Labour Relations Board
Saskatchewan

TRACEY HANLEY, Applicant v. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 336 and BRIDGES PERSONAL CARE INC., Respondents

LRB File No. 135-07; February 28, 2008
Vice-Chairperson, Angela Zborosky; Members: Kendra Cruson and John McCormick

The Applicant:	Tracey Hanley
For the Certified Union:	Keir Vallance
For the Employer:	No one appearing

Decertification – Interference – Applicant's reasons for bringing application implausible, not borne out by evidence, based on inaccurate information that could only have come from employer or employer's representatives, represented concerns of employer rather than concerns of employees or arose out of action/inaction of employer – Board draws inference of improper employer influence with application to extent that vote would not reflect true wishes of employees – Board dismisses application pursuant to s. 9 of *The Trade Union Act*.

Decertification – Interference – Idea to decertify originated with employee married to president of employer's board of directors – Employee asked applicant to continue decertification effort in circumstances where applicant had close relationship with employer's out-of-scope administrator – Employee husband of out-of-scope administrator acted as applicant's support person at hearing – Board dismisses application pursuant to s. 9 of *The Trade Union Act*.

Decertification – Interference – Gathering of support done in workplace during work hours – Employees not permitted to discuss union in workplace – Under circumstances, gathering of support could not have escaped notice of out-of-scope administrator – Board concludes that employees would view applicant as having out-of-scope administrator's tacit approval to gather support and would believe that discussion about decertification in workplace acceptable to employer – Board dismisses application pursuant to s. 9 of *The Trade Union Act*.

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

REASONS FOR DECISION

Background:

[1] By an amended certification Order of the Board dated May 15, 2007 (LRB File No. 046-07), Service Employees International Union, Local 336 (the "Union") was designated as the certified bargaining agent for a unit of employees employed by Bridges Personal Care Inc. (the "Employer"). The Employer operates a special care home in Ponteix, Saskatchewan. At all material times, the Applicant, Tracey Hanley, was employed by the Employer and was a member of the bargaining unit.

[2] On November 8, 2007, the Applicant 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*"). The effective date of the collective bargaining agreement is January 1, 2007 and, therefore, the application for rescission was filed in the appropriate "open period" under s. 5(k) of the *Act*.

[3] In its reply to the application, the Union asserted 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 agent. Section 9 of the *Act* reads as follows:

> *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.*

[4] The Employer did not file a reply to the application although it did send a letter to the Board dated November 26, 2007 advising that it would not be attending the hearing. Also in that letter the Employer set out its position in relation to the Union's assertions and made a request for the letter to be read at the hearing. Given that the Employer did not file a sworn reply or otherwise participate in the hearing (except to answer to a subpoena directed to it by the Union concerning issues related to the composition of the statement of employment), the Board has disregarded the letter sent by the Employer.

[5] The statement of employment filed on behalf of the Employer lists 11 employees in the bargaining unit as of the date upon which the application was filed, however, attached to the statement of employment are photocopies of the completed TD-1 tax forms of three additional employees, including Ms. Hanley. It is apparent that the Employer intended that fourteen employees be included on the statement of employment. Although the Union initially opposed the inclusion of certain employees on the statement of employment, at the end of the hearing it advised that the composition of the statement of employment was not in issue. Based on the number of employees listed on the statement of employment, the application was accompanied by purported evidence of support from a majority of employees in the bargaining unit.

[6] The Board heard the application on November 28 and December 10, 2007.

Facts and Evidence:

[7] The Employer's business is the operation of a special care home, Bridges Personal Care Inc. in Ponteix, Saskatchewan. There are essentially two areas in the care home – the individual rooms for residents of the personal care home and an area of suites, similar to an apartment building, where seniors live independently. The initial certification Order held by the Union in relation to the special care home facility was issued on May 27, 2005 when the personal care home was operated under the name Rolling Hills Villa Ltd. by Carole Krieger. Rolling Hills Villa Ltd. closed on September 30, 2005 when the facility was transferred to Ron Martin, a local resident of Ponteix, who did not intend to continue to operate the personal care home. Around the same time, members of the community of Ponteix were engaged in fundraising efforts in order to purchase the facility so that it could continue to operate as a personal care home. The group created a non-profit corporation and, although the evidence was not entirely clear on this point, it appears that initially the corporate name was Ponteix Care Centre Inc. and that, at some later point, it became Bridges Personal Care Inc. In any event, the corporation purchased the facility from Mr. Martin in late fall 2005 in order to operate the personal care home.

[8] As stated, the Union was first certified to represent all employees of Rolling Hills Villa Ltd. in May 2005, however, a first collective agreement had not been entered into by the time Mr. Martin bought the facility. When the facility transferred to the Employer, the Employer recognized that it was a successor to Rolling Hills Villa Ltd. by letter dated December 9, 2005. The Employer also recognized the rights of employees to continue to be represented by the Union. The parties commenced bargaining collectively but failed to settle the terms of a first collective agreement. The Union applied for first collective agreement assistance from the Board pursuant to s. 26.5 of the *Act* on October 25, 2006 (LRB File No. 161-06). A Board agent was appointed on November 30, 2006 to assist the parties in reaching a first collective agreement which the parties did on January 24, 2007. The Union applied to amend the certification Order and, with the agreement of the Employer, the Board issued an amended Order dated May 15, 2007 changing the name of the Employer and the titles of excluded positions (LRB File No. 046-07).

[9] The Applicant testified in support of the application for rescission at the hearing before the Board. In response, the Union called the evidence of employees Irene Severson, Val Laverdiere and Arlene Clark, as well as that of the Union's business agent, Deborah Fuhrman. The Union also cross-examined Mark Morris who appeared on behalf of the Employer in response to a subpoena served on the Employer by the Union.

The Applicant

[10] The Applicant began her employment with the Employer on January 12, 2007 as an activity helper assisting the activity coordinator, Chris Desautels. The Applicant was given the activity coordinator position in October 2007 upon the departure of Chris Desautels. The Applicant holds a Bachelor of Education degree and worked as a teacher from 1993 – 2000. She has lived in Ponteix for eleven to twelve years. She volunteered approximately once per month at the facility when it was operated as Rolling Hills Villa Ltd.

[11] In the application, the Applicant indicates that the reasons for bringing the application are that:

> *… a majority of the employees are unsatisfied with union representation concerning lack of job and wage classifications, inability to use volunteers, inability to receive bonuses, expensive union dues, no visible union representation, employees being forced to sign cards with threat of dismissal from shop steward, some employees suffered wage decrease after union came in.*

[12] The Applicant expanded on the reasons for bringing the application in her testimony at the hearing. Although the Applicant had little knowledge or understanding of how the Union came to represent employees of the Employer, the Applicant stated that, at the time of the application, there was a different complement of employees working for the Employer than was there at the time the Union came in and that a majority of the current employees did not want the Union.

