Labour Relations Board
Saskatchewan

RONNIE ROGOZA, Applicant v. UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400 and NATIONAL HOTEL, Prince Albert, Respondents

LRB File No. 150-06; September 23, 2008
Chairperson, James Seibel; Members: Bruce McDonald and Clare Gitzel

The Applicant:	Ronnie Rogoza
For the Respondent Union:	Drew Plaxton
For the Respondent Employer:	No one appearing

Reconsideration – Criteria – Crucial evidence not adduced at hearing – Board satisfied there was a good and sufficient reason evidence was not adduced at original hearing – Board concludes situation merited reconsideration of Board's original Order to prevent miscarriage of justice.

Vote – Decertification – Employer Influence – Board finds evidence of egregious Employer interference in preparation of application for rescission – Board dismisses application for rescission.

***The Trade Union Act*, ss. 5(k)(i), 9 and 13**

REASONS FOR DECISION

[1] United Food and Commercial Workers, Local 1400, (the "Union") is designated as the bargaining agent for a unit of employees of the National Hotel in Prince Albert (the "Employer"). On September 29, 2006, Ronnie Rogoza (the "Applicant"), a member of the bargaining unit, filed an application for rescission of the certification Order dated June 17, 2004 pursuant to s. 5(k)(i) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*").

[2] The Applicant represented himself throughout the proceedings. The Union was represented by Drew Plaxton.

[3] The application for rescission was filed during the open period mandated under the *Act*. The Applicant filed ostensible majority support for the application. At the initial hearing of the application on October 17, 2006, the parties consented to a vote. On October 18, 2006, the Board ordered a vote.

[4] However, before the vote was conducted, the Union filed an application for reconsideration of the Order for a Vote, on the grounds that it had discovered evidence of Employer interference in the application that it was unaware of when it agreed to the conduct of a vote. The Union asserted that, had it been aware of such circumstances, it would not have agreed to a vote, and the Board would not have ordered a vote upon applying s. 9 of the *Act*.

[5] The application for reconsideration was heard by the Board on December 8, 2006. The Board issued an Order the same date allowing the application for reconsideration, rescinding the order for a vote dated October 17, 2006 and dismissing the application for rescission. These are the Reasons for Decision.

[6] Mr. Darren Kurney, a Union representative, and Ms. Arlene Dirks, an employee of the National Hotel and member of the bargaining unit, were called to testify on behalf of the Union. Mr. Rogoza testified on his own behalf.

[7] Mr. Kurney testified that the Union received a copy of the application for rescission from the Board on October 11, 2006. He travelled to the hotel in Prince Alberta and met with the Manager, Doug Cheyne. Nothing seemed untoward, and the Union agreed that a vote be conducted with respect to the representation issue. However, upon receiving the voters' list from the Board, it was noted that the Employer claimed exclusion of two members of the bargaining unit, one of whom was Arlene Dirks.

[8] Mr. Kurney contacted Ms. Dirks on October 27, 2006 and as a result of their conversation he formed the belief that the Employer was involved with the Applicant in the making of the application.[1] Mr. Kurney then contacted legal counsel about obtaining a review of the Board's order for a vote. The application for reconsideration was filed on October 30, 2006.

[9] Arlene Dirks has been employed as a front desk clerk at the hotel for some time. She also performed bookkeeping and some serving duties in the Employer's lounge. She was at all material times a member of the bargaining unit.

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[1] As the Union undertook to call Ms. Dirks to testify, the Board heard Mr. Kurney's evidence as to their conversation.

[10] Mr. Cheyne, the Employer's manager, has his office just behind the front desk where Ms. Dirks spends a lot of her work time. She testified that Mr. Cheyne and Mr. Rogoza had several conversations in Mr. Cheyne office during the period of some weeks before the application for rescission was filed.

[11] Sometime in September, 2006 Ms. Dirks overheard Mr. Cheyne speaking with Mr. Rogoza about a "time frame" of some kind within which they had to get signatures "to get rid of the union." Mr. Cheyne had received some sort of package of papers that Mr. Rogoza had to fill out. Shortly after this conversation, Mr. Cheyne asked Ms. Dirks if she could speak to her co-workers to get a sense about what they thought of the Union.

