

**The Labour Relations Board
Saskatchewan**

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL No. 1400, Applicant v. AFFINITY CREDIT UNION, Respondents

LRB File Nos. 078-09 & 079-09; August 24, 2009
Chairperson, Kenneth G. Love Q.C.; Members: Ken Ahl and Gloria Cymbalisty

For the Applicant: Mr. Drew S. Plaxton
For the Respondent: Ms. Catherine Sloan

Certification – Preliminary Objection – Application filed within six (6) months of dismissal of application for amendment of certification Order – Previous application dismissed without decision on the merits of the application. Application of clause 5(b) of the *Trade Union Act*. Exercise of Board’s discretion – whether application should be barred under clause 18(m) or (n) of the *Act*.

***The Trade Union Act*, s. 3, clauses 5(b) and 18(m) & (n).**

REASONS FOR DECISION

Background:

[1] By Order of the Saskatchewan Labour Relations Board (the “Board”) dated December 10, 2003, the United Food and Commercial Workers, Local 1400, (the “Union”) was designated as the bargaining agent for a unit of employees of Saskatoon Credit Union Limited, Saskatoon Credit Union (2002), FirstSask Financial Group Inc., FirstSask Employee Services Inc., Canada Loan Administration Services Inc., and FirstSask Mortgage Inc. (the “Employer”) “*in their places of business located in Saskatoon, Saskatchewan and surrounding area.*”

[2] On January 18, 2008, the Union filed an application with the Board pursuant to clause 5(j) of *The Trade Union Act*, R.S.S. 1978, c.T-17, (the “*Act*”) to amend its certification Order in the following respects:

- (a) to reflect the corporate restructuring and the change in name of the Employer (including each of its constituent corporations);
- (b) to expand the geographical scope of the Order (from Saskatoon and surrounding area) to “*all of Saskatchewan*”; and
- (c) to include a new list of exclusions.

[3] The Board dismissed the Union's application on April 30, 2009 with written Reasons.

[4] The Union filed two (2) applications for certification on July 16, 2009 with respect to two (2) of the branch locations which were included in the previous application. The previous application covered approximately two hundred (200) employees at various former Affinity Credit Union branches throughout the Province of Saskatchewan. The current application is in respect of approximately fourteen (14) employees at two (2) former Affinity Credit Union locations in Regina.

[5] In its Reply, the Employer plead that clause 5(b) of the *Act* was applicable to these applications insofar as the applications were within six (6) months of the date on which the previous application had been dismissed by the Board. It applied to the Board to have the applications struck in accordance with that provision.

[6] In the alternative, the Employer, in its Reply, argued that the provisions of clause 18(m) or (n) of the *Act* should be invoked by the Board to bar or refuse to entertain the current applications as they were made within twelve (12) months of the previous application and were similar applications to the previous application that was adjudicated by the Board in its April 30, 2009 decision.

[7] The Union's application was heard in Regina on August 18, 2009. Both the Union and the Employer made applications for interim relief under s.5.2 of the *Act*. The Board considered those applications on August 4, 2009. Those applications were adjourned by the Board until the hearing of these applications.

[8] The Board agreed to consider the Employer's application to have these applications barred under either clause. 5(b) or 18(m) or (n) of the *Act* as a preliminary matter. If the application was successful, then the matter would be determined. If unsuccessful, then the Board would determine the applications in accordance with its usual procedures.

[9] Also, at the outset of the hearing, Employer's counsel advised the Board that it was withdrawing its objection to the appropriateness of the units applied for by the Union.

[10] For the reasons that follow, the Board determined that the applications should proceed and gave directions for the conduct of a secret ballot vote in accordance with the provisions of s. 6(1) of the *Act*.

Facts:

[11] The relevant facts were not in dispute. The Union has been certified to a unit of employees of Saskatoon Credit Union for many years, with certification Orders filed with the Board dating back to 1996. The Union and the Employer had a mature and cooperative relationship.

