

**Labour Relations Board
Saskatchewan**

THE NORTH WEST COMPANY and TORA REGINA (TOWER) LIMITED o/a GIANT TIGER, Applicant v. UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Respondent

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant v. THE NORTH WEST COMPANY and TORA REGINA (TOWER) LIMITED o/a GIANT TIGER, REGINA, Respondent

LRB File Nos. 026-04, 041-08, 072-08 & 150-08; September 10, 2008
Chairperson, Kenneth G. Love, Q.C.; Members: Joan White and John McCormick

For the Applicant Union: Susan Barber
For the Respondent Employer: Drew Plaxton

Practice and Procedure – Jurisdiction to reconsider Order of Executive Officer - Executive Officer made Order stemming from decision of previous Board Panel – Board determines that fresh Panel has jurisdiction to hear application to reconsider Order of Executive Officer stemming from decision of previous Board Panel – Order of Executive Officer confirmed

Certification Vote – Union seeks additional information from employer prior to conduct of certification vote – Board determines additional information not required – Board determines previous Order sufficient

REASONS FOR DECISION

Background:

[1] United Food and Commercial Workers, Local No. 1400 (the “Union”) filed an application with the Saskatchewan Labour Relations Board (the “Board”) on July 30, 2008 pursuant to ss. 5.3, 18 and 42 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”) for the following relief:

A. *LRB 026-04 (Certification / Reconsideration)*

1. *An order setting aside the order of the Executive Officer dated the 22nd of July, 2008;*

2. *An order compelling the employer to provide all relevant information to allow the Union to communicate with employees, including scheduling information for all of its employees;*
 3. *An order compelling the employer provide payroll records for all of its employees;*
 4. *An order allowing the union to effectively communicate with employees;*
 5. *An order setting dates for the hearing of the actual reconsideration of the certification order in the within matter;*
- B. *LRB 041-08 (Unfair Labour Practice / Successorship)*
1. *An order rescheduling the hearing dates presently set to a date available to all parties and before any proceedings, or further proceedings, in relation to the Certification / Reconsideration and Rescission applications;*
- C. *LRB 150-08 (Rescission)*
1. *An order that all employee payroll records be produced;*
 2. *An order the decertification application be summarily dismissed as the applicant has no status to bring same;*
 3. *An order the employer produce a proper Statement of Employment with proper signatures of all employees or in the alternative TD1 forms or other acceptable proof of signatures;*
- D. *LRB 072-08 (First Contract Application)*
1. *An order setting dates for the hearing of same in advance of any proceedings, or further proceedings, in relation to the Certification / Reconsideration and Rescission applications.*
- E. *In relation to all applications:*
1. *Such further and other relieve (sic) as counsel may advise and this Honorable Board allow.*

[2] The first application arose from a decision of the Board dated June 2, 2008 wherein the Board determined to reconsider an application for certification by the Union (LRB File No. 026-04) and ordered that the Union be provided access to employees employed by The North West Company and Tora Regina (Tower) Limited operating as Giant Tiger (the “Employer”) in its retail operations in Regina (LRB File No.

041-08). The Board also ordered a vote to determine support for the certification application under s. 6 of the *Act*. The Respondent applied to the Court of Queen's Bench to judicially review the Board's decision of June 2, 2008, which application was denied by Court of Queen's Bench judgment of Mr. Justice R. K. Ottenbreit dated July 16, 2008.

[3] Part of the Board's Order arising out of its June 2, 2008 decision was that the Union be provided access to the employees of the Employer prior to a secret ballot vote. The Order provided that if the Union and the Employer were unable to agree on the times and dates which access to the employees would be provided, then those times and dates were to be set by the Executive Officer of the Board upon application by either party.

[4] The parties were unable to agree as to the times and dates upon which the Union would be permitted to use the Employer's lunch room facilities for the purpose of meeting with employees to advise them of the benefits of union membership. The Respondent made several offers to the Union, none of which were found to be satisfactory. The Union made no counter-offers to the Employer as to suitable times and dates.

[5] The Employer applied to the Executive Officer to set the times and dates for the Union to meet with employees. A conference call was held between the parties and chaired by the Executive Officer on July 21, 2008. Again, no agreement was reached between the parties, which resulted in the Executive Officer making an Order on July 22, 2008 establishing times and dates for the Union to have access to the employees as specified in the Board's Order.

[6] The Union then applied under s. 4(12) of the *Act* to have the Board review the Executive Officer's decision. That application, as noted in para [1] above, also contained other applications related to various other files and further applications made by the Union.