[13] The Applicant stated that when collective bargaining started there were only three or four employees working for the Employer whereas at the time of the application, with the care home operating at full capacity with 17 residents, there were 14 employees. The Applicant feels that those four initial employees spoke on whether to be unionized without knowing whether future employees (i.e. those not yet hired) would want to be in a union. It became clear in cross-examination that the Applicant was not aware that the Union was certified before the Employer took over the operation of the facility. She also acknowledged that there were more than four employees there when she started her employment.

[14] For the most part, the Applicant's stated reasons for bringing the application were those of the other employees on whose behalf she purported to act. She says "they hate the $15.00 union fees" coming off of their pay cheques each month, adding that some employees work on a very part-time basis and this is therefore a significant amount of money. Although the union dues also include a percentage of earnings above a certain amount per month, the employees do not earn enough to have more than the $15.00 per month taken off their pay cheques. The Applicant added that she herself only works part-time, making approximately $170.00 - $180.00 every two weeks and does not wish to have the $15.00/month fee deducted.

[15] The Applicant also relayed the employees' dissatisfaction with a union meeting that was held in Ponteix just after the collective bargaining agreement was

signed where the Applicant says the union's representative, Ms. Fuhrman, seemed inexperienced and incompetent as she did not know the answers to many of the employees' questions. In addition, the Applicant said the employees were not invited to the Union's monthly membership meetings and that, because the meetings were held in Swift Current, 45 minutes away, only the shop steward, Ms. Laverdiere, attended as the Union would only pay for one vehicle to travel there and Ms. Laverdiere was the only one who knew of the meetings. In cross-examination, the Applicant acknowledged that meeting notices were posted on the Union's bulletin board in the workplace and that she did not have time to go in any event. The Applicant stated then that her problem was that the employees were not told of what went on at the meetings. The Applicant also complained that Ms. Fuhrman was never seen in Ponteix again.

[16] The Applicant is not pleased that all new employees are required to sign union cards when they are hired with the threat of termination if they do not. In addition, the Applicant feels that the classification scheme in the collective agreement is improper and that it is not appropriate to have all employees in each of the four classifications earning the same hourly rate with no wage differentials on the salary grid. The Applicant feels that there should be various levels within the classifications to account for each employee's seniority, experience, time of shift etc. The Applicant stated that, according to the collective agreement, it does not matter if you are a care worker, cook, maintenance person or activity coordinator, everyone earns the same wage. The only way to get a wage increase is to work over 1000 hours (which is difficult for the many part-time employees to achieve) and then the increase is only 25¢ per hour. Also, the Applicant feels that the low wages provided for in the collective agreement make it difficult to attract new employees. In the Applicant's view, having the Union as the employees' exclusive agent requires ruling by a majority which does not respond to individual needs and aspirations and does not allow individuals to advance on their own merit.

[17] Personally, the Applicant believes she could be making more money if the Union was not in place. She bases this belief on her information that employees of the former Rolling Hills Villa Ltd. were making more than she is now (she had a friend there who earned approximately $9.45/hour) and because the care home is now operating at full capacity whereas it was not when the collective bargaining agreement was

negotiated. She feels the employees and Employer are being taken advantage of by the Union, an outside third party which the employees must financially support in circumstances where the employees cannot afford to do so. The Applicant stated that the workplace is located in a small, poor, rural community where it is unrealistic to have the Union, a third party, speak on employees' behalf with "big city" policies in mind. The Applicant did not elaborate on what she meant by "big city" policies.

[18] In cross-examination, the Applicant acknowledged that she was not on the bargaining committee and was not aware of the Union's or Employer's bargaining proposals. She stated that, when she asked the Employer's administrator, Win Smith, why their wages were so low, Ms. Smith responded that that was what the Union bargained with the Employer for and the Applicant figured the Union took that position "whether it was what the collective whole wanted or not." When asked whether she blames the Union for the low wages, the Applicant stated that the board of the Employer wanted to put the "whole bargaining thing in place" to get the facility up and running quickly even though the board thought it may not be in the best interests of employees and the community. The Applicant further stated that while she does not know what the Employer bargained for, she knows "if they could raise the wages now, they would." She also stated that the Employer, meaning Ms. Smith, would like to pay higher wages or give bonuses but that she is not allowed to because, according to the Union, she cannot make an agreement with her. When asked why she did not go to the Union with this information suggesting it might be a good time to renegotiate wages with the Employer, the Applicant stated that Ms. Smith is very busy and the Applicant did not wish to increase Ms. Smith's workload by having to negotiate with the Union. The Applicant maintained that, in any event, this is not a solution to her concerns about the Union as the employees' main complaint is the $15 monthly fee. When it was suggested to the Applicant that requiring Ms. Smith to negotiate 14 contracts of employment would be very time consuming, the Applicant responded that at least the employees could talk to Ms. Smith about terms that would better meet their individual needs. The Applicant simply does not believe the employees need the Union to bargain for them.

[19] The Applicant also has concerns over what she views as a negative attitude on the part of employees because the Union is there to protect them. She sees important mistakes being made in the handling of medications and in following the

facility's protocol for medical procedures. In the Applicant's view, the presence of the Union has caused the employees to lose the incentive to work hard and to not be worried about being fired because "the Union will be there to protect them." She believes that all the Employer can do with these employees is document their mistakes and talk to them with a shop steward present. In cross-examination, the Applicant clarified that she corrected two different employees, on three to ten occasions, for errors in administering medications, although she is not officially a supervisor. The Applicant claims that she is aware that all the Employer can do is "talk to" these employees because Ms. Laverdiere, the shop steward "spreads the word around" after a disciplinary meeting concerning the employees' errors. Although the Applicant believes that "those who get a verbal talking to shouldn't be there anymore," she has not reported employees' errors to Ms. Smith.

[20] The Applicant also expressed concern over the Employer's inability to use volunteers in the workplace. Currently, the Applicant has the assistance of one employee and one volunteer to carry out activities for the residents of the facility. The Applicant stated that, when she asked for additional volunteers, Ms. Smith told her the Union said the Employer could not use any more volunteers because it should be using paid employees. The Applicant believes that volunteers make a big difference in the lives of the residents as the use of volunteers allows the Applicant to set up extra activities. She believes that the use of one more volunteer would not take a job away from any existing employee. In cross-examination, the Applicant stated that Ms. Smith told her the Union did not want any more than one volunteer because it would take work away from potential employees. When the Applicant was asked whether she consulted with the Union on this issue she stated that "because the Union is an outside third party" she likes "to keep things to [her]self" and she does not like Ms. Fuhrman.

[21] The Applicant testified that initially Chris Desautels had taken some action to "get a decertification going" and that when Chris Desautels quit she asked the Applicant to "take it over." The Applicant stated that other employees also asked her to bring the application for rescission on their behalf.

[22] With respect to the preparation of the application and the gathering of support, the Applicant testified that she obtained the necessary instructions and forms

from the Board's website along with information and clarification from the Board's staff and from the collective agreement. With reference to the information on the website, the Applicant calculated the open period during which she was to file her application. Also, based on information on the website and from Board staff, the Applicant prepared a form of support she referred to as a "personal statement," where the employee would indicate that he or she was in favour of the application and no longer wished the Union to represent him or her. The Applicant stated that she asked employees if they were in favour of decertification and, if they indicated they were, she asked them to sign a personal statement. She said that she only collected signatures while on a break or after work.