[12] Until approximately 2006, the Saskatoon Credit Union had seven (7) branches (together with a Commercial Services Centre, a MemberTrust office, a FirstSask Mortgage office and a Teleservices) located as follows:

Saskatoon Credit Union Branches (as of 2006)

Broadway – 912 Broadway Avenue, Saskatoon

Eighth Street – 2201 8th Street East, Saskatoon

Fairhaven – 3315C Fairlight Drive, Saskatoon

Main - 309 22nd Street East, Saskatoon

River Heights, Bay 7 - #7 Assiniboine Drive, Saskatoon

Westview – 1624 33rd Street West, Saskatoon

Warman – 204 Central Street West, Warman, Saskatchewan

Commercial Services Centre – 300 310 20th Street East, Saskatoon

MemberTrust Office – 401A – 310 20th Street East, Saskatoon

FirstSask Mortgages – 234 21 Street East, Saskatoon

[13] In late 2006 or early 2007, Saskatoon Credit Union merged with both the Langham Credit Union and the Shellbrook Credit Union (hereinafter referred to as the “2007 merger”). Immediately prior to the 2007 merger, the Saskatoon Credit Union consisted of the above captioned branches and the Langham and Shellbrook Credit Unions respectively had the following branches:

Langham Credit Union Branch (as of 2006):

Langham – 302 Main Street, Langham, Saskatchewan

Martensville - #7 – 7 Centennial Drive, Martensville, Saskatchewan

Borden – 107 Shepard Street, Borden, Saskatchewan

Dalmeny – 115 3rd Street, Dalmeny, Saskatchewan

Hepburn – 402 Main Street, Hepburn, Saskatchewan

Waldheim – 3001 Central Avenue, Waldheim, Saskatchewan

Shellbrook Credit Union Branches (as of 2006):

Canwood – 561 Main Street, Canwood, Saskatchewan

Leask – Main Street, Leask, Saskatchewan

Marcelin – Marcelin, Saskatchewan

Shellbrook – 31 Main Street, Shellbrook, Saskatchewan.

[14] The 2007 merger of the Saskatoon, Shellbrook and Langham Credit Unions resulted in the formation of FirstSask Credit Union.

[15] Prior to the 2007 merger, neither the Shellbrook nor Langham Credit Unions were certified. As part of the merger process, a vote was conducted by the Union and the Employer of each of the two (2) groups of branches; one (1) group consisting of the employees of the branches of the Langham Credit Union; and one (1) group consisting of the employees of the branches of the Shellbrook Credit Union. The employees in the Langham Credit Union voted to join the Union; but the employees of the Shellbrook Credit Union did not. As a result of this vote (which was not supervised by the Board), the Employer voluntarily recognized the Union as the bargaining agent for the employees working at the branches of the former Langham Credit Union, while the employees working at the branches of the former Shellbrook Credit Union were not voluntarily recognized by the Employer.

[16] On January 1, 2008, FirstSask Credit Union merged with Affinity Credit Union (hereinafter referred to as the “2008 merger”). Immediately prior to the merger, FirstSask Credit Union contained the above captioned branches and Affinity Credit Union consisted of the following branches:

Affinity Credit Union – Rural Branches (as of 2007):

Aberdeen – 207 Main Street North, Aberdeen, Saskatchewan

Alvena – Alvena, Saskatchewan

Bellevue – 200A Grenier Crescent, Bellevue, Saskatchewan

Davidson – 123 Garfield Street, Davidson, Saskatchewan

Hague – 302 Main Street, Hague, Saskatchewan

Kamsack – 316 3rd Avenue South, Kamsack, Saskatchewan
Kenaston – 607 3rd Street, Kenaston, Saskatchewan
Laird – 220B Main Street, Laird, Saskatchewan
Lintlaw – 212 Main Street, Lintlaw, Saskatchewan
Milestone – 118 Main Street, Milestone, Saskatchewan
Nokomis – 209 Main Street, Nokomis, Saskatchewan
Norquay – 24 Main Street, Norquay, Saskatchewan
Osler – 228 Willow Drive, Osler, Saskatchewan
Pelly – 123 Main Street, Pelly, Saskatchewan
Rosthern – 2003 6th Street, Rosthern, Saskatchewan
Sedley – 121 Broadway Street, Sedley, Saskatchewan
Semans – Main Street, Semans, Saskatchewan
Simpson – 408 George Street, Simpson, Saskatchewan
Strasbourg – 208 Mountain Street, Strasbourg, Saskatchewan
Togo – 175 Main Street, Togo, Saskatchewan
Tugaske – 114 Ogema Street, Tugaske, Saskatchewan
Watrous – 210 Main Street West, Watrous, Saskatchewan
Wecan Branch – Ashley Street, Bulyea, Saskatchewan

