Labour Relations Board
Saskatchewan

MARLYS JANZEN, Applicant v. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 336 and PRAIRIE CARE DEVELOPMENTS INC., Respondents

LRB File No. 004-07; February 16, 2007
Vice-Chairperson, Angela Zborosky; Members: Marshall Hamilton and Donna Ottenson

The Applicant:	Marlys Janzen
For the Certified Union:	Rod Gillies
For the Employer:	Glenn Hanke and Dianne Hanke

Decertification – Interference – By refusing to comply with collective agreement in ways that go to core of relationship between union and its members, employer engaged in course of conduct that undermined union's status and created anti-union environment that compromised employees' ability to decide whether to be represented by union – Board exercises discretion under s. 9 of *The Trade Union Act* to dismiss application.

Decertification – Interference – Employer did not understand that duty to bargain transcends negotiation of collective agreement and includes obligation to resolve disputes arising during course of collective agreement - By refusing to bargain collectively with union, employer created anti-union environment where employees would not see any benefit to collective bargaining relationship – Board exercises discretion under s. 9 of *The Trade Union Act* to dismiss application.

Decertification – Practice and procedure – Board confirms requirements for form of support evidence on rescission application which mirror requirements for form of support evidence on certification application and ensure that purported evidence of support represents informed decision that individual no longer wishes to have union representation in dealing with employer and supports rescission application – Evidence of support filed with application does not meet requirements – Board dismisses application.

***The Trade Union Act*, ss. 2(b), 5(k) 9 and 18(f).**

REASONS FOR DECISION

Background:

[1] By a certification Order of the Board dated March 23, 2005 (LRB File No. 281-04) Service Employees International Union, Local 336 (the "Union") was designated as the certified bargaining agent for a unit of employees employed by Prairie Care

Developments Inc. (the "Employer"). At all material times, the Applicant, Marlys Janzen, was employed by the Employer and was a member of the bargaining unit. On January 18, 2007, Ms. Janzen 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*").

[2] The statement of employment filed on behalf of the Employer lists twenty-four employees, including Ms. Janzen, in the bargaining unit on the date on which the application was filed. The Union did not oppose the composition of the statement of employment.

[3] In its reply to the application, the Union alleges 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 or interference of or intimidation by the employer or its agents. Specifically, the Union asserts that the Employer has engaged in conduct, including sarcasm and a refusal to bargain in good faith with respect to the Union's requests for information and compliance with the collective bargaining agreement, all of which has resulted in an anti-union environment. The Union asserts that the true wishes of the employees cannot be obtained through a vote in these circumstances. The Union also indicates its intent to challenge the method employed in gathering support and the form of support.

[4] The effective date of the collective bargaining agreement is March 10, 2006 and, therefore, the application for rescission was filed in the appropriate "open period" under s. 5(k) of the *Act*.

[5] The Board heard the application on February 7, 2007.

Facts and Evidence:

[6] The Employer's business is the operation of two care homes, the Riverview Village Estates and the Bentley, in Swift Current, Saskatchewan. Mr. and Ms. Hanke, the principals of the Employer, are responsible for the management of the

business and they, along with an assistant manager, appear to be responsible for the day-to-day operations.

[7] At the hearing, the Applicant testified in support of her application. The Applicant has been employed at the Riverview Village Estates location since approximately January 2005, initially as a care aide and currently as a supervisor/care aide/cook. She testified that her primary reason for bringing the application was that she felt she was not getting any value for the dues she paid to the Union. She cited, as an example, the fact that the Union negotiated terms of a collective bargaining agreement which implemented a lower wage scale for newly hired employees, although she acknowledged that existing employees did not have their wages reduced but rather were given percentage increases applied to their existing wages in each of the three years of the duration of the collective agreement. The Applicant also stated that only one employee who participated in the certification vote is still employed by the Employer.

[8] The Applicant also testified concerning the manner of gathering of support for the application. She testified that she solicited the support of the employees at the Riverview Village Estates location while a co-worker, Shonnon Klassen,[1] solicited support of the employees working at the Bentley location. The form of support filed by the Applicant is somewhat unusual in that each employee who supported the application hand-wrote a separate note on a lined sheet of paper. While we will discuss this aspect of the application in more detail later in these Reasons for Decision, we note that each employee's form of support was different in its content.

[9] The Applicant was cross-examined at length concerning the circumstances of her purported promotion to the position of supervisor/care aide/cook not long after her employment commenced. Although the Applicant could not recall exactly when she was promoted to this position, she initially stated in her testimony that it was approximately three months following the commencement of her employment. While later in her testimony the Applicant claimed to have no idea as to the timing of her promotion, Mr. Hanke, testifying on behalf of the Employer, indicated that it may have been approximately three to six months after the commencement of the Applicant's employment but, in any event, was during the statutory freeze period, that is, between

the time the Union was certified and the time the collective agreement with the Union was signed. The Applicant received a $2.00 per hour increase when she was appointed to this position and then a 2% increase as per the collective agreement following its signing in March 2006.

[10] With respect to the Applicant's change in job duties following her promotion, the Applicant testified that she performed the role of supervisor when the Hankes were away and that, in their place, she was responsible for answering telephone calls and inquiries from residents' families and from others in contact with the Employer concerning its day-to-day operations such as those calling with questions about job vacancies and contractors coming to perform repairs at the facility. The Applicant also indicated that she was responsible for minor discipline of other employees such as issuing verbal warnings and, on one occasion, issuing a written warning. Mr. Hanke disagreed with the Applicant's description of her supervisory duties, stating that the Applicant was not responsible for the discipline of staff. Both the Applicant and Mr. Hanke testified that the Applicant was not responsible for other supervisory duties such as the scheduling of staff or hiring but said that the Applicant would supervise the employees and be the "second signature" upon the distribution of medication.

[11] With respect to the fact that the Applicant was appointed to a new position during the statutory freeze period, Mr. Hanke denied that this amounted to a change to an employee's terms and conditions of employment (in violation of the *Act*) because it was a change to the Applicant's position, not only a change to her wages. Mr. Hanke indicated that he had received advice from his labour relations consultant that during this time period there had to be a freeze on all wage increases for employees. The Union was not aware of the Applicant's promotion and there has been no application to the Board seeking an order to exclude the Applicant from the bargaining unit.

