

**Labour Relations Board
Saskatchewan**

RAYMOND HALCRO, Applicant v. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 296 and THERMAL METALS LTD., also working under the name A.R. PLUMBING AND HEATING LTD., Respondents

LRB File No. 232-05; February 22, 2006

Chairperson, James Seibel; Members Bruce McDonald and Clare Gitzel

The Applicant:	Raymond Halcro
For the Certified Union:	Gunnar Passmore
For the Employer:	Rupert Rabut

Decertification – Interference – Where director of employer actually participated in perfection of application as commissioner for oaths and discussed application with applicant and where employer totally disregarded and failed to apply collective agreement provisions and employees have therefore never enjoyed benefits of certification, Board may infer that employer has created anti-union environment in which wishes of employees almost certainly tainted – Representation vote could not reliably reflect true wishes of informed employees – Board dismisses application for rescission.

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

REASONS FOR DECISION

Background:

[1] By a certification Order of the Board dated December 23, 2003 (LRB File No. 258-03) Sheet Metal Workers' International Association, Local 296 (the "Union") was designated as the certified bargaining agent for the standard unit of employees working in the sheet metal trade in the construction industry¹ employed by Thermal Metals Ltd., also working under the name A.R. Plumbing and Heating (the "Employer"). At all material times, the Applicant, Raymond Halcro, was employed by the Employer and was a member of the bargaining unit. On December 9, 2005, Mr. Halcro filed an 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, as amended (the "Act").

¹ The standard bargaining unit description for the sheet metal trade as described in *International Erectors & Riggers (a Division of Newbery Energy)*, [1979] Sept. Sask. Labour Rep. 37, LRB File No. 114-79 is: "all

[2] The statement of employment filed on behalf of the Employer lists six employees, including Mr. Halcro, in the bargaining unit on the date on which the application was filed.

[3] In its reply to the application the Union alleged that the application ought to be dismissed pursuant to s. 9 of the *Act* on the grounds that it was made “in whole or in part on the advice of, or as a result of influence of or interference by the employer.”

[4] The parties adjourned the hearing of the application from the original hearing date that was set by the Board and the Board heard the application on February 10, 2006.

Facts and Evidence:

[5] Certain basic facts were not in issue either because of formal documentary evidence, operation of statute or the admission of one party or another. The balance of the evidence is drawn from the testimony of Mr. Halcro and Mr. Rabut.

[6] The effective date of the Saskatchewan Provincial Sheet Metal Workers' Agreement (the “collective agreement”) is January 23, 2005, and, therefore, the application for rescission was filed in the appropriate “open period” under s. 5(k) of the *Act*.

[7] The sheet metal trade is designated as a “compulsory apprenticeship trade” pursuant to s. 19 of *The Apprenticeship and Trade Certification Act, 1999*, S.S. 1999, c. A-22.2, and s. 26 of *The Apprenticeship and Trade Certification Regulations, 2003*, S.R. 2003, c. A-22.2, Reg 3.

[8] Following evidence given by one of the principals of the Employer, Rupert Rabut, the Union accepted that all the employees listed on the statement of employment

are registered journeymen or apprentice sheet metal workers or are otherwise certified to work in the compulsory apprenticeship trade pursuant to the legislation.

[9] Mr. Halcro has been with the company (or its predecessors) for approximately 16 years. He described himself as a kind of a foreman, working mainly in the Employer's shop.

[10] Mr. Rabut actively works in the trade for the Employer. The office work is performed by Dawn Kuchirka. Mr. Rabut, Ms. Kuchirka and Ms. Kuchirka's spouse (who does not work actively for the Employer) are registered with the Saskatchewan Corporations Branch as directors of the Employer and each holds one-third of the shares in the Employer.

[11] Ms. Kuchirka is the Commissioner for Oaths who took the statutory declaration of Mr. Halcro to the application for rescission. Mr. Halcro testified that he discussed the application with Ms. Kuchirka when he went to have it signed and that he knew that she was a part owner of the company. All of the evidence of support for the application was obtained from employees on the Employer's premises, but not necessarily during active work time.