[7] LRB File No. 041-08 is an Unfair Labour Practice application filed under ss. 5(d) and (e), 5.1, 5.3, 36, 37 and 42 of the *Act* by the Union against the Employer

related to its certification (which was the subject of the reconsideration decision dated June 2, 2008). That application also claims that by virtue of the certification Order, an Order for successorship to the former named Respondent, Tora Regina (Tower) Limited. As a result of a corporate reorganization, the business being operated as the Respondent, Giant Tiger is now owned by The North West Company LP.

[8] LRB File No. 150-08 is a rescission application made by Gail Doucette, one of the employees of the Employer. Ms. Doucette applied to the Board for rescission of the certification Order under s. 5(k) of the *Act* on June 2, 2008.

[9] LRB File No. 072-08 is an application where the Union applied for first contract assistance from the Board on May 16, 2008 under the provisions of s. 26.5 of the *Act*.

[10] The Union's application relates to each of these files.

Preliminary Issues:

[11] At the commencement of the proceedings, the Union raised an issue with respect to the composition of the panel and its jurisdiction to hear and determine some of the matters in dispute. Specifically, the Union's position was:

- (a) *That in respect of matters involving LRB File No. 026-04, the panel which heard and determined the original reconsideration application was seized with the file and that a fresh panel could not make orders or decisions concerning that file; and*
- (b) *That the application for rescission (LRB File No. 150-08) should be summarily dismissed because there were now no employees employed by Tora Regina (Tower) Limited, the Employer named in the certification order in respect of which the application to decertify had been filed.*

[12] For the reasons that follow, the Board has determined that it has jurisdiction to hear the matters set forth in this decision.

[13] With respect to item [11](b) above, in the absence of the Applicant Gail Doucette, the Union requested that its application to dismiss Ms. Doucette's application,

be adjourned *sine die* with leave to again challenge Ms. Doucette's ability to bring the application when the matter finally comes before the Board for hearing. That request was granted by the Board.

Statutory Provisions:

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

4(12) The board may delegate to the executive officer any of its powers or functions but any employer, employee or trade union affected by any act done by the executive officer in the exercise or purported exercise of any such delegated power may apply to the board to review, set aside, amend, stay or otherwise deal with the act and the board upon the application or, of its own motion, may exercise its powers or perform its functions with respect to the matter in issue as if the executive officer had not done such act.

...

5.3 With respect to an application or complaint made pursuant to any provision of this Act or the regulations, the board may, after giving each party to the matter an opportunity to be heard, make an interim order pending the making of a final order or decision.

...

18. *The board has, for any matter before it, the power:*

(a) *to order, at any time before the proceedings has been finally disposed of by the board, that:*

(i) *a vote or an additional vote be taken among employees affected by the proceeding if the board considers that the taking of such a vote would assist the board to decide any question that has arisen or is likely to arise in the proceeding, whether or not such a vote is provided for elsewhere; and*

(ii) *the ballots cast in any vote ordered by the board pursuant to subclause (i) be sealed in ballot boxes and not counted except as directed by the board;*

Analysis and Decision:

[15] We will deal with each of the items contained within the Union's application in turn.

Reconsideration of the Order of the Executive Officer of the Board

[16] The Union did not argue strenuously with respect to the Order of the Executive Officer of the Board and did not provide a strong rationale or labour relations reason that the Order ought to be overturned. The Union's main argument with respect to the issue was that the panel of the Board, as constituted for this hearing, did not include Ms. Cruson. The Union argued that the panel, without Ms. Cruson lacked jurisdiction insofar as the panel of the Board which heard the original Interim application on April 16, 2008 was seized with jurisdiction in respect of that matter.

[17] The Respondent argued that the current panel did have jurisdiction and that the Order of the Executive Officer was procedural, as distinct from adjudicative, and that the purpose of the Order was to move the application for reconsideration forward.

[18] The Board agrees that it has jurisdiction to hear the application for review of the Executive Officer's Order of July 22, 2008. A review of an order made by the Executive Officer, while subject to review as set out in the *Act*, need not be determined by the panel of the Board of the original decision from which the Executive Officer's Order stems. (See *Amalgamated Transit Union, Local 588 and Wayne Bus Ltd.* [1999] Sask. L.R.B.R. 440, LRB File No. 130-97), where the panel that considered the Executive Officer's Order was not the same panel that made the underlying decision.

[19] The rationale for the delegation of authority to the Executive Officer as outlined in s. 4(12) of the *Act*, is to allow procedural issues that arise on a particular file to be dealt with in a summary fashion so as to ensure that Reasons and Orders of the Board move forward. On the application of an interested party, however, the *Act* allows the Board to review that decision.