[23] The Applicant admitted that she has a friendly relationship with all of the staff including the Employer's administrator, Ms. Smith. The Applicant is an active member of the community and serves as secretary of the Lion's Club. Ms. Smith is the third vice-president of the Lion's Club. They are also members of the same church. The Applicant denied speaking to Ms. Smith about this application and indicated that, outside the workplace, she does not speak to Ms. Smith about work related matters except scheduling.

[24] During the hearing of the application, Ron Smith, who is the spouse of Ms. Smith, sat with the Applicant at the counsel table. The Applicant explained that Mr. Smith drove her to the hearing and was present as a "support person," not as her representative. The Applicant stated that Mr. Smith supports the application and while she would have liked to bring all those employees who supported the application, she could not do so. It was apparent that Mr. Smith did offer the Applicant some assistance throughout the course of the hearing, however, the Board was not made aware of the specific advice or assistance given.

Ms. Severson

[25] Ms. Severson testified for the Union. Ms. Severson is a care worker responsible for looking after the residents' daily needs, including the administration of medication. She has been employed with the Employer since the facility re-opened in January 2006 and was also employed with Rolling Hills Villa Ltd. from 2000 to the date it closed in the fall of 2005.

[26] Ms. Severson testified that Ms. Smith is responsible for hiring and scheduling. She stated that the issue of the $15.00 union fee coming off of employees' cheques has come up at staff meetings, usually in the context of discussions about scheduling or wages, in the presence of Ms. Smith. Ms. Severson also testified that she has heard Ms. Smith say that, if things do not improve at the facility, "we might not be here in six months." In cross-examination, Ms. Severson agreed with the Applicant that that was a surprising statement given that the facility was full with 17 residents and five individuals on the waiting list.

[27] Ms. Severson stated that the Applicant called her into the activity coordinator's office in late September or early October while Ms. Severson was working a shift and asked Ms. Severson whether she was in favour of dissolving the Union. The office is very small and, because the Applicant and her assistant, Cecile Lemieux, were sitting in the office, Ms. Severson had to stand in the doorway while this conversation took place. Ms. Severson stated that she did not answer the Applicant one way or another.

[28] Ms. Severson testified that while Chris Desautels, (the former activity coordinator) expressed her dislike of the Union, Chris Desautels had not asked her to support a rescission application. Ms. Severson noted that Chris Desautels' spouse was, at that time, a member of the board of directors of the Employer.

Ms. Clark

[29] Ms. Clark testified for the Union. Ms. Clark began working for the Employer as a care worker on October 2, 2007. She stated that she was hired by Ms. Smith who advised Ms. Clark that she would have to pay union dues and that she should see Ms. Laverdiere about getting a "booklet." Ms. Smith also advised Ms. Clark that the Employer did not pay for overtime. Subsequently, Ms. Clark obtained a copy of the collective agreement from Ms. Laverdiere. It was pointed out in cross-examination that there is indeed overtime pay for overtime work authorized by the Employer.

[30] Ms. Clark testified that the Applicant contacted her at home, by phone, on October 28, 2007 and asked her to come down to the facility as the Applicant had

"matters to discuss" with her. Ms. Clark stated that she had just been on her way out and was in a hurry but that she immediately ran to work to see the Applicant. When Ms. Clark attended at the Applicant's office, the Applicant asked her to "sign to get rid of the Union" stating that, if they did not have a Union, the employees would get better wages and still be able to keep their benefits.

[31] Ms. Clark also testified that, while her boss is Ms. Smith, the Applicant has given her suggestions about the performance of her work. She also relayed one occasion where the Applicant performed her care worker duties for her without advising her.

[32] In cross-examination, Ms. Clark acknowledged that a union representative drove her to Regina for the hearing and that the Union paid for her hotel room the night before the hearing. Ms. Clark stated that she has been stressed out and physically ill by the circumstances caused by this application but loves her job and just wishes she could do her job "without worrying how everything is affected by the politics of the place."

Ms. Laverdiere

[33] Ms. Laverdiere has worked for the Employer as a care worker since the facility opened. She also worked as a care worker for Rolling Hills Villa Ltd. since 1999. Ms. Laverdiere acts as the shop steward and was involved in the negotiations for the parties' collective agreement.

[34] Ms. Laverdiere testified that the Applicant did not approach her to seek her support for this application although Chris Desautels had approximately one year earlier.

[35] Ms. Laverdiere testified that, while she is aware that the Union represented the employees of Rolling Hills Villa Ltd., she was not involved with the Union at that time. She became shop steward shortly after the re-opening of the facility by the Employer. She stated that there were approximately four employees at that time and they elected her as shop steward. As shop steward, she is required to hand out copies of the collective agreement to new employees and explain what she can about

the agreement, although that is primarily Ms. Fuhrman's responsibility. She is also required to attend disciplinary meetings if the discipline is minor, otherwise Ms. Fuhrman must attend. Ms. Laverdiere stated that she has only been required to attend one disciplinary meeting for one employee and she denied talking to anyone about what occurred at that meeting.

[36] In cross-examination, Ms. Laverdiere stated that she has been unable to attend union meetings because she has been scheduled to work.

[37] Ms. Laverdiere testified that, when she was employed with Rolling Hills Villa Ltd., the employees were instructed by the administrators not to discuss the Union at the facility and they were required to hand out copies of the collective agreement in the parking lot. Ms. Laverdiere testified that, while Ms. Smith is "more understanding about the Union" such that Ms. Laverdiere is permitted to distribute copies of the collective agreement in the workplace, Ms. Smith has still instructed the employees not to discuss union matters or explain the collective agreement in the workplace. They are, however, able to use a bulletin board to post notices of union meetings, which they do. Ms. Laverdiere stated that Ms. Smith has commented at a couple of staff meetings about the $15.00 dues being deducted from employees' cheques.

[38] In cross-examination, Ms. Laverdiere stated that the facility is staffed at any given time with one care worker. At the same time, either the activity coordinator or her assistant is working in the facility and a cook works each of the two separate shifts, either 6:00 a.m. to 2:00 pm or 3:00 pm to 9:00 pm. Ms. Smith is also present at the facility much of the time.

Ms. Fuhrman

[39] Ms. Fuhrman became the business agent for the Union in August 2006 and has been responsible for this bargaining unit since September or October 2006. Ms. Fuhrman testified to the background of the Union's relationship with the facility. Although she was uncertain of the date the facility transferred to Mr. Martin, the Union received notice of closure of Rolling Hills Villa Ltd. on June 28, 2005 and notice of the sale August 2, 2005. The Union received a further notice of sale from Mr. Martin to the Ponteix Care Centre Inc. on October 24, 2005 and, on December 9, 2005, the Union

received a letter from the Employer acknowledging it was a successor employer to Rolling Hills Villa Ltd.

