputed issues and a statement of the applicant on those issues" as contemplated by s. 2.5 (3) of the *Act*.

Decision:

[6] After considering the arguments of counsel for the parties – Ms. Barber on behalf of the Employer and Mr. Kowalchuk on behalf of the Union – I have determined as follows:

(1) The form of the application as a letter of request is acceptable. The Regulations under the *Act* specify the types of applications (and replies thereto) that must be in the form of a statutory declaration and provide forms for that purpose, and do not include applications pursuant to s. 26.5 (1.1). The Chairperson of the Board has not yet made regulations prescribing rules of procedure that might change the present practices. To this point, since the inclusion in the *Act* in 1994 of the right to apply for first contract assistance, the Board has accepted many such applications that have not been in the form of a statutory declaration;

(2) The attached tri-colour copy of the agreement-under-discussion does not constitute a proper list of disputed issues and statement of the position of the

applicant on those issues as contemplated by the statutory provision. In my opinion, the *Act* contemplates an actual "list" of issues (as that word is accepted in common usage) and a discrete statement of the applicant's position on each issue, which will most often provide the text of the applicant's proposed collective agreement language. Furthermore, while the use of the tri-colour agreement-under-discussion is no doubt of much assistance to the parties at the bargaining table, for the purposes of quasi-judicial proceedings before the Board it is not appropriate. Colour printers, photocopiers and fax machines are not yet widely used office equipment for business purposes and duplication thereof is inconvenient. The form of the list and statement as specified by myself above is most convenient for the use of the parties to such applications and for the Board and the Board Agent who may be called upon to meet with the parties and provide a report to the Board.

[7] Accordingly, the Union shall file with the Board, and provide a copy to counsel for the Employer, an appropriate list of issues and statement of its position thereon within 14 days of the date of this letter; the Employer shall file with the Board, and provide a copy to counsel for the Union, its list and statement pursuant to s. 26.5 (5) of the *Act* within 14 days of the Employer's receipt of the Union's list and statement.

[8] Pursuant to s. 4(12) of the *Act*, any party may apply to the Board to review, set aside, amend, stay or otherwise deal with this decision of the Executive Officer of the Board.

DATED at Regina, Saskatchewan, this **22nd** day of **February, 2006**.

LABOUR RELATIONS BOARD

James Seibel,
Chairperson and Executive Officer