[20] We confirm the Order of the Executive Officer. The decision in LRB File No. 026-04 of the Board was dated June 2, 2008 and the Board's Order implementing the decision was dated June 3, 2008. There has been significant delay in moving the reconsideration forward in compliance with the Board's Reasons and Order. The decision specifically authorized the Executive Officer to establish the times and dates for

the Union to have access to the Employees. As the parties were unable to agree on dates and time, it was necessary for the matter to be advanced that the Executive Officer acted in the manner in which he did to ensure compliance with the Board's Order and Reasons.

Union's Request for Additional Information

[21] The Union in its application requested orders of the Board compelling production of the following information from the Employer:

1. *all relevant information to allow the union to communicate with employees, including scheduling information for all of its employees; and*
2. *payroll records for all of its employees; and*

[22] The Union also requested an order "allowing the union to effectively communicate with employees" and an order "setting dates for the hearing of the actual reconsideration of the certification order."

[23] The Union's rationale for requesting the information it sought was on the basis that it required this information to be able to effectively contact employees to show them the benefit of union representation. It argued that it could not effectively communicate with the employees absent this information.

[24] The Board does not agree with the Union in respect to the need for the information requested. The original Order of the Board provided that the Employer was to provide the Union with "the names, addresses and telephone numbers of all employees of the Employer as at March 27, 2008." That list has been provided by the Employer to the Union and the Board. The Union, however, argues that its use of the list provided is embargoed by the Union. Again, the Board does not agree. The Order of the Board is very specific and allows the information to be used "to contact employees with respect to the vote to be conducted by the agent of the Board."

[25] The Union argued that the information was necessary for it to determine if the voters list for the ordered vote was accurate. However that responsibility falls under the Board's regulations to the agent of the Board who is appointed to conduct the vote. Section 26 of the Regulations of the Board specifies that the agent who conducts the vote must "(a) determine the list of employees eligible to vote." Furthermore, when the vote is conducted the Union will be permitted to have scrutineers present under s. 26(g). Those scrutineers may challenge any employee which they feel is not entitled to vote.

[26] There are well established practices and procedures at the Board with respect to the conduct of votes as ordered by the Board. The Union in its application would have the Board determine matters that have been left by regulation to the agent of the Board. If there are challenged votes when the vote is held, those challenges can be brought forward to the Board following the vote, when the results of the vote are being considered by the Board.

[27] The Board therefore declines to order the Employer to provide the additional information requested by the Union.

[28] Similarly, the Board declines to make the orders requested by the Union with respect to communication with the employees or an order setting dates for the reconsideration hearing.

[29] The Union, as ordered by the Board on June 3, 2008, has been provided the names, addresses and telephone numbers of the employees so as to allow the Union to lobby those employees in respect of the representation vote. In the opinion of the panel of the Board which heard the application for reconsideration, that information was sufficient. Also sufficient was the access provided to the Union to allow the Union to effectively contact the employees to state its case. If the Union seeks a clarification of the Board's orders, the jurisdiction to clarify the original Order may be made under s. 5(j) of the *Act*. There is no such application before the Board regarding clarification of the earlier Order of the Board.

[30] It would be premature for the Board to schedule a resumption of the reconsideration hearing prior to the conduct of the vote of the employees of the Employer. The decision of the Board with respect to the reconsideration is clear that it has ordered a vote to be held to determine whether or not the employees support the Union's application for certification, given the changes which occurred in the workplace between the date the application for certification was filed and a decision rendered.

LRB 041-08 (Unfair Labour Practice/Successorship)

[31] The Union has requested that the Board reschedule the hearing dates presently set to another date. At the hearing of this matter, the Board advised the parties that dates had been set, but, given that the reconsideration had not been completed, those dates were to be cancelled and the matter adjourned *sine die* pending the outcome of the reconsideration of the certification application.

LRB 150-08 (Rescission)

[32] As noted above, this application has been adjourned by the Board, *sine die* on the application of the Union.

LRB 072-08 (First Contract Application)

[33] This application will also be adjourned *sine die* pending the outcome of the reconsideration application in LRB 026-04. Until it is known if there is, in fact, a certification and an obligation to bargain collectively, any hearing or determination of this application would be premature.

[34] Orders of the Board will issue implementing this decision.

DATED at Regina, Saskatchewan, this **10th** day of **September, 2008**.

LABOUR RELATIONS BOARD

Kenneth G. Love Q.C.,
Chairperson