[12] Deborah Fuhrman testified on behalf of the Union. Ms. Fuhrman is employed by the Union as a business agent and was assigned to service the bargaining unit in question in early September 2006. Ms. Fuhrman had not been involved in the bargaining of the parties' collective agreement and therefore, upon her initial review of

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[1] Ms. Klassen did not attend at or participate in the hearing.

the file relating to the bargaining unit, she wrote a number of letters to the Employer – one on September 13, 2006 and a number of others on September 29, 2006 -- requesting information, payment of union dues, posting of a notice of a union meeting, and the opportunity to visit the facility and meet the employees. She also wrote two letters on September 29, 2006 concerning discipline imposed on two employees. Ms. Fuhrman's letters were met with resistance by the Employer which was detailed in correspondence filed as exhibits at the hearing and in testimony given by Ms. Fuhrman and Mr. Hanke.

[13] In her September 13, 2006 letter, Ms. Fuhrman outlined difficulties in contacting Mr. Hanke concerning the posting of a notice of a union meeting in the break rooms at both facilities and the Employer's response that it would not agree to post the notice, as there was no provision in the collective agreement requiring it to do so. Mr. Hanke had indicated that it was the Union's job, not his, to inform members of such matters. Ms. Fuhrman indicated that she felt that the posting of the notice was the least disruptive way to notify members of the meeting but that, if the Employer persisted in its refusal, she would invoke s. 5.04 of the collective agreement to attend in person at the facilities to inform members of the meeting. Ms. Fuhrman also indicated her desire to meet Mr. Hanke and tour the facilities, given that she was new to Swift Current.

[14] Ms. Fuhrman also sent six pieces of correspondence to Mr. Hanke on September 29, 2006, each of which may be summarized as follows:

> (a) With respect to the discipline of one employee, Ms. Fuhrman noted that it appeared that progressive discipline had not been followed (an employee was issued a written warning, not a verbal warning), that the written warning was given in the presence of other staff (in violation of the collective agreement) and that similar misconduct by other employees had attracted only a verbal warning. Ms. Fuhrman asked that time limits of the grievance procedure be waived in order that she could conduct an investigation and, to that end, requested copies of the disciplinary policy, medication policy, description of the liability insurance, a job description and permission to meet with the employee at the facility in accordance with the collective agreement;
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> (b) With regard to the discipline of another employee, Ms. Fuhrman indicated it did not appear progressive discipline had been followed, asked for waiver of time limits and copies of the disciplinary policy, two cellular telephone policies referred to in the letter of discipline and a job

description and permission to enter the premises to meet with the employee;

(c) Ms. Fuhrman requested that she be permitted to attend the facility and meet with newly hired employees, as per the collective agreement, and indicated her availability to do so on two days in October 2006;

(d) Ms. Fuhrman demanded remittance of union dues, payable September 14, 2006 pursuant to s. 32 of the *Act*;

(e) Ms. Fuhrman asked the Employer to advise who the union member representative was on the Employer's occupational health and safety committee; and

(f) Ms. Fuhrman requested the filing of monthly statements as required by the collective agreement, showing the names of employees who had separated and the effective dates of their separations, the Employer having failed to provide such statements since the signing of the collective agreement.

[15] The Union also sent correspondence to the Employer on October 3, 2006 indicating Ms. Fuhrman's intention to attend at the Bentley and Riverview Village Estates locations for an inspection because she had received reports that the notices of union meetings and the occupational health and safety notice had not been posted, thereby causing concern about the Union's ability to communicate with its members.

[16] Mr. Hanke, on behalf of the Employer, responded by correspondence to the Union dated October 4, 2006. In order to get a flavour of the tone the Employer took with the Union in all of its correspondence, it is helpful to set out that one piece of correspondence in its entirety:

Letter #1 Dated Sept. 29/06 re: Disciplinary Procedure

Since your letter dealt with several items, I will deal with them in order:

1. *Whether or not you have copies of an action in your file is not our concern. We cannot be accountable for your recordkeeping. You also have not named the employee in question.*
2. *5.03 d. If you read article 5.05 you will receive your answer to that question. There are also extenuating circumstances which you should find out about before firing off letters*

designed to cause work, so please do your homework before constructing letters to us.

3. *It is the employer's position to determine what is serious enough to issue verbal warnings providing it is reasonable and consistent. Before closing this response, we refer you to the preamble of the CBA. That also should answer your query.*
4. *I am not sure that you require time to investigate*
5. *You do not require copies of our policies as they are our policies and it is the way in which we manage the business. I refer you to article 2.*[2] *If you can show us how we have violated article 2, we will consider your request.*
6. *Uniform understanding of and administration of discipline was ground out in bargaining before the Union agreed to the language. We see no reason to revisit that again with someone who seems only to cause unneeded work for us.*

In closing on your Sept 29/06 letter, you make reference to the CBA when it suits your needs. We will always refer to the CBA when you request something. If what you request is enshrined in the CBA, we will gladly comply. It is our understanding by what the Union stated during bargaining, and how the Labour Board has described as CBA as a document that describes how the Union and Employer will work together.

Letter #2 Dated Sept. 29/06 re: Disciplinary Procedure

We require an employee name since you asked about a disciplinary in a previous letter dated Sept. 29/06.

Letter #3 Dated Sept. 29/06 re: Occupational Health Committee

After reviewing the CBA, we find that there is no provision to notify the Union on our part; only to have a committee in place. We refer you to your shop steward who should be aware of this committee.

Letter #4 Dated Sept. 29/06 re: Introduction to Shop Steward

In reviewing our records we find that we have no record of any letter being sent as per article 6.06

Letter #5 dated Sept. 29/06 re: Monthly Employment Statements

Our records show that we have compiled this information, but if you have misplaced this information we will send it.

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[2] Article 2 is a standard management rights clause.

> ***Letter #6 dated Sept. 29/06 re: Monthly dues Remittance-August***
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> *Our payroll (which you as a representative of our employees and if you spoke to them) would know that part of the pay period runs over each month. This negates the idea of remittance on the 14th of each month.*
>
> ***Letter #7 dated October 3/06 re: Investigation of Premises***
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> *The dates you requested, are not good for us as it will disrupt the facility at that time. We will reply as to a more appropriate time for your inspection. Please inform us as to what you think you will inspect considering the guidelines in the CBA.*
>
> *Sincerely,*
>
> *Glenn Hanke*
> *General Manager*

[17] The Union and the Employer continued to exchange correspondence throughout the fall and winter of 2006 with the Union attempting to explain its position and justify its requests for certain information and its attendance at the workplaces. The Employer continued to raise roadblocks to a meeting/inspection of the workplaces, the exchange of information and a resolution of the issues. The parties communicated primarily in writing. Given the length and number of these communications, we will simply highlight some of the ongoing problems between the parties.

