

**The Labour Relations Board  
Saskatchewan**

**TEAMSTERS, LOCAL UNION NO. 395, Applicant v. CAL-GAS INC., Respondent**

LRB File No. 135-10; October 18, 2010

Chairperson, Kenneth G. Love, Q.C.; Members: Gloria Cymbalisty and Ken Ahl

For the Applicant Union:

Rick Engel, Q.C.

For the Respondent Employer:

Meghan McCreary

**Geographic Scope of Unit – Union applied for province-wide unit – Employer argues that geographic unit defined by municipal boundaries more appropriate – Board finds on facts of case that province-wide unit appropriate.**

**Appropriate Unit – Geographic scope of unit – Board discusses factors to be considered regarding geographic scope of unit.**

***The Trade Union Act, ss. 5.(a), (b) and (c).***

**REASONS FOR DECISION**

**Background:**

**[1] Kenneth G. Love, Q.C., Chairperson:** Teamsters, Local Union 395, (the “Union”) applied to be certified as the bargaining agent for a unit of employees of Cal-Gas Inc. (the “Employer”) on August 30, 2010. The application was for a unit of employees described as follows:

*All employees operating propane delivery trucks and/or picker trucks within the Province of Saskatchewan, excluding the local Managers and any other Employees above the rank of manager.*

**[2]** In its Reply to the application, the Employer claimed that it was subject to the jurisdiction of the Canada Industrial Relations Board arguing that it was a federally-regulated employer subject to the provisions of *The Canada Labour Code*<sup>1</sup>. However, that objection was withdrawn at the hearing.

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<sup>1</sup> R.S.C. 1985, c. L-2

[3] The Employer also objected to the geographic scope of the unit arguing that a municipality based unit was preferable to the province-wide unit requested by the Union. The Employer, in its Reply, proposed the following unit:

*All employees operating propane delivery trucks and/or picker trucks in the Town of Carlyle, the Town of Kerrobert and the Town of Maidstone, excluding managers and any other employees above the rank of manager.*

[4] The only issue before the Board was the appropriate geographic scope of the unit.

**Facts:**

[5] The Board heard evidence from only one witness, Mr. John Sereda, the President and Chief Executive Officer of the Employer. He testified to having 24 to 25 years of experience in the propane industry (which was the business in which the Employer was engaged). He had worked for 17 years with Inner-City Gas in Winnipeg before joining the Employer some eight (8) years ago.

[6] The Employer operates its retail propane business in British Columbia, Alberta, Saskatchewan, Manitoba and northern Ontario. It has 22 locations across Canada, three (3) of which are in Saskatchewan. The businesses in Saskatchewan are operated out of the Towns of Maidstone, Kerrobert and Carlyle. Its business is supply and transport of propane principally to oil and gas producers in Saskatchewan.

[7] In Maidstone and Kerrobert, the Employer stores propane in tanks at a facility which it owns in those towns. Propane for those facilities is trucked in from propane suppliers by drivers who are not the subject of this application. This application is for drivers who take on supplies of propane and deliver it to customers of the Employer in the area surrounding the towns in which it operates.

[8] In Carlyle, the situation is somewhat different, insofar as the Employer is able to access propane from two (2) nearby gas plants. In Carlyle, employees pick up supplies of propane at one of these two (2) gas plants and then deliver it to customers in the surrounding area.

**[9]** In all cases, the service delivery area is determined by the economics of delivering the propane. Current pricing restrictions are one factor that makes it uneconomical to deliver propane much further than 150 - 200 km from the towns from which the Employer operates. Another limiting factor is the work schedules of the employees of the company who typically work eight (8) hour days in Maidstone and Carlyle and may work either eight (8) or ten (10) hours in Kerrobert.

**[10]** There is no fixed delivery route for the employees who deliver the propane to the customers. While many customers are on a regular schedule for delivery, more typically deliveries are determined by the weather and demand for heating. In some instances, when demand is particularly high, employees may work overtime to fill orders.

**[11]** While the Employer has a facility in Lloydminster, Alberta, which is nearby to Kerrobert and Maidstone, it would be unusual for deliveries to customers in the areas served by the Saskatchewan operations to be serviced out of Lloydminster. Mr. Sereda testified that that had happened in times of extreme demand, but was highly unusual as their accounting system did not have provision for that event.

**[12]** The Employer utilizes two (2) types of truck units in its business. The first is a regular truck with a tank. The tank is filled with propane and is offloaded at a customer site. The second form of truck unit is a picker unit which is a truck with a crane attached that is used to load customer's tanks full of propane, transport them to the customer's site, offload the filled tank, load the empty tank, and return the empty tank to the Employer's yard. All employees, provided they are properly trained, may operate either the regular tank truck or the picker truck.

**[13]** Employees at all locations are paid at the same rate based on their years of service. In addition, the company pays a retainer bonus. Wage rates are consistent in both Alberta and Saskatchewan.

**[14]** Mr. Sereda testified that the Employer at one time had looked at the possibility of opening another location in Saskatchewan in Shaunavon. He testified, however, that the Employer was unable to find a sufficient number of customers to establish this location. In cross examination from counsel for the Union, he advised that it was not the amount of time it took to

set up locations, but rather the necessity to have a sufficient customer base to service that was the determinative factor.