[40] Ms. Fuhrman stated that the parties commenced negotiations for a first collective agreement in December 2005 and, when they had not reached an agreement by October 25, 2006, the Union applied for the Board's assistance to conclude a first collective agreement pursuant to s. 26.5 of the *Act*. With the Board's assistance, the parties reached an agreement on January 24, 2007.

[41] With respect to negotiations for the collective agreement, Ms. Fuhrman stated that Claude Desautels, president of the Employer's board of directors, represented the Employer. Ms. Fuhrman pointed out that it was the Employer's proposal to create only one level in each classification, all with the same rate of pay, because it was a new facility and all employees were doing similar work. The Union agreed to this proposal. Ms. Fuhrman also pointed out that the Union's proposal for wage rates was higher than what the Employer would agree to. Ms. Fuhrman stated that it was the Union's understanding that no employees were being paid $10.00 per hour or more when working for Rolling Hills Villa Ltd.

[42] Ms. Fuhrman testified that the parties discussed the issue of the maintenance position in their negotiations. The Employer wished to have the maintenance person excluded from the bargaining unit but the Union insisted the position was in-scope because it holds an "all employee" certification Order. The Employer then took the position that the maintenance position was an independent contractor and should be excluded on that basis. The Union took the position that the criteria for an independent contractor were not satisfied. The issue came up later in the discussions when the Employer wanted to explore different terms of employment for this position, such as guaranteed hours or flexible time. The Union said that was possible but the rate could not change. The parties have still not resolved this issue.

[43] Ms. Fuhrman also testified that there were no discussions during the negotiations concerning the use of volunteers by the Employer, except for a brief discussion about the Employer's ability to comply with occupational health and safety requirements concerning boiler checks. Ms. Fuhrman stated that Ms. Smith raised the

issue of volunteers with her by email, either at the end of September or beginning of October 2007. Ms. Smith asked if the Union objected to the Employer's use of volunteers in the facility on a more regular basis. Ms. Fuhrman stated that she responded by saying the Union did not object as long as the Employer was not taking work away from an employee.

[44] Ms. Fuhrman testified concerning a letter dated July 2, 2007 to the Union from Ms. Smith with a copy going to Nikki Perkins, the acting chairperson of the board of directors. The letter speaks to union dues being paid (for the first time since the facility opened). In addition, Ms. Smith proposed a wage rate change for the maintenance person (her spouse, Mr. Smith) to $10.00 per hour. That portion of the letter reads as follows:

> *For the maintenance position I have copies of the previous maintenance workers hours and rate of pay. The previous owner must have the personnel files. The hourly rate is different and they were paid a minimum of 3 hours a day. The current employee was hired at the $10.00 per hour with flexible start and finish times. After negotiations the hourly rate is much lower and even if he is called in for a 5-minute job he will be paid the 3-hour minimum.*
>
> *When Ron Smith agreed to take on the maintenance position last summer, it was with the condition that he works his own hours and as long as the work was done he would not have to punch a clock, per say.*
>
> *Bridges was unable to hire anyone to do the maintenance position due to the wages and that is not a full time job. I feel that if we cannot come to some agreement that Mr. Smith will hand in his notice.*

[45] Attached to the July 2, 2007 letter was a copy of an agreement between Ponteix Care Centre Inc. and Bill Reimer, effective November 1 to December 31, 2005. In that agreement, the parties agreed that Mr. Reimer was an independent contractor, was responsible for purchasing personal liability insurance and would be paid $10.00 per hour for time expended to provide required services. Ms. Fuhrman stated that this was the first time the Union saw this agreement and noted that the Union was certified in November and December 2005 and Mr. Reimer had never been a member of the Union. The Union thought the letter was in response to proposals it had made to the board. Ms.

Fuhrman also stated that, despite the fact that the Union and Employer had been exchanging proposals about the terms of employment of the maintenance position since the negotiations for the collective agreement, neither Ms. Perkins nor anyone on the board with whom the Union had been dealing mentioned this old agreement. When Ms. Fuhrman asked the board about it, they indicated they had no knowledge of the agreement and that it was before their time. Ms. Fuhrman also indicated that the Union was not previously aware of the terms of employment of Mr. Smith, as expressed by Ms. Smith in her July 2, 2007 letter. In negotiations, the Employer maintained that all employees were earning the same rate of pay. In addition, the board made it clear to the Union that the Employer wished Mr. Smith to work whenever the Employer asked him to do so.

[46] In cross-examination, the Applicant asked Ms. Fuhrman about the discussion at the meeting in Ponteix concerning Mr. Smith. Ms. Fuhrman testified that Mr. Smith said he believed he was a member of a different union and that he had a signed contract. In response to Mr. Smith's question at that meeting of what would happen if he did not want to be in the Union, Ms. Fuhrman explained that he was required to join the Union. When asked whether Mr. Smith was "red-circled" when the collective agreement came into effect, Ms. Furhman responded that, as far as the Union was aware, Mr. Smith had never earned more than what was in the collective agreement, a fact that she had confirmed with the board. Ms. Furhman stated that the board represented in the negotiations that *all employees* were being paid the same hourly rate and the Employer wanted to keep it that way. It was the Union's understanding that the only issues with Mr. Smith were his terms of employment aside from wages and that he would continue as per past practice until the parties otherwise reached an agreement.

[47] Ms. Fuhrman testified that, since negotiations for a first collective agreement concluded, the parties have been involved in mediation with the assistance of an employee of the department of labour in order to resolve certain issues that have come up in their relationship. One of those issues involved the requirement in the collective agreement that the parties explore a benefit package. The second issue related to a new salary grid because of the planned increase to minimum wage in May 2008. The parties have an agreement in principle for a new wage grid and the Union is

waiting to hear back from the Employer regarding a proposal the Union made for benefits approximately two weeks before the application for rescission was filed.

Mark Morris

[48] Mark Morris testified in response to a subpoena issued by the Union directed to the Employer. Mr. Morris described himself as an active member with a close connection to the Employer. Although he holds no official position with the Employer (he is neither an employee nor on the board of directors), he indicated that he had the necessary authority to speak on behalf of the Employer and sufficient knowledge and control over the Employer's documents in order to answer to the subpoena duces tecum.

[49] The Union questioned Mr. Morris in relation to the hours worked by three employees on the statement of employment who were initially in dispute. Given that the Union ultimately agreed that these individuals were properly included on the statement of employment, it is not necessary to detail that evidence here.

[50] Mr. Morris also provided further background concerning how the Employer came to own and operate the special care home. He stated that, early in the process while members of the community were fundraising in order to buy the facility, a membership drive was held where individuals could purchase a membership for $25.00 each. It was the members who elected the board of directors of the Employer, all of whom serve on a voluntary basis and have no ownership interest in the building or care home operation. He stated that, because the town and the rural municipality contributed a large amount of money, each was permitted to appoint one director to the board.