[18] One of the issues in dispute between the parties was the role of the Union in the two disciplinary matters and the propriety of its requests for information. The Union explained it was attempting to investigate the matters with a view to determining whether there was a problem and, if so, to attempt to resolve it without filing grievances. In response, the Employer, while acknowledging that the one disciplinary response should have been a verbal warning instead of a written warning, would not provide the information requested, stating: "If you wish to file grievances due to your offices inability to properly file and administer the local, that is your prerogative, we do not ask you to assist with our business, we find it uncanny that you would request our assistance to manage yours."

[19] With regard to the occupational health and safety committee issue, the Union sought the name of its representative on the committee given that the relevant legislation required member representative(s) selected by the Union. The Employer denied that it was required to provide this information as nothing was contained in the collective agreement about it. The Employer stated that there was an occupational health and safety committee in place and it was meeting but added "if you have proof that they do not then file a complaint with the OH&S and we will deal with it."

[20] One of the other primary difficulties between the parties stemmed from the difficulties the Union had over members' attendance at union meetings. Ms. Fuhrman testified as to the difficulties she experienced with the Employer in having notices posted in the workplace (Mr. Hanke denied that he was required to do so under the collective agreement) and that, due to low attendance at the first meeting (only one employee attended), she concluded that the notices had not been posted. When Ms. Fuhrman made telephone calls to members' homes she discovered that a lot of the information the Union had received from the Employer was out-dated (changes in phone numbers and addresses and employees no longer employed by the Employer) and that she did not have complete information for new hires. Having received little co-operation from the Employer on the issue, Ms. Fuhrman indicated to the Employer that it was necessary for her to "inspect" the workplace to see if the notices had been posted. Again, she met with resistance from the Employer to this request (first stating there was no obligation to post notices, then agreeing to post a notice, then again challenging the right of the Union to have a notice posted). Even after Ms. Fuhrman pointed out the provision allowing her to inspect the premises under the collective agreement, the Employer was uncooperative. The Employer stated that the Union's representative could not venture beyond the public areas of the facility as that there was nothing in the collective agreement to allow this and stated in its correspondence its general position on all matters, as follows:

> *What we are saying is we are prepared to welcome you, but only as provided in the CBA. You have us at a disadvantage as you have a great deal of experience and we only have the CBA to rely on. You're negotiator told us that this was the document that would outline how we would do business but you seem to be taking many liberties and we must ALWAYS remain firm to the CBA.*

[21] Another issue between the parties stemmed from the resistance the Employer showed to the Union concerning the Union representative's ability to meet with newly hired employees to introduce herself and provide a copy of the collective agreement, as she was entitled to do under the collective agreement. The Employer responded by questioning Ms. Fuhrman's ability to act as a shop steward because she did not work on site. Ms. Fuhrman pointed out that, under the collective agreement, in the absence of a shop steward, she or one of the other executive members of the Union could fulfill this role. Ms. Fuhrman explained that the Union did not yet have an elected shop steward in the workplace primarily because of its difficulties obtaining a quorum at a union meeting (although the evidence appeared to indicate that the Union may have had one steward in one of the locations, but that shop steward was on a leave of absence). The Employer indicated it would instead just give the new employees Ms. Fuhrman's office phone number to call her. Another example of the Employer's resistance to or lack of cooperation with Ms. Fuhrman's requests to meet with employees was to say that the Employer or employees should be able to call Ms. Fuhrman 24 hours a day to do this because new employees work casual and might work at night. The Employer also stated that meeting with new employees at the worksite would be too disruptive to the residents. To date, the Employer has never permitted or arranged for Ms. Fuhrman to attend the workplace to meet with a newly hired employee. Ms. Fuhrman had also proposed to meet with current employees to introduce herself and provide union material, given the lack of an available shop steward and the difficulties with the Employer posting notices of union meetings.

[22] A further issue to which Ms. Fuhrman testified to was that the Employer had not been remitting dues on time, had been remitting dues for those not required to pay them, and had not been following the collective agreement with respect to the information required with the remittances of dues. The copies of the Employer's remittance sheets entered at the hearing included only the date of deduction of dues (on a bi-weekly basis), the employees' names and the amount of the dues deducted for each employee on each date. According to the collective agreement, the Employer should also have been providing the hours worked and employee addresses. The collective agreement requires monthly dues and the Union says that the Employer's calculations, which are done on a bi-weekly basis, are confusing. Even aside from the fact that dues

were being calculated bi-weekly instead of monthly, the failure to include the "hours worked" by each employee prevented the Union from determining whether the dues remittances were proper. As of the date of the hearing, this information had not been provided by the Employer.

[23] In response, Mr. Hanke testified concerning his method of calculation of dues. He stated that, with the computer accounting program he had at the time, he had no ability to calculate dues other than on a bi-weekly basis (unless he calculated them manually) and report them in that fashion. Nor could he indicate the hours worked by each employee without doing so manually each month. He testified that he is putting in a new accounting program that will calculate dues on a monthly basis and permit the required information to be generated in a report to the Union. He did not advise the Union of these intentions at the time the Union had questions and concerns and he gave no explanation at the hearing for his failure to do so.

[24] Following the exchange of correspondence, Mr. Hanke did allow Ms. Fuhrman to attend at the facility on November 9, 2006. Ms. Fuhrman had hoped to meet with some of the employees on their breaks to introduce herself and provide information about the Union but was initially told that all of the employees were working on the floor and she could not go on the floor. Although the evidence was unclear on this point, it sounded as though at some point Ms. Fuhrman was able to distribute union information to a couple of employees. Ms. Fuhrman stated that she had a very intense meeting with Mr. Hanke, Ms. Hanke and another representative of the Employer, Ms. Baldwin, but, when Ms. Fuhrman approached a topic for discussion, Mr. Hanke would say they did not have enough time to discuss it or they did not want to talk about it. Ms. Fuhrman stated that she did view the notice board and did see the union meeting notice posted (the Union had had another meeting in October at which time no employees attended). Ms. Fuhrman was permitted to take a tour of the Riverview Village Estates location.

[25] Following the November 9, 2006 meeting, the Union followed up several outstanding issues with the Employer, including errors in dues remittances and pointed out the fact that the parties seemed to have a different interpretation of various terms of the collective agreement. Essentially, the Union proposed a cooperative approach to resolving the issues, including the possible use of a mediator provided at no charge by

Saskatchewan Labour. The Employer took issue with the Union's recount of the November 9, 2006 meeting, stating that the collective agreement should guide them, that the Employer would not be bargaining it again, that Ms. Fuhrman should contact the person who negotiated it for the Union in order to understand its intent, and that "We told you that it is not our position or responsibility to train you how to interpret the CBA. That is why we take notes while negotiating. We will only negotiate a CBA once." The remainder of the Employer's letter illustrates an uncooperative approach by the Employer and questions the Union's ability to be involved in various issues that had been raised by the Union.

