

**Labour Relations Board  
Saskatchewan**

**CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4651 Applicant v. EASTERN II METIS REGIONAL COUNCIL, EASTERN IIA REGIONAL DEVELOPMENT CORP., EASTERN REGION IIA ASSINIBOINE TRAINING & EMPLOYMENT and EASTERN REGION IIA EMPLOYMENT & EDUCATION SERVICES INC., Respondents**

LRB FILE NOS. 288-04 to 293-04 & 077-05 to 084-05; December 5, 2008  
Chairperson, James Seibel; Members: Maurice Werezak and Leo Lancaster

For the Applicant: Peter Barnacle and Don Moran  
For the Respondents: No one appearing

**REASONS FOR DECISION**

**Background and Evidence:**

[1] By Order dated May 21, 2004 the Canadian Union of Public Employees, Local 4651 (the "Union") was designated as the certified bargaining agent for a unit of employees as follows:

*All employees employed by Eastern Region II A Regional Metis Development Corporation, Eastern Region II A Metis Property Management Corporation and Eastern Region II A Assiniboine Training & Employment in Yorkton, Saskatchewan, whose employment is controlled by Eastern II A Metis Regional Council...*

Following is a brief description of the sequence of events that followed certification.

[2] By letter dated October 6, 2004 to the Employer, the Union National representative Don Moran, sought to commence negotiations for a first collective agreement. The Union received no reply.

[3] By letter dated November 15, 2004, one of the employees in the certified bargaining unit, R. Pritchard, who, allegedly, had been active in the original organizing, was terminated by the Employer, ostensibly "due to lack of committed funding." The letter was authored by one Thomas Hayden, "Acting Chairperson ERIIA Development Corp."

[4] Mr. Moran sent a further letter to the Employer dated November 23, 2004 asking for a reply to the letter of October 6, 2004 regarding commencement of contract negotiations.

[5] Letters dated November 29, 2004, from one Peter Thrun on behalf of ER II A Employment & Education Services Inc., which the letter states was formerly Eastern Assiniboine Training & Development Inc., purported to terminate the employment of two employees, B. Pelletier and M. Jordan, respectively president and vice-president of the local Union, ostensibly for cause. The letters identify Mr. Thrun as "Regional Director ERIIA" and "Chair ERIIA Employment & Education Services Inc." The letters are copied to, *inter alia*, "Metis Nation ERIIA Regional Council Inc."

[6] On December 1, 2004, the Union filed a number of applications (LRB File Nos. 288-04, 289-04, 290-04, 291-04, 292-04, 293-04 & 294-04) against Eastern II Metis Regional Council ("EMR Council"), Eastern II A Regional Development Corporation. ("ER DevCo"), and Eastern Region II A Assiniboine Training & Employment ("Assiniboine T & E") alleging that the Respondents (collectively, the "Employer") committed unfair labour practices in violation of sections 11(1)(a), (e) and (m) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*") in discharging the three employees (B. Pelletier, M. Jordan and R Pritchard), while the Union was trying to negotiate a first collective agreement with the Employer. The Union included applications for reinstatement and compensation for monetary loss in respect of the discharged employees, pursuant to ss. 5(f) and (g) of the *Act*. The Union later applied to amend the applications to include ER II A Employment & Education Services Inc. ("ER EdServInc"), as a Respondent.

[7] By letter faxed the same date by Mr. Moran, on behalf of the Union, he advised Mr. Thrun of the filing of the applications.

[8] The Union received a letter in reply from Mr. Thrun dated December 6, 2004. In the letter, which is condescending and arrogant in the extreme, Mr. Thrun, (who claimed to be ignorant as to what the Respondent corporations had to do with him), stated, *inter alia*, that Assiniboine T&E was struck from the Saskatchewan Corporations Branch corporate registry on February 15, 2003, and that ER IIA Metis Property

Management Corp. and ER DevCo were similarly struck August 3, 2001 and October 15, 2002, respectively.