[51] Mr. Morris stated that he has been involved in the operation of the facility since its commencement. He stated that, given his experience as a business person and his legal background, the board often accepts his advice and assistance. He spoke of his involvement with the Employer's negotiations with the Union and his advice to the board of directors that the Union had successorship rights when the Employer reopened the facility.

[52] With respect to the daily operation of the facility, Mr. Morris said the board is mostly "hands-off" leaving the administrator, Ms. Smith, primarily responsible for the day-to-day operations and supervision of the staff. Mr. Morris noted that Ms. Smith was not the first administrator – Jennifer Wilson performed that job for approximately the first half of 2006. A couple of the directors assisted from time to time but many have little business experience or experience in long term care. Mr. Morris himself, although not a member of the board, has full access to the records of the facility and "pops in" from time to time to review records and provide advice. The assistance he and the directors provide is on an informal basis.

[53] In cross-examination by the Applicant, Mr. Morris indicated that he had heard through Ms. Laverdiere that Chris Desautels was trying to get rid of the Union. This occurred some time prior to finalizing the collective agreement in January 2007. He acknowledged that Chris Desautels quit her employment in approximately October 2007 and that, around that same time, her spouse, Claude Desautels resigned his position as a director of the board. Mr. Morris acknowledged that the Employer was having some difficulty meeting the terms of the collective agreement because of an inability to attract and hire new employees.

[54] In cross-examination by the Applicant, Mr. Morris testified that the facility is operated entirely through the fees charged to residents, donations and fundraising efforts, with no government subsidies. He stated that the Employer runs on a tight budget and, in answer to the Applicant's question of "what would happen if we asked for a competitive wage," he responded "we would have to close."

[55] The Applicant cross-examined Mr. Morris in relation to the Employer's and Union's collective agreement negotiations regarding the maintenance employee's position. Mr. Morris stated that the Employer proposed to keep the maintenance employee out-of-scope but the Union demanded that all employees, except the administrator, be within the scope of the bargaining unit. Mr. Morris clarified upon re-examination by the Union that the maintenance person is more in the nature of housekeeping/maintenance. Mr. Morris stated that the Employer wanted the position to be out-of-scope because of its multi-faceted nature and the necessity of having to contract out certain portions of the work (i.e. lawn care, snow removal) because the

current maintenance person, Mr. Smith, had had a heart attack and could not perform these duties. Mr. Morris stated that the Employer had taken the alternative position that it wanted to have a different wage structure for the maintenance employee but the Union did not agree to that.

Arguments:

[56] In argument, the Applicant re-stated the reasons why she brought the application as previously set out in the evidence summarized above. She argued that the Union was brought into the workplace by an ill advised group of workers and the Union no longer enjoys the support of a majority of the employees. At $15.00 per month, union dues are too expensive for the employees, many of whom work part-time. The Applicant feels that the Union is ill equipped to deal with the individual needs and aspirations of employees as evidenced by its treatment of the maintenance employee. The Applicant complained that, with the Union, employees cannot advance on their own merit, wage increases are too minimal and it takes too long to earn a wage increase. The Applicant argued that the Union's representatives are incompetent and that the employees can better negotiate for themselves. The administration under which they work is good and they therefore do not need the protection of the Union. The Applicant also wants the Union to be decertified because it offers protection or job security to incompetent employees.

[57] The Union argued that there are many indicators in this case that point to employer influence or involvement in the application such that it should be dismissed pursuant to s. 9 of the *Act*. On the basis of the Applicant's position and her complaints, the Union argued that it is apparent that there has been involvement or interference by the Employer - if not by members of the board of directors then by Ms. Smith, the out-of-scope administrator.

[58] The Union pointed out that employer influence is rarely overt and is often more subtle. The Union argued that the Board should look back to where the idea for an application for decertification originated. The evidence indicated that it was Chris Desautels, with whom the Applicant worked, who first began to ask the employees to support an application for decertification at the same time that her spouse was president of the board of directors. The Applicant succeeded Chris Desautels in these efforts and

it is clear that the Applicant has strong social ties with the administrator, Ms. Smith. In addition, the Applicant received the assistance of Ms. Smith's husband at the hearing. The Union argued that, while it is acceptable to be "friendly with the boss," the only reasonable explanation for the application is that there has been some guidance or certainly some involvement by the Employer or its representatives.

[59] The Union argued that the Applicant would not have had certain information she disclosed at the hearing but for this close involvement with the Employer. For example, the Applicant, while displeased with the Employer's alleged inability to discipline employees, stated that all the Employer could do was give them "a talking to." She stated that the basis of this information was the shop steward talking about it after disciplinary meetings. The shop steward denied talking about such matters and stated that, in any event, she had only been present at one disciplinary meeting. Another example was the Applicant's statement that the Employer wished to pay bonuses, a statement that could only have come to her from a representative of the Employer. Other concerns for which the Applicant blamed the Union, such as the payment of a single rate of pay for all classifications, the lack of bonuses, a decrease in an employee's wages upon reaching a collective agreement, the lack of benefits, etc. are not borne out by the evidence and therefore, the Union argued, must have been based on information provided by the Employer in the Employer's attempt to influence the decision to bring the application for rescission.

[60] In addition, the Union argued that the Applicant's firm belief that the employees would get wage increases and bonuses if the Union was not their representative, in contradiction to the evidence of Mr. Morris that wages could not be increased, suggests that Ms. Smith and possibly Mr. Smith represented this to the Applicant in order to influence her to bring the application. In summary, the Union argued that the Applicant's position is too close to the Smiths' interests to conclude that she made the application for rescission on her own.

[61] The Union also argued that the method used by the Applicant to gather support had the encouragement of the Employer. While the Applicant stated that she had collected support on breaks or after work, Ms. Severson stated that the Applicant

asked for her support at the facility while Ms. Severson was working. Ms. Clark testified that she was called by the Applicant at home and asked to come to the facility at which time the Applicant asked about her support. The Union argued that the Employer, at least Ms. Smith, must have known what was going on and allowed it to happen in circumstances where employees had long understood they should not be discussing the Union in the workplace.

[62] The Union also argued that it was clear that Mr. Smith had a role in the application by not only driving the Applicant to the hearing but by sitting with the Applicant at the counsel table and conferring with her throughout the hearing. Bearing in mind Mr. Smith's relationship with the Employer's representative, Ms. Smith, his involvement in the application taints the application.

[63] In the alternative, should the Board not dismiss the application, the Union asked the Board to hold a secret ballot vote in accordance with its usual practice.

[64] In making the above arguments, the Union relied on the following authorities: *Debra Newnham v. International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 and Earl's Mechanical Insulation Ltd.,* [2004] Sask. L.R.B.R. 37, LRB File No. 014-04; *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; *Katrina Swan v. Canadian Union of Public Employees, Local 1975 and Treats at the University of Saskatchewan*, [2000] Sask. L.R.B.R. 448, LRB File No. 258-99; *Marlys Janzen v. Service Employees International Union, Local 336 and Prairie Care Developments Inc.*, [2007] Sask. L.R.B.R. 48, LRB File No. 004-07; *Robert Monahan and Capital Pontiac Buick Cadillac GMC Ltd. And United Steelworkers of America,* [1993] 4th Quarter Sask. Labour Rep. 109, LRB File No. 169-93; *Robert Pfefferle v. Ace Masonry Contractors Ltd. and Bricklayers and Masons International Union of America, Union No. 3*, [1984] Aug. Sask. Labour Rep. 45, LRB File No. 225-84; and *Valerie Jones and Kendra Memory v. Saskatchewan Government and General Employees Union and Hill View Manor*, [2006] Sask. L.R.B.R. 404, LRB File No. 144-06.