Arguments:

[26] Ms. Janzen argued that the application for rescission ought to be granted because there was evidence that a majority of the employees supported the application. She submitted that there was no evidence that the Employer was involved with the making of the application nor did it influence her decision to bring the application. In her opinion, the employees simply did not see any benefit to having the Union in place when considering how much they pay in dues to the Union.

[27] The Union's argument focused on two primary grounds for dismissal of the application pursuant to s. 9 of the *Act*. The first ground argued by the Union was that, given the Applicant's appointment to the position of supervisor by the Employer, the employees from whom she sought support would view her as an agent of the Employer. The collection of support was therefore tainted because employees would have felt they had to sign or be betrayed to the Employer. In this regard the Union urged the Board to accept the evidence of the Applicant who testified that her duties changed once she became a supervisor to include managerial type duties such as the imposition of discipline. The Union relied on *Matychuk v. Hotel Employees and Restaurant Employees Union, Local 206 and El Rancho Food and Hospitality Partnership o/a KFC/Taco Bell*, [2004] Sask. L.R.B.R. 5, LRB File No. 242-03 and *Ron Bitz v. Communications, Energy and Paperworkers Union of Canada and Saskatoon Star Phoenix Group Inc.*, [2004] Sask. L.R.B.R. 122, LRB File No. 073-04, in support of this contention.

[28] The second argument of the Union was that the Employer's systematic undermining of the Union and its relationship with the employees created an anti-union environment that led to the decertification application being brought. The Union argued that, in such circumstances, the true wishes of employees could not be obtained through a secret ballot vote. Specifically, the Union said it was prevented from developing a relationship with the employees and the employees were prevented from experiencing the true benefits of a collective bargaining relationship because of both (i) the Employer's failure to comply with the collective bargaining agreement; and (ii) the Employer's failure to bargain collectively within the meaning of s. 2(b) of the *Act* which included the obligation to discuss and attempt to resolve any disputes arising under or matters requiring the interpretation of the collective agreement, during the life of the agreement. The Union pointed to the failure of the Employer to remit dues according to the collective agreement, the failure to submit proper employee information with dues remittances, the failure to supply other employee information, the failure to allow the Union's representative to meet with new hires or other bargaining unit members at the workplace, the difficulties in allowing the Union to investigate the discipline of two of its members and to attempt to resolve those situations, the failure to provide relevant policies concerning discipline and disciplinary incidents, the failure to allow the Union's representative access to the workplace to familiarize herself with it and the failure to post notices of union meetings or give assurances that this had been done.

[29] In support of these arguments, the Union relied on the following cases: *Clayton Walters v. Xpotential Products Inc. operating as Impact Products and United Steelworkers of America, Local 5917*, [2002] Sask. L.R.B.R. 65, LRB File No. 214-01; *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; *Raymond Halcro v. Sheet Metal Workers' International Association, Local 296 and Thermal Metals Ltd., also working under the name A.R. Plumbing and Heating Ltd.*, [2006] Sask. L.R.B.R. 92, LRB File No. 232-05; and *Amalgamated Transit Union, Local 588 v. Wayne Bus Ltd.*, [1999] Sask. L.R.B.R. 369, LRB File No 117-98.

[30] The Employer argued that its conduct toward the Union could not have had any influence on the application because it never let its dealings with the Union leave its office; in other words, the employees could not have known anything about the

relationship between the Employer and the Union. The Employer asserted that it does not promote or condone the Union – a position it took on the advice of its consultant. The Employer stated that it responded to every letter sent by the Union and denied that it did anything that prevented the Union from representing its members, except with respect to its failures concerning the provision of dues and the information that should have been provided to the Union with the dues. The Employer speculated that the low attendance at union meetings must have simply been the result of a lack of interest by members and insisted that it had posted the notices in the workplace. The Employer stated that it is not responsible for doing the Union's job for it, such as phoning employees to come to union meetings.

[31] In response to the Union's arguments concerning the Applicant's status as a supervisor, the Applicant argued that, because she had another employee who worked at the Bentley location helping her gather support and because she did not know the employees at the Bentley location, this argument should not succeed.

Relevant Statutory Provision:

[32] Section 9 of the *Act* reads:

> *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.*

Analysis and Decision:

[33] It is necessary for the Board to deal with two issues in this application. The first is whether the application was made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by the Employer within the meaning of s. 9 of the *Act*. The second concerns the form of support evidence filed by the Applicant on the application. We are of the opinion that the application for rescission should be dismissed through the exercise of our discretion to do so pursuant to s. 9 of the *Act*, as well as on the basis that the support evidence filed by the Applicant is

deficient to the extent that there has not been evidence of majority support filed in favour of the application.

Employer Influence

[34] In the often quoted decision of the Board in *Shuba v Gunner Industries Ltd., et al,* [1997] Sask. L.R.B.R. 829, LRB File No. 127-97, which was followed by the Board in *Nadon v. United Steelworkers of America and X-Potential Products Inc. o/a Impact Products*,[3] [2003] Sask. L.R.B.R. 383, LRB File No. 076-03, the Board set out the factors to consider when determining whether to grant a rescission vote, at 832 through 834**:**

> *In determining whether to grant a rescission vote, the Board must balance the democratic rights of employees to select a trade union of their own choosing, which is enshrined in s. 3 of the Act, against the need to ensure that the employer has not used coercive power to improperly influence the outcome of the democratic choice. In Wells v. United Food and Commercial Workers, Local 1400 and Remai Investment Corp., [1996] Sask. L.R.B.R. 194, the Board described its approach to the balancing task as follows, at 197-198:*
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> > *Section 3 of The Trade Union Act reads as follows:*
> >
> > > *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.*
> >
> > *The Board has often commented on the significance of the power which is accorded to employees under this provision to make their own choices concerning representation by a trade union. We have also stated that the rights granted under*

[3] Upheld by the Saskatchewan Court of Queen's Bench on judicial review, reported at (2004), 244 Sask. R. 255.