[12] About September 15, 2006, Mr. Cheyne, accompanied by Mr. Rogoza, called Ms. Dirks into his office and told her that Mr. Rogoza would give her some papers that she should get her co-workers to sign. Mr. Cheyne gave her some instructions about what to tell her co-workers when trying to get their signatures, to the effect of "what's the Union ever done", and "when have you not been able to speak to [Mr. Cheyne] directly", and, "The Union takes … $300 off your pay cheque every year." He also told her that, if they should ask, she could say that their wages and seniority would not change if the Union was ousted. At this time, she noticed there were a number of forms on Mr. Cheyne's desk that were identical to the evidence of support forms filed with the Board on the present application. Shortly after she went back to work, Mr. Rogoza gave her a number of the same forms.

[13] Ms. Dirks testified that she secured the signing of the forms from several of her co-workers, at the hotel during her and their work time. Later, when Mr. Cheyne saw some of the completed forms at the bar where she was working, he told her not to leave them lying about and to bring them to him. She personally handed him the completed forms from time to time at his office. She said that she also saw at least four employees go into Mr. Cheyne's office to see him with the form in hand, and leave without it.

[14] A short time afterwards, a gentlemen attended at Mr. Cheyne's office to notarize some papers for Mr. Rogoza – Mr. Rogoza had advised her that he would be coming. Mr. Cheyne was not in the room while this was being done. Afterwards, Mr. Rogoza gave the papers to Ms. Dirks and asked her to make up an envelope for him addressed to the Board; the papers were the application for rescission. Ms. Dirks knew that Mr. Cheyne had paid the gentleman from the VLT float, because of a receipt in his handwriting that he had left for her to transfer the money from petty cash to the float – he also told her this.

[15] On or about October 10, 2006 Ms. Dirks said that, while Mr. Cheyne and Mr. Rogoza were discussing the latter's planned attendance at an upcoming Union meeting, Mr. Cheyne asked him to "let me know what happens." After the meeting, which both she and Mr. Rogoza attended, they returned to the hotel and met with Mr. Cheyne in his office. Mr. Rogoza advised him as to what transpired at the meeting.

[16] Near the start of his testimony, the Applicant stated to the effect that, "there is a lot of accusations here, sure there were improprieties made and I'm willing to admit it more than anybody else, a lot of consultation between Doug and I, and me and Arlene at the time…".

[17] In cross-examination, the Applicant admitted that Mr. Cheyne told him what the "time frame" was to apply for decertification, without his inquiring of him about it; Mr. Cheyne provided him with the forms for making the application in mid-August 2006, and helped the Applicant make the application; the meeting of September 15, 2006 between himself, Mr. Cheyne and Ms. Dirks was essentially as she testified; Mr. Cheyne gave him some of the completed employee support forms; Mr. Cheyne gave him the envelope in which to put the completed application and support forms; Mr. Cheyne arranged for the notary public to notarize the documents for Mr. Rogoza, and that he paid the gentleman with the hotel's money.

Relevant statutory provisions:

[18] Relevant statutory provisions of the *Act* include the following:

> *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:*
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> > *(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*
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> *. . .*
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> *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.*
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> *. . .*
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> *13 A certified copy of any order or decision of the board shall be filed in the office of a local registrar of the Court of Queen's Bench and shall thereupon be enforceable as a judgment or order of the court, and in the same manner as any other judgment or order of the court, but the board may nevertheless rescind or vary any such order.*

[19] After hearing the arguments of counsel and the Applicant, and considering the authorities filed, and the Board's jurisprudence, in our opinion, the situation merited reconsideration, the Union having convinced us that the requirements were met to do so, on the grounds that crucial evidence was not adduced at the hearing for good and sufficient reason, and generally to prevent a miscarriage of justice: See, *City of North Battleford v. Canadian Union of Public Employees*, Local 287, [2003] Sask. L.R.B.R. 288, LRB File No. 054-01.

[20] Secondly, the Board finds that the evidence disclosed gross Employer interference in the making of the application for consideration. Had the evidence been adduced at the original hearing, there is no doubt that the Board would have exercised its jurisdiction under s. 9 of the *Act* to refuse to consider the ostensible evidence of

support for the application, and would have dismissed the application. Upon the Board's reconsideration of the matter in light of the evidence, it has determined that s. 9 ought to be applied in light of egregious Employer interference, and the evidence of ostensible support for the application that was filed, ought not to be considered: See, *Glas, et al. v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Loraas Disposal Services Ltd.*, [1999] Sask. L.R.B.R. 456, LRB File Nos. 031-99 to 034-99.

[21] Accordingly, there is no evidence in support of the application for rescission, and for the foregoing reasons, the Order for a vote shall be rescinded and the application for rescission is dismissed.

DATED at Saskatoon, Saskatchewan, this **23rd** day of **September, 2008.**

LABOUR RELATIONS BOARD

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James Seibel,
Chairperson