

**The Labour Relations Board
Saskatchewan**

**PRAIRIE NORTH REGIONAL HEALTH AUTHORITY, Applicant v. CANADIAN UNION OF
PUBLIC EMPLOYEES, LOCAL 5111, Respondent**

LRB File No. 020-09; February 14, 2011

Chairperson, Kenneth G. Love, Q.C.; Members: Clare Gitzel and Gerry Caudle

For the Applicant: Mr. Michael Phillips
For the Respondent: Mr. Will Bauer

Provisional Determination – Employer and Union request Board to consider whether two newly created positions should be within scope of bargaining unit.

Board considers provisions of s. 2(i)(a) and (b) and Board jurisprudence respecting exclusion of proposed managerial positions.

Board determines that facts of case support a provisional Order excluding the proposed positions from the bargaining unit pursuant to s. 5.2 of the Act.

The Trade Union Act, ss. 2(f), 5(k), 5(m) and 5.2.

REASONS FOR DECISION

Background:

[1] Kenneth G. Love, Chairperson: On March 9, 2009, the Prairie North Regional Health Authority (the “Applicant”) applied for an amendment to an existing certification Order made by the Board on April 4, 2001. That application was outside of the open period provided for in Section 5(k) of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the “Act”).

[2] From the date of the application, the parties continued to negotiate with respect to the various positions which were in dispute between them as to their inclusion or exclusion from the bargaining unit. As a result of those discussions, the parties jointly agreed at the opening of the hearing of this matter on December 13, 2010, that the positions listed on Appendix “A” to this decision are to be excluded from the bargaining unit. Furthermore, the parties agreed that the proper Employer to be named in the amended certification Order was the Applicant in these proceedings. Subject to the decision set forth below, with respect to the remaining position in

respect of which the parties could not agree, the certification Order will be amended in accordance with this agreement in accordance with s. 5(j) of the *Act*.

[3] The parties agreed that the Board should consider this application as a provisional determination in accordance with the provisions of ss. 5(m) and 5.2 of the *Act* as to whether two (2) newly created positions of Manager of Admitting in the Lloydminster Hospital (“Lloydminster”) and the Battlefords Union Hospital (“Battlefords”) should be within or outside of the scope of the bargaining unit.

Facts:

[4] The Applicant is the Regional Health Authority responsible for the delivery of health services in the north west portion of Saskatchewan, which area includes the cities of Lloydminster and North Battleford. Prairie North was created by the amalgamation of The Battlefords Health District, the Lloydminster Health District, the Northwest Health District and the Twin Rivers Health District pursuant to section 13(10) of *The Regional Health Services Act*¹.

[5] The Respondent, the Canadian Union of Public Employees, Local 511, (the “Union”) is certified as the bargaining agent for employees of the Applicant.

[6] The Admitting Departments in Lloydminster and Battlefords are presently supervised by Ms. Sandra Lauinger and Ms. Shirley McKay, respectively. Both are employed as Office Co-ordinators, a position which is within the scope of the bargaining unit. Ms. Lauinger reports to Ms. Alice Robinson, Director of Strategic Health Information for Prairie North. Ms. McKay reports to the Director of Care at Battlefords.

[7] The Admitting Departments of both Lloydminster and Battlefords work closely with the Health Records Departments in each of those facilities. They work together with respect to development and implementation of processes for the collection, management, use and disclosure of personal information and personal health information. The Health Records Departments in Lloydminster and Battlefords are headed by Managers who are excluded from the scope of the bargaining unit.

¹ R.S.S. 1978, c. R-8.2

[8] Until some time in 2005, both the Health Records and Admitting Departments in Lloydminster were managed by a single Manager. Following the departure of that Manager, the Applicant was unable to find someone who could serve as Manager of both the Health Records and Admitting Departments. As a result, responsibility for management of the two departments was divided between a Health Records Manager for the Health Records Department and Ms. Lauinger who assumed a supervisory role in the Admitting Department. As noted above, Ms. Lauinger reports to Ms. Alice Robinson, Director of Strategic Health Information for Prairie North.

[9] In Battlefords, the Health Records Department and the Admitting Department was, until some time in 2002, managed by a single Manager. When that single Manager transferred out of that position in 2002, the Applicant hired a Health Records Manager to oversee the Health records and Ms. McKay assumed responsibility for the supervision of the Admitting Department.

[10] Ms. Robinson, to whom Ms. Lauinger reports, maintains an office in Lloydminster, but is required by her position to travel frequently throughout the Health Region. In her absence, there is no day to day managerial presence in Lloydminster.