Section 3 include the right to decide against trade union representation as well as the right to undertake activities in support of a trade union. In the decision in United Food and Commercial Workers v. Remai Investment Corporation and Laura Olson, LRB Files No. 171-94 and 177-94, the Board made the following observation:

> *Counsel for the Employer urged the Board to take the same view of Ms. Olson's conduct as we took in Brandt Industries Ltd., LRB File No. 095-91. In Brandt Industries Ltd. the Board recognized the right of employees to debate the representation question vigorously and to campaign against the Union. We still regard this as an important right. In F. W. Woolworth Co. Limited, LRB File No. 158-92, the Board returned to this theme and stated that charges against individual employees of interfering in an organizing drive are particularly serious because of the chilling effect that they can have upon the democratic process which is at the heart of The Trade Union Act.*

Earlier decisions have made it clear, however, that the Board is alert to any sign that an application for certification has been initiated, encouraged, assisted or influenced by the actions of the employer, as the employer has no legitimate role to play in determining the outcome of the representation question. In the Remai Investment Corporation decision from which the above quotation was taken, the Board went on to say:

> *However, there is a distinction between two employees debating the representation question as they work side by side or while they ride to work and what Ms. Olson did. Brandt Industries Ltd. does not stand for the proposition that one of those employees can enlist the coercive power of management in order to gain the support of other employees for his or her position.*

In the case of Kim Leavitt v. Confederation Flag Inn (1989) Limited and United Food and Commercial Workers, LRB File No. 225-89, the Board made the following comment:

> *The Board has frequently commented upon the relationship between Section 3, which enshrines the employees' right to determine whether or not they wish to be represented by a union, and Section 9 of the Act. These sections are not inconsistent but complimentary. Section 3 declares the employees' right and Section 9 attempts to guard that right against applications that in reality reflect the will of the employer instead of the employees.*

The Board proceeded to make the following statement:

> *Generally, where the employer's conduct leads to a decertification application being made or, although not responsible for the filing of the application, compromises the ability of the employees to decide whether or not they wish to be represented by a union to the extent that the Board is of the opinion that the employees' wishes can no longer be determined, the Board will temporarily remove the employees' right to determine the representation question by dismissing the application.*

In Susie Mandziak v. Remai Investment Corp., LRB File No. 162-87, the Board made a similar point:

> *While the Board generally assumes that all employees are of sufficient intelligence and fortitude to know what is best for them and is reluctant to deprive them of an opportunity to express their views by way of a secret ballot vote, it will not ignore the legislative purpose and intent of Section 9 of The Trade Union Act. Section 9 is clearly meant to be applied when an employer's*

> *departure from reasonable neutrality in the representation question leads to or results in an application for decertification being made to the Board. In the Board's view, this application resulted directly from the employer's influence and indirect participation in the gathering of necessary evidence of employee support.*
>
> *This statement makes clear that Section 9 is directed at a circumstance in which an employer departs from a posture of detachment and neutrality in connection with the issue of trade union representation. There have been cases where an employer has taken a direct role in initiating or assisting an application for rescission of a certification order, and in these cases, it is fairly easy for the Board to identify the conduct on the part of the employer which constitutes improper interference. On the other hand, as the Board pointed out in Rick Poberznek v. United Masonry Construction Ltd. and International Union of Bricklayers and Allied Craftsmen, LRB File No. 245-84, employer interference is rarely of an overt nature, and the Board must be prepared to consider the possibility that subtle or indirect forms of influence may improperly inject the interests or views of the employer into the decision concerning trade union representation.*

[35] In the application before us, the influence or involvement of the Employer has not been overt in the sense that the Employer was not directly involved in the making of the application. It therefore becomes necessary to examine whether we should draw an inference that the Employer interfered with or influenced the bringing of the application by the Applicant to the extent that the true wishes of those in the bargaining unit cannot be ascertained at this time by way of a secret ballot vote.

[36] The circumstances of this case are similar to those considered by the Board in a number of recent decisions. In the *Huber* decision, *supra*, the Board determined that the application for rescission was improperly influenced by the employer's anti-union attitude in circumstances where the Employer had ignored the

certification order and the collective agreement. The Board reasoned as follows, at 594-595:

> *[6] The Board examined this question in Flaman v. Western Automatic Sprinklers (1983) Ltd. et al., [1989] Spring Sask. Labour Rep. 45, LRB File No. 045-88. In that case, the employer hired employees without regard to the hiring hall provisions contained in the collective agreement. The union took various steps under the terms of the collective agreement to enforce its terms but the employer continued to disregard the terms of the collective agreement. In this environment, the Board held that employees hired "off the street" in violation of the union security provisions could not participate in a representation vote. In addition, the Board found that the employer's conduct in not abiding by the terms of the collective agreement led the Board to infer that the employer improperly influenced or interfered 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.*
>
> *[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.*

[37] Similarly, in the *Halcro* decision, *supra*, the Board dismissed an application for rescission in circumstances where the employer had not followed the collective agreement since the certification of the union. The Board concluded, at 95 and 96:

> *[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.*

[38] In the *Walters* decision, *supra*, the Board had occasion to consider circumstances where the employee bringing the rescission application had received a wage increase, without the knowledge of the Union, not long before the application was brought before the Board. Upon reviewing the facts of that wage increase and noting that the employer told the applicant to contact the Board concerning his anti-union beliefs and that as luck would have it the applicant contacted the Board before the open period, the Board concluded, at 71:

> *[20] Even without all of the unusual circumstances listed above, the fact that the Employer negotiated wages directly with Mr. Walters and was paying Mr. Walters a significantly higher rate of pay without the Union's knowledge, clearly had the effect of undermining the Union at the workplace. The evidence confirms the obvious, that other employees wanted to negotiate a higher wage rate directly with the Employer much like Mr. Walters had done. By bargaining directly with Mr. Walters, the Employer undermined the Union and the conclusion that some employees drew was that they did not need the Union, just as Mr. Walters was advising them. The Board has previously determined that such Employer conduct is unacceptable.*
>
> *[21] In the decision McNutt v. I.W.A and Moose Jaw Sash and Door (1963) Ltd., [1980] July Sask. Labour Rep. 37, LRB File No. 033-80, the Board notes at 37:*
>
> > *If the Board granted the application, it would sanction the practice of an employer inducing applications for decertification by an employer offering wage increases directly to employees without reference to the Union. Section 9 of the Act was enacted to permit the Board to prevent the success of such tactics.*

[39] In our view, the Employer has engaged in a course of conduct that has undermined the Union's status as the sole collective bargaining representative of the employees. The Employer has created an anti-union environment which has compromised the employees' ability to decide whether to be represented by a union to the extent that the true wishes of informed employees could not be obtained through a secret ballot vote at this time. Not only has the Employer refused to comply with several

terms of the collective agreement, it has done so in a way that goes to the core of the relationship between the Union and its members. There are many examples of such conduct, as outlined in greater detail in the evidence above, including:

- sending monthly statements that did not contain all required information including employee information that would allow the Union to contact employees about union meetings and other matters;

- dues remittances were not calculated on a monthly basis and did not contain all required information to give the Union the ability to ensure that proper dues were paid which is important when employees apparently have concerns over the value for dues paid;

- failing to arrange for the Union to meet with newly hired employees;

- administering discipline to an employee in front of others.