**Relevant statutory provision:**

[15] Relevant statutory provisions of the *Act* provide as follows:

5 *The board may make orders:*

*(a) determining whether the appropriate unit of employees for the purpose of bargaining collectively shall be an employer unit, craft unit, plant unit or a subdivision thereof or some other unit;*

*(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;*

*(c) requiring an employer or a trade union representing the majority of employees in an appropriate unit to bargain collectively;*

**Employer's arguments:**

[16] The Employer argued that the Board's traditional practice was to confine the geographic scope of a collective bargaining unit to the facilities that the Union claims to represent<sup>2</sup>. The Employer also argued that the certification Order should not ignore the scope of the Employer's operation.<sup>3</sup> Furthermore, it argued that the Board has repeatedly affirmed that certification Orders should be restricted to relevant municipal boundaries.<sup>4</sup>

[17] The Employer also argued that the rationale for the Board restricting the geographic scope of a bargaining unit was to ensure that any future employees would have the right to select a bargaining agent of their own choosing.<sup>5</sup> Its argument was that a province-wide bargaining unit should only be sanctioned when it represents the only way to ensure that the rights of employees to engage in collective bargaining are not defeated.

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<sup>2</sup> *Impact Products v. United Steelworkers of America*, [1996] Sask. L.R.B.R. 766, LRB File No. 180-96

<sup>3</sup> *United Food and Commercial Workers, Local 1400 v. Burns Philp Food Limited*, [1993] 2nd Quarter, Sask. Labour Rep. 162, LRB File No. 120-93

<sup>4</sup> *United Steelworkers of America, Local 5917 v. Doepker Industries Ltd.*, [2000] Sask. L.R.B.R. 290, LRB File No. 041-00; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Starbucks Coffee Canada, Inc.*, [2006] Sask. L.R.B.R. 11, LRB File No. 177-05

**Union's arguments:**

**[18]** The Union agreed that the Board's policy in restricting the geographic scope of bargaining units was to balance the rights of future employees to choose a bargaining agent of their choice versus the industrial stability which results from larger more inclusive bargaining units. It argued that there was a broad public policy interest in the creation of larger more stable bargaining units, which might at times, conflict with the rights of future employees to choose a bargaining agent.

**[19]** The Union argued that the Board makes exceptions from its usual policy to favour province-wide certifications. It pointed to the construction industry which operates on a province-wide (or often on a one half province-wide) system, as well as the film industry which was generally certified on a province wide basis. The Union argued that the mobility of the labour in these industries was the common denominator to the grant of an exceptional province-wide unit.

**[20]** The Union argued that this unit did not have easily definable boundaries, insofar as the deliveries, while centred in the three municipalities, were dependent upon customer demand and economics for the distance drivers would drive to service the customers of the Employer.

**[21]** The Union also argued that the evidence showed that, while there was a possibility of expansion in the province, the evidence of Mr. Sereda tended to show that any expansion was unlikely. Therefore, it argued, the Board need not protect any future rights of employees.

**[22]** It also argued that the trucking industry was like the construction industry insofar as movement of employees and work sites was relatively easy and that the Board should consider the trucking industry to be an exceptional industry to which a province-wide certification could be applied. In support of this statement, the Union filed copies of various certifications granted by the Board to the Union on a province-wide basis.

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<sup>5</sup> *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Raider Industries Inc.*, [1996] Sask. L.R.B.R. 27, LRB File No. 274-95 & 275-95

**Analysis and Decision:**

[23] For the reasons which follow, the Board agrees that a province-wide unit is appropriate in this case. However, this decision should not be considered as establishing an ongoing exception for certifications in the trucking industry. Determination of the appropriate scope (in geographic terms) for a bargaining unit is within the Board's discretion and will be determined by the Board based upon the facts in each case.

[24] In the cases cited by the Employer, the geographic scope determinate was the location of a retail facility, an industrial plant, or other facility within a municipality. In those cases, when the union did not claim to represent any employees outside the municipal boundaries, it was logical for the Board to restrict the geographic scope of the proposed bargaining unit to the boundaries of that municipality. This allowed the Board to protect the rights of other employees who might be engaged by the employer at another plant (even one under active consideration) such as was the case in *Raider Industries Inc.*<sup>6</sup>.

[25] In the present case, the facts are much different. The drivers operate in a loosely defined area surrounding the Towns of Maidstone, Kerrobert and Carlyle. Expansion is not contemplated into other areas of the province. The evidence was that the proposed expansion in Shaunavon was found to be uneconomic and did not proceed. Furthermore, Mr. Sereda testified that future expansion would probably occur through independent dealers to whom they would supply propane and who would then obtain customers and deliver propane to those customers. From that, the Board has concluded that the expansion of the retail operations of the Employer within the Province of Saskatchewan is not likely.

[26] Rather than trying to define the ill-defined area into which the employees service customers, the Board feels that it is more appropriate to define the bargaining unit with respect to the province as a whole. This will lead to a more stable bargaining unit. Furthermore, it will permit the Employer to relocate its facilities within the Province as necessary or desirable to service its customer base without the necessity of the parties applying to the Board for amendments to the certification Order.

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<sup>6</sup> *Supra* at note 5

[27] Admittedly, the rights of future employees in different locations may be compromised as a result of this province-wide bargaining unit. However, this is not a case, like that which was faced by the Board in *The North West Company L.P. and Tora Regina (Tower) Limited o/a Giant Tiger v. United Food and Commercial Workers, Local 1400*<sup>7</sup>, where a new retail location was opened by the Employer while a decision of the Board on a certification application was outstanding. Nor has the evidence disclosed any likelihood that any future expansion in the province requires the Board to ensure the rights of those employees are protected.

[28] A certification Order will issue in the following terms:

*All employees operating propane delivery trucks and/or picker trucks within the Province of Saskatchewan, excluding the local Managers and any other employees above the rank of Manager.*

**DATED** at Regina, Saskatchewan, this **18th** day of **October, 2010**.

**LABOUR RELATIONS BOARD**

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Kenneth G. Love, Q.C.  
Chairperson

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<sup>7</sup> [2010] CANLII 1128, LRB File No. 026-04