[9] The Board received a letter dated December 6, 2004 from a Mr. Hayden on behalf of the Employer, EMR Council, purporting to be a reply to the Union's applications. The document contains information that, *inter al/a*: identifies the EMR Council as the regional representative of the local metis councils in the Eastern IIA Region; that Peter Thrun's election as regional director, and a director of Assiniboine T&E, is being appealed; that apparently there are two sets of boards of directors for the entities that refuse to recognize each other, and take different stances with respect to the bona fides of the layoffs of the employees referred to above.

[10] The Local Metis Management Board ("LMM Board") consists of directors appointed by the several Regional Councils. Apparently, after the disputed elections in which Mr. Thrun purportedly won office in the Eastern Region IIA, the LMM Board assumed management of the affairs of the EMR Council in May, 2004. The provincial government withdrew funding for the umbrella organization known by the acronym METSI.

[11] On January 10, 2005 the [MM Board led by Mr. Thrun purported to terminate the employment of the Employer's three remaining employees, D. Pelletier, C. Kobluck and N. St. Pierre.

[12] On May 5, 2005 the Union filed a further number of applications (077-05, 078-05, 079-05, 080-05, 081-05, 082-05, 083-05 & 084-05), against the same three Respondents and Eastern Region II A Employment & Education Services Inc. ("ER EdServInc"), alleging that the Respondents had committed certain unfair labour practices as above by terminating the employment of these three employees and seeking their reinstatement and compensation for monetary loss. The Union further applied, pursuant to ss. 2(g) and 37 of the *Act*, *inter al/a*:

- (a) *For determination that ER EdServInc is the true employer of certain employees in the certified bargaining unit or is the*

- (b) *determining whether the employees of all of the Respondents constitute one or more appropriate units for collective bargaining;*
- (c) *amending the certification Order and providing such other direction as is necessary.*

[13] At the hearing of the applications, counsel on behalf of the Union also advised that the Union sought to add allegations that the LMM Board was a successor to the ERM Council, and to amend the certification Order accordingly.

[14] Replies to the applications were filed with the Board by a solicitor on behalf of the Respondent, ER EdServInc, on September 14, 2005, declared by Peter Thrun, putative chairperson of the Respondent, denying that the Respondent was the employer of any of the persons alleged to have been terminated and further denying that it was the successor to the Employer. The solicitor withdrew as counsel for the Respondent prior to the hearing of the applications. No one representing any of the Respondents appeared at the hearing. Mr. Moran gave *viva voce* evidence on behalf of the Union.

**Statutory Provisions:**

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

2 *In this Act:*

(g) *"employer" means:*

*an employer who employs three or more employees;*

*(ii) an employer who employs less than three employees if at least one of the employees is a member of a trade union that includes among its membership employees of more than one employer;*

*(iii) in respect of any employees of a contractor who supplies the services of the employees for or on behalf of a principal pursuant to the terms of any contract entered into by the contractor or principal, the contractor or principal as the board may in its discretion determine for the purposes of this Act;*

*and includes Her Majesty in the right of the Province of Saskatchewan*

5 *The Board may make orders:*

(e) *requiring any person to do any of the following:*

*to refrain from violations of this Act or from engaging in any unfair labour practice;*

(ii) *subject to section 5.1, to do any thing for the purpose of rectifying a violation of this Act, the regulations or a decision of the board;*

(g) *fixing and determining the monetary loss suffered by an employee, an employer or a trade union as a result of a violation of this Act, the regulations or a decision of the board by one or more persons, and requiring those persons to pay to that employee, employer or trade union the amount of the monetary loss or any portion of the monetary loss that the board considers to be appropriate;*

(h) *determining whether a labour organization is a company dominated organization;*

*11(1) It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer:*

(a) *in any manner, including by communication, to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act;*

(c) *to fail or refuse to bargain collectively with representatives elected or appointed, not necessarily being the employees of the employer, by a trade union representing the majority of the employees in an appropriate unit;*