[40] Similarly, the Employer's refusal to bargain collectively as defined by s. 2(b) of the *Act* created an anti-union environment where the employees would not see any benefit to the collective bargaining relationship. The examples of this conduct, as outlined in greater detail in the evidence above, included:

- creating difficulties for the Union relating to the Union's attempts to resolve the two grievances;

- refusing to provide relevant workplace policies, including those upon which discipline was based;

- refusing to engage in discussion of the Employer's progressive discipline policy;

- refusing and/or questioning the requirement to post notices of union meetings in circumstances where the Employer had provided the Union with inaccurate/incomplete employee information and had not been permitting the Union's representative to come to the work site to meet with bargaining unit employees;

- failing to provide the name of the Union's representative on the occupational health and safety committee, in circumstances where a representative is required by legislation to have been selected by the Union; and

- attempting to prevent the Union's representative from entering the work sites to view the facilities.

[41] The approach used by Mr. Hanke in his correspondence with the Union demonstrated the contempt with which the Employer treated the Union and Ms. Fuhrman and contributed to the creation of an anti-union environment. Mr. Hanke was cross-examined at length by counsel for the Union concerning the nature of his responses in his correspondence to the Union. Mr. Hanke testified that the use of the word "demand" twice in one of the letters from the Union dated September 19, 2006 was, in his view, "not conducive to good communications" (the Union's use of the word "demand" was in relation to a demand for payment of unpaid union dues owing to the Union). Mr. Hanke stated that this was what got the relationship off to the wrong start and explains the tone he used in subsequent correspondence with the Union. In cross-examination, Mr. Hanke acknowledged that, when this issue was discussed at their November 9, 2006 meeting, Ms. Fuhrman apologized for any problems with her tone or approach. Mr. Hanke also acknowledged that the tone in his subsequent correspondence with the Union used language that was "not conducive to good communications." In our view, the tone of the Employer's subsequent correspondence with the Union was sarcastic and demonstrative of an uncooperative approach by the Employer to a continued relationship with the Union.

[42] Through its responses to the Union, the Employer demonstrated a significant misunderstanding of its obligation to bargain in good faith under the *Act*. While the Employer maintained that it was always acting on the advice of its labour relations consultant (and, in fact, Mr. Hanke stated that all of the Union's correspondence was sent to the labour relations consultant for review, the formulation of a response and the drafting of a letter for Mr. Hanke to sign and send to the Union) Mr. Hanke acknowledged that he, as the Employer's representative, was responsible for the responses. The Employer apparently did not understand that the Employer's duty to bargain transcends the negotiation of the collective agreement and includes the obligation to resolve disputes arising during the course of the collective agreement. This obligation to bargain is prescribed by s. 11(1)(c) of the *Act* which makes it an unfair labour practice not to bargain collectively, which is defined in the *Act*, as follows:

> *2(b) "bargaining collectively" means negotiating in good faith with a view to the conclusion of a collective bargaining agreement, or a renewal or revision of a bargaining agreement, the embodiment in writing or writings of the terms of agreement arrived at in negotiations or required to be inserted in a collective bargaining agreement by this Act, the execution by or on behalf of the parties to such agreement,* ***and the negotiating from time to time for the settlement of disputes and grievances of employees*** *covered by the agreement or represented by a trade union representing the majority of employees in an appropriate unit;*
>
> [**emphasis added**]

[43] The obligation has also been the subject of decisions of the Board and, in *United Food and Commercial Workers, Local 1400 v. Madison Development Group Inc.*, [1996] Sask. L.R.B.R. 75, LRB File No. 131-95, the Board summarized the nature of the duty to bargain, at 108:

> *The duty to bargain with the certified trade union is a legal obligation, not a responsibility which the employer may take up or not according to whim. The duty to bargain includes, but is not limited to, the conclusion of a collective agreement at the bargaining table. It covers all aspects of the dealings an employer may have with employees with respect to terms and conditions of employment, and requires that the employer deal with the trade union, and only with the trade union, in connection with these questions. It requires that the employer make a genuine and positive effort to resolve issues raised by the trade union on behalf of the employees.*

[44] The purported violations of the collective agreement and the failure to address matters in dispute between the parties cause us significant concern. This is an immature bargaining unit with several casual employees and a high rate of turnover in the staff complement. The Employer's deliberate attempts to frustrate the developing relationship with the Union and its members through the failure to provide proper and complete employee information and the failure to permit/arrange for the Union to meet with newly hired employees and other bargaining unit members at the workplace, have tainted the employees' relationship with the Union.

[45] Also, the evidence at the hearing did not give us any comfort that the proper dues were paid by the Employer to the Union. With respect to one of the

employees, the first remittance sheet shows dues being paid to the Union on her behalf on three occasions in one month, each one week apart and for an amount that would appear to exceed dues payable on a percentage of earnings, even if the employee were full-time. Even though the Employer calculated remittances on a bi-weekly basis, these calculations would appear to be improper. The Employer had no explanation for this anomaly. This illustrates the difficulties encountered by the Union in determining whether appropriate dues had been remitted when the Employer has not provided complete information with dues remittances. The effect of this failure to provide complete information is particularly important in the circumstances of this case where the Applicant gave as her reason, and as the reason of others, for wanting the Union decertified that there was no value for the amount of dues paid to the Union.

[46] Furthermore, the lack of cooperation by the Employer in resolving day-to-day issues of interpretation of the collective agreement, as required by the *Act*, including the refusal to share the Employer's policies with the Union, the lack of cooperation in discussing disciplinary issues and the progressive discipline policy, and the disputes over the ability of the Union's representative to enter the workplaces, contributed to the creation of an anti-union environment. It is our view that the Employer does not want the employees to be part of the Union or to enjoy the benefits of collective bargaining. In this environment, it would be easy to understand how the employees might draw the conclusion that they do not need a union.

[47] We also have conflicting evidence over whether the Employer posted notices of union meetings. We do not accept the Employer's evidence that all the notices were posted. Ms. Fuhrman testified that employees had reported that no notices had been posted. The Applicant stated that there was only one notice posted following the signing of the collective agreement. Weighing this evidence against that of the Employer, which constantly challenged the right of the Union to have the notices posted, we must conclude that not all of the notices were posted. In the circumstances, the Employer's lack of cooperation in posting the notices and limiting or preventing Ms. Fuhrman's access to employees at the workplace only compounded the difficulties the Union had in developing a relationship with employees (or even contacting them) and allowing them to experience the benefits of collective bargaining.