Affinity Credit Union – Regina Branches (as of 2007):

Hill Avenue – 3418 Hill Avenue, Regina, Saskatchewan
Rochdale – 4503 Rochdale Blvd, Regina, Saskatchewan
Scarth Street – 2101 Scarth Street, Regina, Saskatchewan

Affinity Credit Union – Saskatoon Branches (as of 2007):

City Centre – 130 1st Avenue North, Saskatoon, Saskatchewan
St. Mary's – 1515 20th Street West, Saskatoon, Saskatchewan

[17] Prior to the 2008 merger, the Employer and the Union entered into an agreement (the “Merger Agreement”) respecting the potential labour relations consequences of the anticipated merger¹. The Merger Agreement contained the following provisions:

1. The First Nations district will be unionized.

¹ Contained within a document entitled “**Board Proposal**”, dated October 23, 2007 and signed by the General Manager/Secretary of Affinity Credit Union and the CEO of FirstSask Credit Union on or about November 6, 2007.

2. Any new branches opened will be unionized. The union status of the planned new branch in south-east Regina will be the same as other Regina locations.
3.
 - a) Upon a successful union vote, the union will apply for a provincial certification; and
 - b) If the Union vote is not successful, the Credit Union will continue to offer the Union an opportunity, as per point 5, in all future mergers.
4. A mutually agreed Question and Answer document will be distributed to Affinity employees.
5. Management will not interfere with the organizing of new districts; Management will remain neutral; the union will have access to new potential members in their workplace; this is to be arranged with Management's cooperation.
6. Seniority would work in the same method as Langham merger.
7. Employees in non-Union branches will not have mobility to unionized branches.
8. Once Credit Union votes are completed successfully, Union notices to be posted.
9. Union tours of Affinity branches November 19 to 23.
10. Meetings in regions November 26 to 30 – Affinity to assist with setting up meetings.
11. Union to conduct organizing drive via phone for new members.
12. Vote conducted by Union December 10 to 14; Union to hold vote in each Credit Union branches (sic) of Affinity and Nokomis districts.

[18] The Union called Mr. Darren Kurmey. Mr. Darren Kurmey was the Secretary Treasurer of the Union, a position he had held since January 5, 2009. Prior to that, he had been a service representative for the Union for approximately five (5) years. During this time, Mr. Kurmey's service responsibilities included the workplace of the Employer.

[19] Mr. Kurmey described the history of mergers and amalgamations that had occurred in recent years resulting in the corporate transition from Saskatoon Credit Union (and

its various affiliates) to Affinity Credit Union (and its related affiliates), including both the 2007 and 2008 mergers described previously in these Reasons.

[20] Mr. Kurmey testified that the two (2) branches for which the Union had applied for certification in these applications had been included in the list of branches in respect of which the previous amendment application had been made. He testified that prior to the hearing of the Board and its decision on April 30, 2009, the collective bargaining agreement, which was in effect with respect to the currently certified bargaining unit, was applied to all employees within the amalgamated credit union.

[21] Mr. Kurmey further testified that as a result of the Board's ruling on April 30, 2009, a disagreement arose between the Union and the Employer with respect to the Merger Agreement and in particular the interpretation of paragraph 3 b). He provided the Board with a copy of an email dated May 21, 2009 from Pat Brothers of Affinity Credit Union wherein the Employer advised that it "will cease its voluntary recognition agreement with UFCW 1400 effective May 25, 2009."

[22] Mr. Kurmey, on behalf of the Union responded to this email by correspondence to Ms. Brothers. In his letter he demanded that the "Employer comply with the voluntary recognition agreement and the collective agreement."

[23] The Employer continued with its cessation threat and, as a result, no longer applied the collective bargaining agreement to the non-unionized employees. In response, the Union filed suit against the Employer in the Court of Queen's Bench and Mr. Kurmey testified that the Union had also filed an unfair labour practice application with this Board.

Relevant Statutory Provisions:

[24] Relevant statutory provisions of the *Act* 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:*

...

(b) *determining what trade union, if any, represents a majority of employees in an appropriate unit of employees, but no order under this clause shall be made in respect of an application made within a period of six months from the date of the dismissal of an application for certification by the same trade union in respect of the same or a substantially similar unit of employees, unless the board, on the application of that trade union, considers it advisable to abridge that period.*

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

(m) *to bar from making a similar application for any period not exceeding one year from the date an unsuccessful application is dismissed:*

(i) *an unsuccessful applicant;*

(ii) *any of the employees affected by an unsuccessful application;*

(iii) *any person or trade union representing the employees affected by an unsuccessful application; or*

(iv) *any person or organization representing the employer affected by an unsuccessful application;*

(n) *to refuse to entertain a similar application for any period not exceeding one year from the date an unsuccessful application is dismissed from anyone mentioned in subclauses (m)(i) to (iv);*

Analysis and Decision:

Section 5(b)

[25] Clause 5(b) precludes the Board from making any order under that provision if there has been a previous application "in respect of the same or a substantially similar unit of employees" within a period of six (6) months from the date the previous application was dismissed. This provision would certainly apply if these applications had been "in respect of the same or a substantially similar unit of employees" as these applications were brought well within the six (6) month period referenced in the Act.

[26] However, for the reasons given by the Board in *Hotel Employees & Restaurant Employees Union Local 767 v. Regina Exhibition Association Ltd.*² we find that the applications are not “in respect of the same or a substantially similar unit of employees.” Here, the group of employees impacted by the applications is much smaller than the previous application filed with the Board in its April 30, 2009 decision. These applications were with respect to only approximately 7% of the previously impacted employees. (In the *Regina Exhibition Association* case, *supra*, the follow on group applied for was approximately 65% of the former group.)

[27] Also, the applications were much different in that the previous application was for an amendment to a previous certification Order under clause 5(j), whereas these applications are for a certification Order under clauses 5 (a), (b) & (c).

[28] Nor did the Board make a determination of the previous application on its merits. The applications were dismissed on procedural grounds, not on substantive grounds related to the matters normally considered by the Board on applications for certification. As outlined by the Board in *United Steelworkers of America v. Vicwest Steel Inc.*³ “a second application for certification will not be barred, even when a first application is dismissed, unless the true wishes of the employees were determined as a result of the first application.”

[29] The interdiction contained in clause 5(b) is therefore not applicable to the current applications. This ground of the application by the Employer is accordingly dismissed.

[30] However, even if we are wrong with respect to our interpretation of this provision and the Board’s jurisprudence as outlined above, the Board considers it to be advisable to ensure that the true wishes of the employees be determined and we would therefore abridge the time period set out in clause 5(b) to allow the application to be filed on or after July 15, 2009.

Section 18, clauses (m) & (n)

[31] Unlike s. 5, 18 is an empowering provision that allows the Board, in its discretion, to bar (clause 18(m) or refuse to entertain clause 18(n)) a similar application for any period up to one (1) year from the date an unsuccessful application is dismissed by the Board. This difference is significant insofar as the onus of proof is concerned.

² [1986] Oct. Sask. Lab. Rep. 43 @ 44, LRB File No. 015-86

³ [1989] Summer Sask. Labour Rep. 77 @ 79, LRB File No. 270-88

[32] Under clause 5(b), the onus is clearly on the Applicant Union to apply for an abridgement of the six (6) month period. Under clauses 18(m) and (n), however, the onus would fall upon the party wishing to have the Board invoke its powers under these sections to satisfy the Board that it should invoke those provisions and bar or refuse to entertain the application. The Employer called no evidence and provided no overarching reason why the rights of the employees under s. 3 of the *Act* should be overridden. The authority in clauses 18(m) and (n) should be exercised sparingly by the Board and only in the clearest and most compelling cases when they would be used to counter the rights granted to employees under s. 3.

[33] Section 3 is a substantive right and one with which the Board will not interfere without clear and compelling reasons or industrial relations prejudice to one of the parties (or potentially others). When the competing interests of the rights of employees to have their application for certification is considered opposite the reasons and rational advanced by the Employer, the rights of the employees must prevail.

[34] For those reasons, the Board declines to exercise its authority under either of clause 18(m) or (n) to bar or refuse to hear the current applications.

[35] As a result of this decision, and the withdrawal of the issue of appropriateness of the unit by the Employer, we are left then to process the applications for certification in accordance with the Board's usual practices. The Board hereby directs that a secret ballot vote be taken of the Employees in the appropriate unit, supervised by an agent of the Board, in accordance with the provisions of the *Act* and the Regulations.

DATED at Regina, Saskatchewan, this 24th day of **August, 2009**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.,
Chairperson