

**Labour Relations Board
Saskatchewan**

**SASKATOON REGIONAL HEALTH AUTHORITY, Applicant v. SERVICE
EMPLOYEES' INTERNATIONAL UNION, LOCAL 333, Respondent**

LRB File No. 296-04; January 12, 2009

Chairperson, James Seibel; Members: Gerry Caudle and Joan White

For the Applicant: Everett Van Olst
For the Respondent: Drew Plaxton

Reference of Dispute – bargaining unit – parties ask Board to determine bargaining unit assignment of security site supervisors.

Evidence – employer failed to provide first person evidence with respect to core issue and provided no credible reason for failing to do so – Board finds that the Employer failed to meet the evidentiary onus – Board dismisses application

The Trade Union Act, ss. 11(1)(k) and 24.

REASONS FOR DECISION

Background:

[1] Service Employees' International Union, Local 333 (the "Union") is the certified bargaining agent for a unit of employees of the Saskatoon Regional Health Authority (the "Employer") including security personnel. The Employer applied to amend the certification Order to exclude three security "site supervisors", one at each of St. Paul's Hospital, City Hospital and Royal University Hospital. The single "security manager" is out-of-scope of the bargaining unit.

[2] The application was made outside of the "open period" mandated in s. 11(1)(k) of *The Trade Union Act*, R.S.S. 1978, c. T-17, (the "*Act*"), but the Union agreed with the Employer that the application could be heard as a reference of dispute under s. 24 of the *Act*. The Union also advised that it could agree to one "assistant security manager" position being out-of-scope.

[3] The three incumbents in the disputed classification were all originally hired pursuant to job postings under the collective agreement. However, several

grievances were filed as a result of awarding the positions to the incumbents, largely occasioned by the fact that two of them were hired "off the street." According to counsel for the Employer, Evert Van Olst, the positions were originally posted and filled as in-scope in 2002 in error. He said that the duties of the incumbents as they are presently performed would mandate that the site supervisor position be out-of-scope.

Evidence:

[4] One witness, Karen Newman, was called to testify on behalf of the Employer. Ms. Newman was the Employer's Director of Human Resources and Security. Neither the security manager, a Mr. Elliott, nor any of the three incumbents in the disputed site supervisor classification were called to testify. The Union did not call any evidence.

[5] Ms. Newman's testimony included, *inter alia*, the history of the organization of security at the three hospitals and the present and former position descriptions. She also purported to describe certain of the day-to-day job functions and activities of the disputed site supervisors, and opined that they were in a conflict situation with the security guards in the bargaining unit.

Decision:

[6] The Board has considered the testimony of Ms. Newman. However, none of it is first-person evidence: it is entirely hearsay, presumption, speculation and extrapolation. None of the three incumbent site supervisors, nor the security manager to whom they report, were called to testify. No sufficient reason was provided for the absence of their testimony. Mr. Van Olst simply stated that because one of the three site supervisors did not support the Employer's application and supported the Union's position, none of them were called to testify; he advanced this as the reason why none of them were called to testify. No reason was advanced for the absence of the testimony of their immediate supervisor. These are the persons who must most reasonably be able to testify from personal knowledge as to the actual duties, responsibilities and functions of the incumbents in the disputed positions.

[7] We cannot accept the hearsay and speculative testimony of Ms. Newman as evidence with respect to the core issue to be decided, *vis a vis*, whether the actual

job activities and functions of the incumbents are such that the position they occupy should properly be out of scope of the bargaining unit. In all of the circumstances, we have made the inference, in the absence of sufficient reason as to why they were not called to testify, that the testimony of the incumbent site supervisors and the security manager would not have supported but rather would have harmed the Employer's case. Accordingly, there is no evidence bearing on the critical issue to be decided. We find that the Employer has not met the evidentiary onus required to succeed in this kind of application. In such circumstances, it is not appropriate to make a provisional order.

[8] Therefore, the application is dismissed.

DATED at Saskatoon, Saskatchewan, this **12th** day of **January, 2009**.

LABOUR RELATIONS BOARD

James Seibel,
Chairperson