

**The Labour Relations Board  
Saskatchewan**

**RURAL MUNICIPALITY OF BLAINE LAKE NO. 434, Applicant v. INTERNATIONAL UNION OF OPERATING ENGINEERS HOISTING & PORTABLE & STATIONARY, LOCAL 870, Respondent**

LRB File No. 141-11; December 1, 2011

Chairperson, Kenneth G. Love, Q.C.; Members: Shawna Colpitts and Don Ewart

For the Applicant Employer: Kevin Wilson, Q.C.  
For the Respondent Union: Marcus Davies

**Objection to the conduct of a vote – Employer objects to conduct of the vote conducted by Board Agent by registered mail – Employer originally advised Board that there were 4 employees in the unit applied for on certification.**

**Objection to conduct of a vote – Employer argues that on ballot which arrived late in mail should be counted – Argues *The Interpretation Act* extends time for delivery of ballot due to Board’s office being closed for holiday on the date ballots to be received and on following Monday.**

**Employer argues that additional employees should have been entitled to vote – one employee absent from workplace due to medical absence – another part-time employee working in office overlooked by employer when advising Board of employees covered by unit applied for by Union.**

**Board notes agreement of parties that 4<sup>th</sup> ballot received late should have been counted – ballot counted and determined to be in favour of Union representation – Parties agree that employee who returned to work should be within unit – Employer presents evidence, accepted by Union that part-time employee should also be in the bargaining unit.**

**REASONS FOR DECISION**

**Background:**

[1] This application by the Applicant Employer deals with an objection to the vote conducted by the Board on LRB File No. 112-11, which file was an application for certification by the International Union of Operating Engineers Hoisting & Portable & Stationary, Local 870, (the “Respondent Union”), for a unit of employees employed by the Rural Municipality of Blaine Lake, No. 434 (the “Applicant Employer”) described as follows:

*All employees except Management, Secretary-Treasurer, Public Works Superintendent, Planners and Councilors.*

[2] In its certification application, the Respondent Union claimed there were approximately four (4) employees in the proposed bargaining unit.

[3] In its Reply, the Applicant Employer did not dispute the number of employees in the proposed unit, but noted that the proper description for "Secretary-Treasurer" should be "Administrator" and also denied that councilors were employees.

[4] The Executive Officer of the Board issued a Direction for Vote which named Mr. Fred Bayer as the Board Agent for the purposes of conducting the vote. In accordance with the Direction for Vote, Mr. Bayer contacted both the Applicant Employer and the Respondent Union to determine the names of those employees eligible to vote in respect of the application for certification. Both parties agreed that there were four (4) employees eligible to vote.

[5] A vote was conducted by registered mail. Three (3) ballots were received by the Board prior to the date set for the return of ballots, which was July 29, 2011. One (1) ballot was received on August 2, 2011, which was after the date set for return of the ballots.

[6] A counting of the ballots was conducted by the Board by telephone conference, with scrutineers present for both parties by telephone. The parties agreed that only the three (3) votes received prior to July 29, 2011 should be counted. The fourth ballot was set aside, unopened. The result of that vote count was three (3) votes in favour of the Respondent Union, none opposed. The Board Agent's Report noted that there were four (4) ballots received, three (3) in favour and one (1) spoiled.

[7] Shortly after the voting results were reported to the Board, but not within the time prescribed in the Regulations,<sup>1</sup> counsel for the Applicant Employer contacted the Board objecting to the conduct of the vote on the grounds:

- (a) that the fourth vote should have been counted because the Board offices were closed on July 29, 2011 and not reopened until August 2,

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<sup>1</sup> S. 29(1) of the Regulations and Forms, Labour Relations Board, Saskatchewan Regulations 163/72 as amended

2011 due to a floating holiday afforded to Saskatchewan Government Employees, and the Civic Holiday on August 1, 2011;

- (b) that Section 24 of *The Interpretation Act*<sup>2</sup> extended the time for return of the ballots until August 2, 2011 being the first date following July 29, 2011, when the Board's offices were open for business; and
- (b) that there were additional employees (2) in the proposed unit who should have been afforded that opportunity to vote.