[48] Unless the Employer properly recognizes its obligations under s. 2(b) of the *Act* and complies with both the spirit and intent of the collective agreement and the *Act*, the employees will be unable to experience the benefits of the collective bargaining relationship and having the Union as their exclusive bargaining representative. The Employer's conduct has compromised the ability of the employees to make an informed decision about whether to be represented by the Union to the extent that their true wishes cannot be ascertained by a secret ballot vote and we must therefore temporarily remove the exercise of their s. 3 rights to choose to belong or not to belong to a trade union. We have therefore decided to exercise our discretion and dismiss the application pursuant to s. 9 of the *Act*.

[49] Given our conclusions above, it is unnecessary for us to determine whether the application should be dismissed pursuant to s.9 because the Applicant's appointment to the position of supervisor and her authority over other employees made her an agent of the Employer. Likewise, we need not determine whether the Applicant's supervisory duties placed her in a position of authority in the eyes of the employees such that they felt they had to sign in support of the application or risk betrayal to the Employer. In support of this argument the Union urged the Board to accept the evidence of the Applicant as to the extent of her supervisory duties. On the other hand, the Employer urged us to accept its evidence that the Applicant's job duties did not really change, all employees "multi-task," and the Applicant had no managerial type duties and was not in a position of authority over other employees. We think it necessary to point out that, if we accept the evidence of the Employer on this issue, then the Employer has arguably violated the *Act* by making a unilateral change to the Applicant's wages during the statutory freeze period, another factor that would support the finding of employer influence/involvement in this case. In any event, we find that the wage increase given to the Applicant without the knowledge of the Union and in violation of the collective agreement is a further indicia pointing to improper conduct of the Employer within the meaning of s. 9. Based on the principles in the *Walters*, case, *supra*, a secretive wage increase such as this undermined the Union, lended credence to the Applicant's views that the Union was unnecessary and suggested to other employees that they could fall into favour with the Employer if they supported the Applicant. This is a tactic that s. 9 was enacted to prevent.

Support Evidence

[50] Even if we had not decided to dismiss this application pursuant to s. 9 of the *Act*, we would have dismissed the application on the basis that the Applicant failed to file proper evidence of majority support for the application. Although the Union did not press this issue in argument, given the confidential nature of support evidence on both certification and decertification applications, it is incumbent upon the Board to satisfy itself in every such application that the applicant has filed evidence of support in a form acceptable to the Board.

[51] The Board has not had occasion in the past to specifically set out the requirements for the form of support evidence on a rescission application.[4] It has, however, done so in relation to the form of support evidence filed on a certification application. In *International Woodworkers of America v. Beaver Lumber Company Limited*, [1977] May Sask. Labour Rep. 30, LRB File No. 112-77, the Board outlined the requirements for support documents, at 31:

> *a. They must be signed by an employee within the appropriate unit.*
> *b. They must expressly, or by necessary implication, authorize the Union in question to bargain collectively on behalf of the employee.*
> *c. They must bear a date not earlier that six months before the date of the application by reasons of the provisions of Section 6(2) and (3) of The Trade Union Act….*

[52] On relatively few occasions, the Board has commented on the level of scrutiny it will exercise in reviewing support evidence filed on a rescission application. In the recent decision of *James Walters v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Dimension 3 Hospitality Corporation o/a Days Inn*, [2005] Sask. L.R.B.R. 139, LRB File No. 238-04 the Board considered an argument by a union that the form of support used by the applicant on a rescission application was not properly informed support and that the purpose, intent and effect of the forms would not be clear to the employees who signed them. At 162 the Board stated:

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[4] In *Tingley v. Capri Motor Hotel and Hotel, Motel, Restaurant Employees and Beverage Dispensers Union, Local 767*, [1979], LRB File No. 300-78, Chairman Sherstobitoff (as he then was) in a letter decision determined that an application for rescission must be dismissed where evidence of support was filed in the form of a petition of the employees. The Board held that proof of support for a rescission application must meet the same standards as those set out *in Beaver Lumber*, *supra*.

> *[75] While there are no forms prescribed by the Act or the Regulations for use as evidence of support for an application for certification, it has been a longstanding practice of the Board to accept support cards at face value and not to make inquiries concerning evidence of support beyond the cards filed, absent an allegation that support may have been obtained in a manner contrary to the Act. As a matter of practice, the Board subjects the cards to a fairly high degree of scrutiny to determine their authenticity.*
>
> *[76] While there have apparently been no previous cases where the Board has been asked to go behind the cards on a rescission application to determine whether the employees truly understood the nature of what they were signing, the Board has considered this issue in the context of a certification application. The Board's rulings in that regard are instructive.*

[53] After reviewing the requirements set out in *Beaver Lumber, supra*, and the form of support used on the application (which was the same for every employee who signed a statement of support), the Board in *James Walters, supra*, stated at 164:

> *[80] The Board finds no reason to depart from its practice and accepts the cards filed by the Applicant as evidence of the wishes of the employees who signed the cards. The Board finds that the evidence of support was signed by employees in the appropriate unit, was dated within six months prior to the application being filed and that the wording on the support cards filed, while somewhat technical, appropriately expresses the intention to no longer have the Union represent the employee and allows the Board to draw an inference that the employees would have understood the implications of signing the same. The Board does not find that the obtaining of support was so contaminated by a lack of information that it could not be considered genuine. In addition, there was no evidence that would suggest that the support was improperly obtained and no employees have come forward to suggest that they did not understand the implications of what they signed. As stated previously, the Board's policy is to order a secret ballot vote on all rescission applications, unless there are extraordinary circumstances that the Board has determined are not present in this case. A vote would also protect against any misunderstanding that may have arisen on the part of any employee who signed in support of this application.*

[54] Even though there is no reported decision of the Board that outlines the requirements for support evidence on a decertification application, the Board has

published a policy on its website which outlines those requirements. When an individual contacts the Board with questions about the decertification process, the Board Registrar and other Board staff routinely refer the individual to the Board's website and/or verbally advise the individual of the process and the requirements for support based on the information on the website. Even though the Board would not find it necessary to conclude that the Applicant actually knew of the requirements for the form of support, we note that, in her evidence, the Applicant stated that she had reviewed the Board's website in order to determine how to file her application and therefore would have had access to information concerning the Board's requirements on the form of support. The following is an excerpt from the Board's website under "FAQ," or "Frequently Asked Questions":