Relevant Statutory Provisions:

[65] Relevant statutory provisions include ss. 3, 5(k), 6(1) and 9 of the *Act*, which provide 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.*
>
> *5 The board may make orders:*
>
> *(k) rescinding or amending an order or decision of the board made under clause (a), (b) or (c) where:*
>
> > *(i) there is a collective bargaining agreement in existence and an application is made to the board to rescind or amend the order or decision during a period of not less than 30 days or more than 60 days before the anniversary of the effective date of the agreement; or*
> >
> > *(ii) there is no agreement and an application is made to the board to rescind or amend the order or decision during a period of not less than 30 days or more than 60 days before the anniversary date of the order to be rescinded or amended;*
>
> *notwithstanding a motion, application, appeal or other proceeding in respect of or arising out of the order or decision is pending in any court;*
>
> . . .
>
> *6(1) In determining what trade union, if any, represents a majority of employees in an appropriate unit of employees, in addition to the exercise of any powers conferred upon it by section 18, the board may, in its discretion, subject to subsection (2), direct a vote to be taken by secret ballot of all employees eligible to vote to determine the question.*
>
> . . .

> *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:

[66] The sole issue under consideration in this case is whether the application was made in whole or in part on the advice of, or as a result of the influence of or interference or intimidation by, the Employer. If we determine that it was, we may dismiss the application pursuant to s. 9 of the *Act*.

[67] In *Nadon v. United Steelworkers of America and X-Potential Products Inc. o/a Impact Products,* [2003] Sask. L.R.B.R. 383, LRB File No. 076-03, upheld by the Saskatchewan Court of Queen's Bench on judicial review, reported at (2004), 244 Sask. R. 255, the Board stated at 386 and 387:

> *[17] The issue to be determined is whether the Board ought to order a vote of the employees on the rescission application. 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 (or whether to be represented by a union at all) against the need to ensure that the employer has not used its authoritative position to improperly influence the decision: Shuba v. Gunnar Industries Ltd., et al., [1997] Sask. L.R.B.R. 829, LRB File No. 127-97.*
>
> *[18] It is necessary to be vigilant regarding the exercise of influence by an employer in such cases, because the cases are legion that such influence is seldom overt but often may be inferred from unusual circumstances and inconsistent events, meetings and conversations not adequately explained by innocent coincidence. . . .*

[68] In reaching its decision in *Nadon*, *supra*, the Board considered the often cited decision of *Shuba v. Gunner Industries Ltd.*, [1997] Sask. L.R.B.R. 829, LRB File No. 127-97. Commencing at 832 of the *Shuba* case *supra*, the Board undertook an extensive review of the Board's case law which discussed the factors the Board should consider in addressing the balance between employees' rights in s. 3 and the limitations

prescribed by s. 9 of the *Act* when making a determination whether to grant a vote on an application for rescission. The Board in *Shuba* quoted extensively from *Wells v. United Food and Commercial Workers, Local 1400 and Remai Investment Corp.*, [1996] Sask. L.R.B.R. 194, excerpts of which (at 197 and 198) read as follows:

> *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 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:*
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> > *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.*
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> *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.*

[69] Also, in *Swan*, *supra*, the Board stated at 455:

> *[22] Employer influence is rarely overt. It is not something that is trumpeted about, but rather, is most often exercised indirectly, obliquely or by inference; it may result from the creation of an atmosphere of tension, fear, frustration, or disillusionment for which the employer is responsible (see, for example: Schaefer, et al. v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Loraas Disposal Services Ltd., [1998] Sask. L.R.B.R. 573, LRB File No. 019-98). Nonetheless it may be as effective as an express direction.*

[70] In the case before us, there is no direct evidence of employer involvement, influence or intimidation with the application, however, there are several factors present that bear upon the question of whether it is reasonable to draw an inference that such employer influence, encouragement, assistance or interference existed. The Board must therefore determine whether there is evidence from which it can draw such an inference of employer involvement to an extent that the true wishes of the employees cannot be determined by a vote. In *James Walters, supra*, the Board outlined the types of circumstances to be examined to make this determination, at 167 and 168:

> *[85] In order to determine whether there is such employer involvement, the Board has typically examined a number of circumstances, the significance or importance of which will vary from case to case. One of the factors which is often examined and bears relevance to this case is the applicant's reasons for bringing the application. When those reasons are not plausible or credible, the Board may also go on to examine other suspicious or unusual circumstances including, but not limited to, the circumstances surrounding the applicant's hiring, aspects of the applicant's relationship with the employer, the timing of the application and how the application was financed. Once the Board has examined the whole of the circumstances it can determine whether it will draw an inference that the employer has intimidated, interfered with or influenced the bringing of the application.*

[71] With respect to the issue of the plausibility of an applicant's reasons, the Board in *Swan*, *supra,* stated at 458:

> *[31] The plausibility of an applicant's reasons for applying for rescission of a certification order – that is, the credibility of the rationale – and the bona fides of the applicant's motivation for so doing, are matters for us to consider on an application for rescission. In Pfefferle v. Ace Masonry Contractors Ltd. and Bricklayers and Masons International Union of America, [1984] Aug. Sask. Labour Rep. 45, LRB File No. 225-84, in dismissing an application for rescission, former Chairperson Ball stated, at 46:*
>
> > *Although the applicant denies having discussed this application with the co-owners and the members of their family, the Board finds it difficult to accept that denial at face value since all of the employees work fairly closely with one another. Furthermore, the Board is not satisfied that the applicant has an honest belief, well founded or otherwise, that the union has failed to adequately carry out its responsibilities as his bargaining agent. He attempted but failed to advance any credible rationale for applying for rescission, and that, coupled with all of the other circumstances, leads the majority of the Board to conclude that the application has been made in whole or in part as a result of the influence of the employer.*

[72] The Board determined in *Swan*, *supra*, that the applicant's reasons were not plausible and proceeded to examine additional circumstances that warranted the Board drawing an inference that the employer influenced the making of the application. These other unusual circumstances included the applicant's close relationship with the owner/managers, her unusual interest in labour relations at the employer's location where she did not yet work, her transfer to that location on the eve of the open period, her immediate organizing of the rescission application, the fact that management had provided the applicant with certain employee information and the Board's finding that the employer had created an environment ripe for a rescission application. Given the applicant's implausible reasons and these other unusual circumstances, the Board did not accept that the applicant brought the application without the advice or influence of management or without having any discussions with management about the labour relations situation.