[11] Ms. McKay reports to the Director of Care at Battlefords. The Director of Care is responsible for the overall management and direction of employees engaged in providing direct patient care, including registered nurses, licensed practical nurses, pharmacists, and pharmacy technicians. Because of this broad scope of responsibility, the Director of Care has limited time to devote to the management of the Admitting Department in Battlefords.

[12] Prairie North has proposed in 2008 to create two new positions, one at each of Lloydminster and Battlefords who would directly manage the Admitting Department. These positions were titled **Manager of Admitting/Switchboard Services (Admitting)**. Since that date the Applicant and the Union have negotiated with respect to whether or not these positions should be excluded from the bargaining unit in accordance with Article 3.01 of their Collective Agreement, but have been unable to agree on their inclusion or exclusion from the bargaining unit.

[13] The Applicant called four (4) witnesses, Tracie Nielsen, the Director of Human Resources for Prairie North, Alice Robinson, the Director of Health Information Services, Sandra

Lauinger, the current Supervisor in Lloydminster, and Shirley McKay, the current Supervisor in Battlefords.

[14] Ms. Nielsen provided the Board with copies of the job descriptions for the newly created positions. Those job descriptions provide, in part, as follows:

NATURE AND SCOPE

- *Both positions would now report to the same person, being the Director of Health Information & Performance Services.*
- *The incumbent was to participate in local and regional management committees...*
- *This position would be "responsible for hiring, discipline and terminating personnel, and designing the organizational structure within the Registration department".*

SPECIFIC ACCOUNTABILITIES

- *Ensures the achievement of the Department's objectives through the management, hiring, training, motivating, evaluating and disciplining of staff.*
- *Ensures the quality of services and adherence to standards and practices through the completion of quality management activities.*

[15] Ms. Nielsen testified that up until 2004, one out of scope Manager was responsible for both the Lloydminster and Battlefords Admitting Departments, but that Manager left in 2004 because it was too much for one person to manage.

[16] She testified that the current supervisors do not have responsibility for hiring, firing or discipline of employees. This, she testified, presents problems when the supervisors have to wait to obtain approvals from their Managers who have little time to devote to those activities.

[17] She acknowledged in her testimony that it was likely that the current supervisors would be promoted into the new positions.

[18] Ms. Robinson testified concerning her current supervision of the Admitting Department in Lloydminster. She acknowledged in cross examination that the current supervisor does perform some management work at present.

[19] The current supervisors, Ms. Lauinger and Ms. McKay also testified concerning their current job activities as supervisors. They described the use and training necessary to utilize the electronic patient registration system ("WINCIS") which was increasingly being expanded to other areas of the hospital as the backbone for the patient record keeping in the Health Region.

[20] Ms. Lauinger supervises five (5) full time and four (4) part time staff. Ms. McKay supervises seven (7) full time staff and three (3) part time staff. Both acknowledged that in their current position that, while they had involvement in the hiring process, they did not independently hire staff, nor did they discipline staff.

[21] The Union called two witnesses. Mr. Brian Manegre, the President of Local 5111 and Ms. Denise Fortin, a Vice-President of the Union and a relief part-time employee in the admitting department in Lloydminster.

[22] Mr. Manegre testified with respect to discussions between the Union and Ms. Nielsen concerning the position. In the final result, the Union advised Ms. Nielsen by letter dated January 9, 2009 that they would not agree to the proposed positions being "out of scope".

[23] Ms. Fortin testified concerning the current operations within the Lloydminster Admitting Department where she worked "a few shifts per month".

Relevant statutory provision:

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

2 *In this Act:*

(f) *"employee" means:*

(i) *a person in the employ of an employer except:*

(A) a person whose primary responsibility is to actually exercise authority and actually perform functions that are of a managerial character; or

(B) a person who is regularly acting in a confidential capacity with respect to the industrial relations of his or her employer;

...

5 *The board may make orders:*

(k) *rescinding or amending an order or decision of the board made under clause (a), (b) or (c) where:*

(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 that a motion, application, appeal or other proceeding in respect of or arising out of the order or decision is pending in any court;

...

(m) *subject to section 5.2, determining for the purposes of this Act whether any person is or may become an employee;*

...

5.2(1) *On an application pursuant to clause 5(m), the board may make a provisional determination before the person who is the subject of the application is actually performing the duties of the position in question.*

(2) *A provisional determination made pursuant to subsection (1) becomes a final determination after the expiry of one year from the day on which the provisional determination is made unless, before that period expires, the employer or the trade union applies to the board for a variation of the determination.*

Summary of Employer's arguments:

[25] Mr. Michael Phillips, counsel for the Applicant, argued that the Board must be careful to look at the position being created, not the current position or the person currently occupying the position. He stressed that the important consideration should be not what the person is currently doing, but what they will be asked to do in the new position.