> ***How can I apply to decertify my workplace?***
>
> *There are only 30 days each calendar year during which an application for rescission may be filed with the Board. The way to calculate this 30 day period is found in s. 5(k) of The Trade Union Act.*
>
> *If there is a collective bargaining agreement in place between the union and the employer, the 30 day period runs from 60 days before the anniversary of the effective date of that collective agreement until 30 days before the anniversary of the effective date of that collective agreement.*
>
> *If there is no collective bargaining agreement in place between the union and the employer, the 30 day period runs from 60 days before the anniversary of the date of the certification order until 30 days before the anniversary of the date of the certification order.*
>
> *The application for rescission must be made by an employee and must be accompanied by evidence of support from a majority of employees in the bargaining unit.* ***Each individual supporting the application must sign an individual written statement which is dated, identifies the union and the employer, indicates that the individual signing no longer wishes the union to represent him or her in dealing with the employer and indicates that the individual signing supports the application for rescission.*** *The original signed statements must be filed with the application for rescission. The evidence of support is kept confidential and neither the union nor the employer is aware of which or how many of the employees support rescission.*

> *An employer may not make an application for rescission, nor may it influence or assist its employee(s) to do so. An employer influenced or assisted application may be dismissed without a vote pursuant to s. 9 of The Trade Union Act.*
>
> [**emphasis added**]

[55] Section 18(f) of the *Act* empowers the Board to determine the appropriate form of support on a rescission application. It states:

> *18 The board has, for any matter before it, the power:*
>
> *(f) to determine the form in which evidence of membership in a trade union or communication from employees that they no longer wish to be represented by a trade union is to be filed with the board on an application for certification or for rescission, and to refuse to accept any evidence that is not filed in that form;*

[56] Pursuant to s. 18(f) of the Act, we approve of and adopt the policy and longstanding practice of the Board with respect to the requirements for support evidence on a rescission application. In our view, the requirements mirror those for certification applications as prescribed in *Beaver Lumber*, *supra*,[5] and ensure, insofar as is possible, that the purported evidence of support represents an informed decision of the individual that he or she no longer wishes to have the Union -- which has been certified to act as the individual's exclusive bargaining agent with his or her employer to bargain terms and conditions of employment on his or her behalf -- at his or her workplace and that he or she supports the application for rescission made by the applicant. For ease of future reference, individual evidence of support filed with an application for rescission will be accepted at face value when the following requirements are met, subject, of course, to any challenge that the evidence was obtained in violation of the *Act*:

> (1) The statement must be signed by an employee within the appropriate unit;

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[5] While the requirements stated in *Beaver Lumber*, *supra*, do not specifically indicate that the name of the Employer and the Union must be included in the support evidence as is stated in the policy concerning support for decertification applications, this requirement is implicit in the *Beaver Lumber* criteria. It is not generally an issue because the union typically uses its own pre-printed forms as support evidence and those forms indicate the name of the union seeking the certification order.

(2) The statement must identify the name of the union and the name of the employer;

(3) The statement must indicate expressly, or by necessary implication, that the individual signing no longer wishes the union to represent him or her in dealing with the employer and that the individual signing supports the application for rescission; and

(4) The statement must bear a date not earlier than six months before the date upon which the application is filed.

[57] On every application for certification or rescission it is crucial that the Board subject the evidence of support to a high degree of scrutiny because the evidence remains confidential. Only the party submitting the same (the union or the applicant) and the Board are entitled to see the employees' cards, except where there is a request by a party at a hearing to see the cards with a view to raising a potential challenge to the form of support, in which case the Board would provide only a blank copy of the support card. Such a challenge is not necessary (and indeed is rarely exercised) because it is incumbent upon the Board to subject support evidence filed on every certification and rescission application to a high degree of scrutiny whether that application proceeds to a hearing or is reviewed by an *in camera* panel of the Board. In this case, had the Union asked for a copy of the blank form of support, it would have been difficult and perhaps impossible to do so because each supporter handwrote a purported statement of support, all using different language. In such circumstances it seems that the Board could not simply "black-out" or delete the confidential information on the purported statement of support (i.e. names and signatures) because the handwriting of a particular employee might be identifiable and/or the Board, by having to provide a copy of each statement filed as support, would be disclosing the number of supporters for the application, a matter which is also confidential to the Board and the party filing the same.

[58] Upon a very careful review of the support evidence filed, we find that the Applicant has clearly failed to file evidence of support from a majority of the employees in the appropriate bargaining unit. Even if we were to determine that we would disregard only those statements that fail to make mention of the name of the Union and the Employer and those that appear to be a "letter of complaint" to or about the Union with no connection made to the application in question, there would be an insufficient number

of statements of support to constitute a majority of employees in the bargaining unit and warrant the ordering of a vote. Aside from our conclusion that the support evidence was obtained in an anti-union environment created by the Employer which might support the assertion that the cards signed by the employees were obtained in a manner contrary to the *Act*, there is a concern in this case whether the employees understood that, by writing and signing their notes, they were supporting the Applicant's application for rescission and saying that they each no longer wished to have this particular union exercise its right and duty to bargain with this particular employer on their behalf. When there is no reference on the support document to the name of the union or the name of the employer we simply cannot conclude that it is acceptable evidence of support for the application or evidence of the employee's wish to terminate the union as exclusive bargaining representative and/or remove the union's authority to bargain collectively with the employer on the employee's behalf. Nor can such an intention necessarily be implied from the wording on the support document.

[59] Although it is not necessary for us to make a determination concerning the other forms of support filed with the application, for the assistance of the Applicant, we note that several of the other statements that simply state that the person wants to "opt out" of the Union, "disband" the Union, "withdraw" from the Union, or that the individual doesn't "believe [she] needs the Union" (even though the particular Union and Employer are identified), are, in our view, deficient in the sense that those statements appear more in the nature of personal statements that the individuals do not want to be union members and do not specifically state that the individuals no longer want the Union as their exclusive bargaining representative and support the application for rescission. Just as the Board would not accept an employee's application for union membership as the equivalent of an expression to designate the union as his or her exclusive bargaining agent to represent the employee in collective bargaining with his or her employer, neither will the Board accept an employee's statement that he or she does not want the union at the workplace any longer as evidence of support for the rescission application and the expression of his or her wish to terminate the Union's status as the employee's collective bargaining agent. There simply must be some reference to the wish to support the application and to terminate the Union's status as the employee's exclusive bargaining representative.

[60] Lastly, we wish to point out that any gratuitous comments made by the employees in their statements such as the reasons why they do not like the Union are not helpful and cannot be considered by the Board as evidence given their hearsay nature and the fact that they are contained in purported evidence of support which the Board considers confidential.

[61] Based on our conclusion that the Applicant has not filed ostensible evidence of majority support in an appropriate form, the application must also be dismissed on this basis.

Summary:

[62] In the circumstances set out above, we have determined that, in the exercise of our discretion pursuant to s. 9 of the *Act* and because there has been no evidence of majority support filed for the application, the application is dismissed.

DATED at Regina, Saskatchewan, this **16th** day of **February, 2007.**

LABOUR RELATIONS BOARD

Angela Zborosky,
Vice-Chairperson