[73] The Union urged us to find that the Applicant's reasons lacked credibility or plausibility and that, combined with several other unusual circumstances, warrants the drawing of an inference that the Employer was involved in or influenced the bringing of the application.

[74] In the present case it is first necessary for the Board to closely examine the Applicant's reasons for bringing the application. In *Paproski v. International; Union of Painters and Allied Trades and Jordan's Asbestos Ltd.*, [2008] Sask. L.R.B.R. ---, LRB File No. 173-06, (not yet reported), the Board described the test as follows, at --:

> *[94]. . . It is not our task to judge whether the reasons proffered by the Applicant are "good" reasons to decertify or whether he is mistaken in his opinions or beliefs. It is our task to discern whether those opinions and beliefs are reasonably held by him such that they are plausible or credible and represent his true motivation for bringing the application.*

[75] In our view, the Applicant's reasons for bringing the application are, for the most part, implausible. Many of the Applicant's stated reasons for bringing the application were not specifically her own – she says they were the concerns of the other employees in the workplace. Cases where an applicant purports to act on behalf of other employees when bringing an application for rescission attract the close scrutiny of the Board (see, for example, *James Walters*, *supra*, and *Paproski*, *supra*). Such a situation calls into question the bona fides of the applicant's motivation for bringing the application. The Applicant would have us believe that she brought the application for a number of specified reasons and simply because she was asked to do so by Chris Desautels (upon her departure from employment) and by the other employees. One of the Applicant's primary complaints concerned the other employees' frustration over the $15.00 monthly union dues, it, in her view, being difficult for them to pay, given the very part-time nature of their work. In these circumstances, we question why the Applicant would, on her own time and at her own cost, attend to the preparation of the application, the gathering of support evidence and the attendance in Regina for a two-day hearing. It is therefore necessary to closely examine the Applicant's specified reasons for bringing the application.

[76] There are several difficulties with the reasons proffered by the Applicant that cause us to question whether her opinions and beliefs are reasonably held by her: they were based on inaccurate facts to the point that the reasons were implausible; they were based on inaccurate information that could only have come from the Employer or its representatives; they represented concerns more so of the Employer than of herself or other employees; and/or they were issues that arose out of the action/inaction of the Employer. In these circumstances, we can only conclude that the Employer has departed from a position of reasonable neutrality and that its representatives have used their authoritative position to influence the views of the Applicant. Taken as a whole, the reasons given by the Applicant suggest to us the Employer's involvement with or influence on the making of the application for rescission.

[77] Of significant concern to the Board were those matters where it was clear that the Applicant was privy to certain information (much of it inaccurate) that could only have been given to her by the Employer and in particular by Ms. Smith, which information clearly played a significant role in the formation of the Applicant's opinions about the Union and her decision to bring the application for rescission. One of those beliefs was that the presence of the Union caused the Employer to be unable to discipline employees, other than give them a "talking to," and that employees had a poor work attitude because they could not be fired with a Union in place. The Applicant stated that she was aware of this situation because the shop steward would, in effect, spread the word around after disciplinary meetings. Ms. Laverdiere, the shop steward, gave evidence that we accept that she only attended one such meeting and did not disclose what occurred to anyone after the meeting. In our view, the Applicant's opinion was based on what the administrator, Ms. Smith, advised her. This conclusion is borne out by the evidence of the Applicant's response to observing other employees make mistakes in the workplace. In those instances, the Applicant would correct the employees (even though she is not a supervisor nor is she trained as a care worker) but would not report her observations to the administrator. In our view, the belief that the employees had poor work attitudes and could not be disciplined was not reasonably held by the Applicant, was based largely on inaccurate information from the Employer and represents a real concern of the Employer and not the Applicant.

[78] A further reason given by the Applicant that was based on information that could only have come from the Employer was that concerning wages. The Applicant believes that if the Union were not in place the employees' wages would be higher. She stated that she bases this opinion on her knowledge of the number of residents and the fees they are charged, however, she also stated with confidence that she knows the Employer would pay higher wages now if it could. The only conclusion that can be drawn was that Ms. Smith must have provided the Applicant with some information that led her to make these statements, given the Applicant's evidence that Ms. Smith said she would like to pay higher wages or give bonuses but could not because of the Union. Ms. Smith, as an out-of-scope employee responsible for the operation of the facility including the hiring and supervision of staff, is a representative of the Employer and her comments lead us to conclude that the Employer improperly influenced the application such that the application could be dismissed on this basis alone. The fact that Mr. Morris stated in his evidence at the hearing that, if the board were to give the employees a "competitive wage," the facility would have to close, does not change the impact of Ms. Smith's comments or promises at the time the Applicant decided to bring the application and sought the support of other employees. It is highly improper for an employer representative to suggest or imply there may be increased wages but for the presence of the Union. In our view, had the Applicant been truly interested in obtaining higher wages she would have contacted the Union to advise of the Employer's willingness to increase wages. Instead she indicated in her evidence that she did not do so because it would cause Ms. Smith extra work, ignoring the suggestion of the Union that it would be a lot more work to negotiate 14 individual contracts of employment with the employees.

[79] The case before us bears some similarity to the situation in *James Walters*, *supra*. There the Board determined that the applicant's reasons for bringing the application were not credible and stated at 171:

> *[91] . . . The Applicant also had little understanding of the benefits provided by the collective agreement or what would be lost should the certification Order be rescinded. While the Employer's witnesses denied any involvement or promising higher wages, the Applicant maintained that, had the Union not proceeded with the grievances, the Employer would have given the employees wage increases. Given the relatively new and largely acrimonious relationship between the Union and the*

> *Employer, the Applicant's adamant views that the employees would receive wage increases are without substantiation and suggest that he must have been given some indication of the same by the Employer. Furthermore, the reason for the increasing volume of telephone calls from Ms. Squires and the hotel to the Applicant just prior to and during the open period were not adequately explained as necessary to the Employer's business and the calls from the Applicant to his home indicate that preferential treatment was either being given to the Applicant or, for some unusual reason, the Applicant presumed that he could put the Employer to this cost.*

[80] The Applicant in the present case also had little understanding of the origins of the collective bargaining relationship including the fact that the Union had been certified prior to the Employer taking over the operation of the facility. In addition, she felt that it was somehow wrong that the employees working at the time of certification got to decide to belong to a union without any regard for what future employees (those not yet hired) might want. The Applicant demonstrated little knowledge or understanding of the role of the Union or the legal relationships between the Union and the Employer and the Union and its members. Yet, as stated above, she understood and had information concerning matters to which other employees were not privy, much of it inaccurate and which we have concluded could only have come from the Employer and, in particular, Ms. Smith.

[81] The Applicant also provided reasons that were not borne out by the evidence and we find no basis upon which she could have reasonably held those views. For example, she complained about the Union not inviting employees to union meetings but acknowledged that notices of the meetings were posted. She then complained that only the shop steward could go, a fact Ms. Laverdiere denied (she had never attended due to scheduling difficulties). The Applicant then conceded she would not have gone to the meetings in any event.