[12] Since the date of the certification Order the Employer has not made any attempt to adhere to the terms of the collective agreement with respect to wages, benefits or at all. The employees are paid less than the collective agreement rate and are not provided with any benefits.

[13] None of the employees is a member of the Union. All of the employees, with the exception of Mr. Halcro, were hired after the date of certification; however, the Employer did not follow the procedure for hiring through the Union's hiring hall. Mr. Rabut testified that, although he was aware that new hires were to have a "referral" from the hall, he thought they could be hired off the street and there was a "grace period" to obtain the referral slips.

Arguments:

[14] Mr. Halcro argued that the application for rescission ought to be granted because there was evidence that a majority of the employees supported the application. He himself thought he would make less money after deductions for dues and benefit plans.

[15] Mr. Passmore, on behalf of the Union, argued that the evidence was more than sufficient to indicate that the application was made as a result of influence or interference by the Employer and that it ought to be dismissed pursuant to s. 9 of the *Act*.

[16] In particular Mr. Passmore referred to the fact that the Employer had not applied the provisions of the collective agreement since the date of certification. He also pressed the fact that an owner, director and management employee of the Employer had spoken to Mr. Halcro about the application and had taken his statutory declaration thereof.

[17] In support of his arguments, Mr. Passmore referred to the decisions of the Board in *Flaman v. Western Automatic Sprinklers (1983) Ltd. et al.*, [1989] Spring Sask. Labour Rep. 45, LRB File No. 045-88; *Huber v. Reinhardt Plumbing, Heating & Air Conditioning Ltd. and Sheet Metal Workers' International Association, Local 296*, [2002] Sask. L.R.B.R. 593, LRB File No. 195-02; and *Arnold v. United Steelworkers of America, Local 5917 and Westeel Ltd.*, [2005] Sask. L.R.B.R. 5, LRB File No. 275-04.

Analysis and Decision:

[18] We are of the opinion that the application for rescission should be dismissed by the exercise of our discretion to do so pursuant to s. 9 of the *Act* in that it was made in whole or in part on the advice of, or as a result of influence of or interference by the Employer.

[19] In *Flaman, supra*, the employer disregarded the terms of the collective agreement after certification. The Board found, *inter alia*, that the employer's conduct in

not abiding by the terms of the collective agreement led the Board to infer that the employer had created an anti-union environment in the workplace thereby improperly influencing or interfering with employees who brought the application for rescission. In essence, the employer's anti-union conduct, which rendered the unionization efforts meaningless, tainted the employees' support for the union.

[20] Similarly, in *Huber, supra*, the Board dismissed the application for rescission for similar reasons, stating as follows at 594 and 595:

[7] In the present case, the employees who applied to the Board for rescission of the Union's certification order are not members of the Union as required in the collective agreement. The Employer has not remitted their membership dues to the Union, nor has he complied with any of the terms of the collective agreement including the wage rates, benefit plan remittances and the like. The Employer has made it clear by this conduct that he does not want his employees to participate in the Union or to enjoy the benefits of the collective agreement.

[21] In the present case, the Employer totally disregarded and failed to apply any of the provisions of the collective agreement including, *inter alia*, wage rates, benefits, union security and the hiring hall provisions. The employees have never enjoyed the benefits of the certification that occurred in 2003, and, all but one having been hired since certification and not being union members, are likely unaware of the terms and conditions afforded them under the collective agreement. In such a situation we find that it may be inferred that the Employer has created an anti-union environment in which evidence of the wishes of the employees is almost certainly tainted: a representation vote at this time cannot in any way reliably reflect the true wishes of informed employees.

[22] Furthermore, there is uncontroverted evidence that Ms. Kuchirka, a director, shareholder and management employee of the Employer, actually participated in the ostensible perfection of the application and had some discussion about it with Mr. Halcro.

[23] In the foregoing circumstances, we have determined that, in the exercise of our discretion pursuant to s. 9 of the *Act*, the application is dismissed.

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

LABOUR RELATIONS BOARD

James Seibel,
Chairperson