[26] Counsel for the Applicant argued that the proposed positions included the ability to hire, fire, and discipline employees, something which the current supervisors could not do. It would allow person in the new position to implement decisions made provincially concerning the

WINCIS system. Furthermore, Mr. Phillips argued, the proposed position would permit the department to engage in further automation; something which, he argued, an in scope position would be reluctant to engage since it may result in position losses.

[27] Mr. Phillips argued that the position, albeit overseeing a fairly small department, nevertheless would have the ability to liaise with other front line Managers and would have the “expected authority” to organize and manage the department. He noted, as well, that the department had historically had a front line Manager.

[28] Mr. Phillips argued further that the Employer needed to simplify the reporting structure which didn’t work as presently constituted. He noted that, the Managers to whom the current supervisors report, are too busy to adequately manage the departments.

[29] Mr. Phillips has also filed a written argument, which we have reviewed and have found helpful, along with a Book of Authorities, which he relied upon.

Summary of Union’s arguments:

[30] Mr. Will Bauer, counsel for the Respondent, also filed a Book of Authorities which we have reviewed. He argued that the Board should focus on the current responsibilities, not the proposed responsibilities in reaching its determination. Mr. Bauer argued that if the current incumbents are promoted to the new positions then they are *ipso facto* the same.

[31] He argued that the “managerial responsibilities” outlined in the job descriptions were not “primary” responsibilities. The number of employees under management was small. The Employer was a sophisticated employer with a Human Resources department which would assist, if not perform, much of the hiring, firing and discipline required.

Analysis and Decision:

[32] The Board recently considered an application under clause 5(m) and section 5.2 in *Canadian Union of Public Employees, Local 4923 v. Saskatchewan Society for Prevention of Cruelty to Animals (Saskatchewan SPCA)*². That decision discussed and considered the factors which the Board will consider in making a decision on these two (2) sections of the *Act*.

² LRB File No. 198-08, Reasons for Decision dated April 20, 2009.

[33] At paragraph [46], the Board summarizes as follows:

The primary purpose of excluding persons from the bargaining unit on the basis of the managerial exclusion is to ensure that persons who can affect the economic lives of other employees are not placed in a conflict of interest by including them in a bargaining unit.

[34] As noted in *Re: University of Saskatchewan*³ the determination of whether a position should be excluded is a factual one. The onus of proving that the position sought to be excluded falls upon the person seeking that exclusion.⁴

[35] The Board is satisfied that the Applicant has satisfied the onus of proving the position of Manager, Registration/Switchboard Services (Admitting) should be excluded from the bargaining unit on a provisional basis. The primary responsibilities of these positions are to manage the admitting/Switchboard Reception department, which duties clearly include the power to hire, fire, and discipline employees. To include these Managers within the bargaining unit would place them in conflict with their managerial duties.

[36] The facts in this case show that the incumbent in this position will be expected to perform duties of a management character as his/her primary responsibility. Within the organizational structure, the position reports directly to Ms. Robinson as do other Managers within the Health Region. Because of the delegation of management functions, including the power to hire, fire and discipline, to these new positions, the effectiveness of the management of this department will be enhanced and presumably less time will be necessary from Ms. Robinson with respect to the “day to day” management of the department. Furthermore, the important work of implementation and ongoing support for the WINCIS system can be facilitated by the new management positions.

[37] The evidence supported an expanding and increasingly important role for the WINCIS system within the Health Region and throughout the province. The importance of keeping health records current and accessible in this digital age cannot, we think, be underestimated.

³ *Op Cit*

⁴ *Canadian Union of Public Employees, Local 4777 v. Prince Albert Parkland Regional Health Authority*, 2009 CanLII 38609 (SK L.R.B.) LRB File No. 011-09

[38] However, that is not to say that the Union has not properly assessed the proper role and authority granted to these positions under the proposed job descriptions. The actual functioning of these positions within the Health Region structure will be the final test of the appropriateness of the exclusion. Accordingly it is appropriate to make the Order excluding these positions provisional in accordance with section 5.2 of the *Act*.

[39] An appropriate Order will follow these Reasons, which Order will also incorporate those positions agreed to by the parties as noted above. To insure that the Order is accurate with respect to both the name of the Union and the Employer, the Board Registrar will consult with the parties prior to the actual issuance of the Order.

DATED at Regina, Saskatchewan, this **14th** day of **February, 2011**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson