Labour Relations Board
Saskatchewan

RON ROSET, Applicant v. UNITE HERE UNION, LOCAL 41 and ATHABASCA CATERING LIMITED PARTNERSHIP, Respondents

LRB File No. 191-08; January 22, 2009
Chairperson, Kenneth G. Love Q.C.; Members: Maurice Werezak and Brenda Cuthbert

For the Applicant:	Ron Roset and Dennis Charity
For the Certified Union:	Garry Whelan and Ed Goralski
For the Employer:	No one appearing

Decertification – Interference – Union alleges Employer interference and influence in bringing application, but provides no concrete evidence of same – Board allows application and orders vote pursuant to s. 6 of *The Trade Union Act*.

***The Trade Union Act*, ss. 3, 5(k), 6 and 9.**

REASONS FOR DECISION

Background:

[1] Ron Roset (the "Applicant") applied for a rescission of the Order of the Board dated January 19, 2002, designating the Hotel Employees and Restaurant Employees, Local 41 (the "Union") as the certified bargaining agent for all employees employed by Athabasca Catering Limited Partnership (the "Employer") at McLean Lake mine site of Cogema, Saskatchewan except division manager, chef, office/housekeeping manager, janitorial supervisor and commissary staff. The effective date of the collective agreement in force between the Union and the Employer was January 1, 2007. The application was filed on November 26, 2008, during the open period mandated by s. 5(k)(i) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"), along with evidence of support from more than 45% of the employees in the bargaining unit. In the application, the Applicant stated numerous reasons why he brought the application for decertification.

[2] In response to the application, the Employer filed a Statement of Employment listing 66 individuals in the bargaining unit. The Employer appeared at the hearing to raise two preliminary matters. The first was that it took no position with respect to the Union's claim that the Employer interfered in the application contrary to s.

9 of the *Act*. The second was to advise the Board that, due to the nature of the camp site, the Employer suggested that should a vote be ordered by the Board, a mail in ballot would be the most appropriate procedure. The Union and the Applicant agreed that in the event a vote was ordered, the Board should conduct such vote by mail in ballot. The Employer and its counsel then retired from the hearing and took no further part in the proceedings.

[3] In its reply to the application, the Union alleged that the application was 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 and that the application should be dismissed pursuant to s. 9 of the *Act*.

[4] The application was heard on January 12, 2008.

[5] The Applicant testified concerning the reasons why he brought the application on behalf of the employees of the Employer as well as the circumstances of his employment and the making of the application. In response, the Union led the evidence of Mr. Ed Goralski, who had been appointed by the President of Local 41, Garry Whalen, to assist him in respect of matters at McLean Lake.

[6] Mr. Goralski's evidence was that he visited the mine site on two occasions at the request of the Union. At the first of these meetings in June of 2008, he met with 8 – 10 union members at the mine site who were unhappy about the Union's representation of them. He was provided a list of concerns which he passed along to Mr. Whelan. He testified that he understood that Mr. Whelan had addressed the concerns, however, it became clear that the concerns were not satisfactorily addressed. Mr. Goralski returned to the mine site in December of 2008, following the filing of the rescission application by Mr. Roset. He testified that he spoke to the division manager, Mr. Randy Jones, in order to have Mr. Jones arrange a meeting with the employees when he visited the mine site. However, when he arrived, he was only able to meet with Mr. Jones, Mr. Roset and Ms. Michelle Belzevick, one of the shop stewards. He suggested that this somehow amounted to interference by the Employer in not organizing a meeting of the employees for him. However, in cross examination he acknowledged that he was not sure why members did not come to the meeting. Mr.

Roset in his closing, acknowledged that the shop stewards had requested the members not attend the meeting.

[7] It is noteworthy that one of the shop stewards, Michelle Belzevick, was involved in the meeting with Mr. Goralski in June of 2008 and brought forward the membership's grievances at that time. She was also present at the meeting in December after the filing of the application. Mr. Dennis Charity who accompanied Mr. Roset at the hearing, was the other shop steward.

[8] Mr. Goralski was the only witness called by the Union. His evidence was that he was suspicious that the Employer was somehow involved in the application, but was unable to provide any concrete evidence with respect to such involvement.

Relevant Statutory Provisions:

[9] Relevant statutory provisions include s. 3, 5(k), 6 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.*
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> *5 The board may make orders:*
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> *. . .*
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> *(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*

> *(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;*
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> *. . .*
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> *6(1) Subject to subsections (1.1) and (2), 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 must direct a vote to be taken by secret ballot of all employees eligible to vote to determine the question.*
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> *6(1.1) No vote shall be directed pursuant to subsection (1) unless the board is satisfied, on the basis of the evidence submitted in support of the application and the board's investigation in respect of that evidence, that at the time of the application at least 45% of the employees in the appropriate unit support the application.*
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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.*

Analysis and Decision:

[10] In *Matychuk v. Hotel Employees and Restaurant Employees Union, Local 206 and El-Rancho Food & Hospitality Partnership o/a KFC/Taco Bell*, [2004] Sask. L.R.B.R. 5, LRB File No. 242-03, 2004 CanLII 65622 (SK L.R.B.), the Board approved of the observation that it must be vigilant with respect to the issue of employer influence as referred to in s. 9 of the *Act*. In *Wells v. Remai Investment Corporation and United Food and Commercial Workers, Local 1400*, [1996] Sask. L.R.B.R. 194, LRB File No. 305-95, at 197, the Board observed that it is alert to any sign that an application for decertification 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.” However, not every suspicious or questionable act or circumstance will necessarily lead to the conclusion that an application has been made as a result of influence, interference, assistance or intimidation by the Employer. As noted in *Leavitt v. Confederation Flag Inn (1989) Limited and United Food and Commercial Workers, Local 1400*, [1990] Winter Sask. Labour Rep. 64, LRB File No. 225-89 at 66, the conduct must be of a nature and significance that it compromises the ability of the employees to make the choice protected by s. 3 of the *Act*:

> *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 the 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.*

[11] In the present case, there is no substantive evidence for the Board to conclude that there has been any interference such that it compromises the ability of the employees to make the choice protected by s. 3 of the *Act.* Furthermore, it appears that the employees union representatives, the shop stewards, were involved in making the application to the Board.

[10] Employees' s. 3 rights have now been buttressed by the Legislature in the recent amendments to the *Act* and require that the Board “must” order a secret vote when the support threshold of 45% is reached. This threshold applies equally to certification applications and decertification applications.

[11] In the case before the Board there is no direct evidence of Employer involvement, influence or intimidation with the application. Therefore, the Board must determine whether there is evidence from which it can draw an inference that the Employer has been involved with the application or has interfered with, intimidated, influenced or encouraged the application being made to an extent that the true wishes of the employees should not be determined by a vote as required by s. 6(1). In *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, 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.*

[12] Based on the evidence provided by the Union there is nothing in the employees reasons for bringing the application, nor is there any suspicious or unusual circumstances which would allow the Board to draw any inference that there was Employer involvement with the application. There was evidence of long outstanding grievances brought forward by the employees which were not adequately addressed by the Union. As Mr. Roset put it in his closing remarks, Mr. Goralski's coming to the mine site in December and trying to meet with the Employees at that time was "too little, too late."

[12] An Order directing a vote with respect to the rescission application to be conducted by mail in ballot is hereby directed.

DATED at Regina, Saskatchewan, this **22nd** day of **January, 2009.**

LABOUR RELATIONS BOARD

Kenneth G. Love Q.C.,
Chairperson