*(e) to discriminate in regard to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including discharge or suspension or threat of discharge or suspension of an employee, with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in a proceeding under this Act, and if an employer or an employer's agent discharges or suspends an employee from his employment and it is shown to the satisfaction of the board that employees of the employer or any of them had exercised or were exercising or attempting to exercise a right under this Act, there shall be a presumption in favour of the employee that he was discharged or suspended contrary to this Act, and the burden of proof that the employee was discharged or suspended for good and sufficient reason shall be upon the employer; but nothing in this Act precludes an employer from making an agreement with a trade union to require as a condition of employment membership in or maintenance of membership in the trade union or the selection of employees by or with the advice of a trade union or any other condition in regard to employment, if the trade union has been designated or selected by a majority of employees in any such unit as their representative for the purpose of bargaining collectively;*

*37(1) Where a business or part thereof is sold, leased, transferred or otherwise disposed of, the person acquiring the business or part thereof shall be bound by all orders of the board and all proceedings had and taken before the board before the acquisition, and the orders and proceedings shall continue as if the business or part thereof had not been disposed of, and, without limiting the generality of the foregoing, if before the disposal a trade union was determined by an order of the board as representing, for the purpose of bargaining collectively, any of the employees affected by the disposal or any collective bargaining agreement affecting any of such employees was in force the terms of that order or agreement, as the case may be, shall, unless the board otherwise orders, be deemed to apply to the person acquiring the business or part thereof to the same extent as if the order had originally applied to him or the agreement had been signed by him.*

### **Analysis and Decision:**

**[16]** The Board accepts the uncontroverted evidence adduced by the Union in its entirety. Although the exact corporate structures and relationships involved in the

present case is complicated, murky and is not possible to follow in a linear fashion, it is apparent that all of the entities involved are related. The uncertainty is wholly caused by the failure of the Respondents to clarify information which only they are privy to, and on account of their failure to do so, we draw an inference that such facts would support the Union's case.

[17] In his letter of November 29, 2004, Mr. Thrun states that ER II A Employment & Education Services Inc. was formerly known as Eastern Assiniboine Training & Development Inc. However the change occurred, and notwithstanding that the latter entity has apparently been struck from the corporations registry, we accept that as an admission that ER II A Employment & Education Services Inc. is the successor to the training and employment entity of the EMR Council which employed B. Pelletier and M. Jordan. Despite the fact that it had apparently been struck as well, ER Devco (on its own letterhead) purported to terminate the employment of R. Pritchard, member of the bargaining unit involved in the Unions bargaining strategies.

[18] Whichever entity(ies) directly employed D. Pelletier, C. Kobluck and N. St. Pierre, we accept that it was operated under the aegis and control of the ERM Council and/or the [MM Board.

[19] We therefore find that Eastern Region II A Employment & Education Services Inc., and the Local Metis Management Board, are either successors to the Employer named in the certification Order or are properly added to it as true employers of the said employees and are bound by the certification Order. We find that Eastern IIA Metis Regional Council, Eastern Region II A Employment & Education Services Inc., and the Local Metis Management Board, are the Employers of each of the six (6) terminated employees, and of all members of the certified bargaining unit.

[20] The certification Order shall be amended to reflect the inclusion of these entities as Employers.

[21] We also find that the six (6) employees were terminated by the said Employers or any of them and that such terminations constitute unfair labour practices in

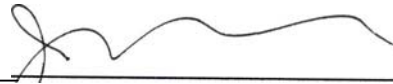
[22] We also find that the Employers have committed an unfair labour practice in violation of s. 11(1)(c) of the *Act* in failing or refusing to bargain collectively with the Union.

[23] We order that the Employers or any of them shall cease and refrain from committing such violations and pursuant to s. 5(c) of the *Act* shall bargain collectively with the Union.

[24] The Board, but not this panel, shall remain seized to receive further evidence and submissions from the Union as to the appropriateness of reinstatement and the quantum of monetary loss for the six (6) employees.

**DATED** at Saskatoon, Saskatchewan, this **5th** day of **December, 2008**.

**LABOUR RELATIONS BOARD**

A handwritten signature in black ink, appearing to read 'a e Seibel', is written over a horizontal line.

a e Seibel, Chairperson