[82] There are also several matters for which Applicant blames the Union when the fault lies with the Employer. In these circumstances, we conclude that the Employer has created an atmosphere of frustration and disillusionment for the Union that is as effective as an express direction to decertify. One example concerns the Applicant's complaint that the Union would not permit the use of volunteers; a

representation made by Ms. Smith to the Applicant which was not true according to the only direct evidence on this point presented by the Union. A further example is the complaint that there is only a single classification with a single rate of pay in the collective agreement. This was the Employer's proposal during negotiations on the basis that all employees were performing similar work. The Applicant did not know of these circumstances and appeared to place the blame on the Union for this state of affairs based on what Ms. Smith advised her. Similarly, the Applicant complained that the wages in the collective agreement are too low, stating that that was what the Union wanted even if the employees did not. The Applicant's response to the question whether the low wages were the Union's fault was that the Employer's board just wanted to get "the whole bargaining thing in place" even though "the board knew this wasn't in the best interests of all employees." This Applicant's response suggests that this was the information she had received from the Employer about bargaining (as she was not employed then) and does not only portray an inaccurate state of affairs but is indicative of the creation of an anti-union atmosphere. A collective agreement was not reached immediately and the Union made an application under the first collective agreement provisions of the *Act* after nearly a year of being unable to secure a collective agreement. In addition, the wage rates in the collective agreement were a result of the Union obtaining the highest rates that the Union could get the Employer to agree to.

[83] The complaint that Mr. Smith's wage rate decreased following the negotiation of the first collective agreement was also a problem created by the Employer. The uncontested evidence was that the Employer represented in bargaining that all employees were earning the same rate of pay and made a proposal that all employees should be paid the same amount. There was also no disclosure by any of the Employer's representatives about the contract that had been in place for the previous maintenance employee, a contract that stipulated that the maintenance person was an independent contactor (earning $10.00 per hour) when, in fact, this individual had been listed as within the bargaining unit on the statement of employment filed in relation to the certification application. Although the parties continued to discuss the current maintenance employee's terms of employment aside from wages, the Union was clear that the maintenance employee was and is a position within the scope of the bargaining unit. Again, this represents a situation where the Employer, whether inadvertently or not, created frustration and disillusionment with the Union on the part of

the employees and, in particular, Mr. Smith and the Applicant, and led directly to the making of the application for rescission.

[84] As previously stated, the Applicant provided reasons for bringing the application that, in our view, showed a concern on her part for the Employer or Ms. Smith and not herself or other employees. As mentioned, the concern about the perceived lack of ability to discipline employees because of the Union and the inability of the Employer to pay increased wages to hire new employees are more appropriately viewed as a concern for the Employer and Ms. Smith. A further example was the Applicant's statement that she did not go to the Union to advise of the Employer's willingness to increase wages because she did not want to create more work for Ms. Smith. In addition, the issue of Mr. Smith's pay decrease was obviously a matter of concern to Ms. Smith given her July 2, 2007 letter to the Union (where she demands that wages and terms of employment be resolved in Mr. Smith's favour or he will quit), a concern which the Applicant appears to have taken up on behalf of Mr. Smith but also, in our view, on behalf of Ms. Smith. Despite the fact that the board of directors may be at odds with Ms. Smith about this issue (given the negotiations that were occurring between the Union and the board concerning Mr. Smith's terms of employment and the denial by the board of knowledge of the previous maintenance employee's contract), Ms. Smith still speaks as the Employer's representative. Ms. Smith's interest in Mr. Smith's wage situation, her conduct in that regard and her close relationship with the Applicant, all suggest there was tacit approval or encouragement by Ms. Smith for the bringing of the application for rescission, such that the application should be dismissed for employer influence/involvement.

[85] We have concluded that several of the Applicant's reasons are not credible and that combined with other unusual circumstances (to which we will refer below) leads us to draw an inference of improper employer influence with the application to the extent that a vote would not reflect the true wishes of the employees at this time. This is not to say, however, that the Applicant did not present some honestly held beliefs for wanting to decertify the Union. For example, even though the $15.00 per month union dues would not typically be considered excessive, the Applicant felt they were too much for the employees who were largely part-time and, in any event, were too much for what the employees received in return. The Applicant also complained that the Union's

representative was incompetent and inexperienced and that the employees had no visible union representation, opinions to which she is entitled. However, in all of the circumstances, we believe that even these views were coloured by the conduct of the Employer.

[86] As stated, there are other unusual circumstances that support the drawing of an inference that the application was influenced or interfered with by the Employer or demonstrate employer involvement with the application. The idea to decertify originated with Chris Desautels whose spouse was the chair or president of the board of directors (and also involved in the collective agreement negotiations) at the same time she began to seek support for the application. Chris Desautels asked the Applicant to continue the effort upon her departure in October 2007 not long before the application for rescission was filed and in circumstances where the Applicant had close ties to the Employer's representative, Ms. Smith. In addition, the presence of Mr. Smith at the hearing, as a support person and one who provided at least some assistance to the Applicant, causes concern. Given the close relationship between the Smiths and the Applicant and the conversations between the Applicant and Ms. Smith to which the Applicant testified, it is simply not believable that the Applicant had not discussed the application or the idea of decertification with Ms. Smith. In addition, given Mr. Smith's complaints about his wage rate decrease and the position Ms. Smith took on behalf of the Employer on that issue, we conclude that the idea for decertification did not originate with the Applicant or, even if it did, the application had the approval and encouragement of Ms. Smith, the Employer's representative.

[87] A further unusual or suspicious circumstance concerns the gathering of support by the Applicant. We conclude that it was done with the knowledge and/or consent of the Employer's representative, Ms. Smith. The support was gathered on the Employer's premises and during at least some of the employees' work time. While the Applicant stated that she gathered support after work or on breaks, other evidence contradicted this statement. Ms. Severson stated that she was asked by the Applicant while she was working in circumstances where it was not apparent to her that the Applicant was on a break or otherwise not required to be working. Ms. Clark was called into the workplace by the Applicant to ask for her support suggesting not only that the Applicant could not leave the workplace because she was in fact working but also that

the Applicant appeared to be exercising some authority over Ms. Clark by requiring her to attend at the workplace. In circumstances where Ms. Smith is usually present at the workplace and the employees are not permitted to discuss issues related to the Union in the workplace, we draw the conclusion that this activity could not have escaped Ms. Smith's notice. It is also our view that the employees would view the Applicant as having Ms. Smith's tacit approval to carry on this type of activity and would assume that this discussion would be acceptable to the Employer in the workplace.

[88] We have determined that, in the circumstances of this case, the application was made, at least in part, as a result of influence of and/or interference by the Employer and it is unlikely that a vote among the employees regarding representation by the Union will reflect their true wishes. We have therefore decided to exercise our discretion pursuant to s. 9 of the *Act* to dismiss the application.

DATED at Regina, Saskatchewan, this **28th** day of **February, 2008.**

LABOUR RELATIONS BOARD

Angela Zborosky,
Vice-Chairperson