**[8]** The Chairperson of the Board, pursuant to s. 34 of the Board's Regulations conducted a hearing by conference call and, by written Reasons for Decision dated August 26, 2011<sup>3</sup> extended the time for filing a notice of objection to the vote. This application by the Applicant Employer deals with that objection to the vote conducted by the Board on LRB File No. 112-11.

**Facts:**

**[9]** A hearing with respect to the objection to the conduct of the vote was held in Saskatoon, Saskatchewan on November 24, 2011. At that hearing, it was agreed by the parties that the fourth vote should have been counted. That vote was counted in the presence of counsel for both parties. That vote was also in favour of certification to the Respondent Union.

**[10]** Evidence was also presented to the Board through Mr. Eugene Chudskov, the Reeve of the Applicant Employer. Prior to his testimony, the parties agreed that the grader operator, who had recently returned to work following a medical absence, should be within the scope of the bargaining unit. Mr. Chudskov's testimony, therefore, was with respect to an administrative assistant who worked one third of the time for the Applicant Employer. Following Mr. Chudskov's testimony, which was uncontradicted, the Union called no evidence and accepted that this position should be within the scope of the proposed bargaining unit.

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<sup>2</sup>S.S. 1995 c. I-11.2

<sup>3</sup> *supra*, footnote 1, unreported

**Applicant's Argument:**

[11] Mr. Kevin Wilson, counsel for the Applicant Employer argued that, as a result of the inclusion of the two (2) additional employees within the unit, the vote had failed for lack of quorum under Section 8 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "Act"), as there were only three (3) votes originally counted of six (6) eligible employees. He argued that even if the fourth vote was considered, one third of the employees had been disenfranchised from voting.

[12] He argued that, based upon the Board's decision in *Ron Roset v. Unite Here, Union, Local 41*,<sup>4</sup> the proper remedy was that the vote failed and the application for certification should be dismissed.

[13] Alternatively, he argued that because one third of the employees had been disenfranchised, the remedy should be another vote of all affected employees.

**Respondent's Argument:**

[14] Counsel for the Respondent Union argued that the fourth ballot was now properly counted as it had only been excluded by the unique circumstances of a double holiday on the expiry date for the return of the ballots. He argued that with the fourth vote now in favour, that a majority of the employees (4 out of 6) had voted in favour of certification. As a result, he argued, s. 8 did not apply as a majority of employees had, in fact, voted.

[15] Counsel for the Respondent Union also noted that the Applicant Employer had agreed to the original voters list and had not made any objection to the voter's list when posted by the Board Agent. He argued that everything had been done by the Respondent Union in good faith during the conduct of the vote, but that it was now being prejudiced by the delay in obtaining certification, which delay was, he further argued, caused solely by the Applicant Employer.

[16] Counsel also argued that the results of the vote should remain and that the Board's certificate should issue with respect to the six (6) person unit.

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<sup>4</sup> 2009 CanLII 2050 (SK LRB), CLLC para 220-013, LRB File No. 191-08

**Relevant statutory provision:**

[17] Relevant statutory provisions of the *Act* and *the Regulations* are as follows:

**T.U.A.**

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;*

...

8 *In any such vote a majority of the employees eligible to vote shall constitute a quorum and if a majority of those eligible to vote actually vote, the majority of those voting shall determine the trade union that represents the majority of employees for the purpose of bargaining collectively.*

**Regulations**

s. 29(1) *Any trade union or any person directly affected having any objection to the conduct of the vote or to the counting of the vote or to the report shall, within three days after the last date on which such voting took place, file with the secretary a written statement of objection in Form 15 and verified by statutory declaration together with two copies thereof, and no other objections may be argued before the board except by leave of the board.*

(2) *The secretary shall cause all statements of objections and all copies thereof, when filed, to be stamped with the date on which they were received in the office of the board.*

**Analysis and Decision:**

[18] For the reasons which follow, the application is allowed in part. That is, the application is allowed insofar as the counting of the fourth ballot is concerned. However, the application to dismiss the certification application and/or to have another vote conducted is denied.

**[19]** The factual situation here is unique. It is an unusual event when an employer seeks to add employees to a bargaining unit following the conduct of a vote by the Board based upon information supplied by the Employer. The addition of these employees is, in our opinion, intended to increase the number of eligible voters on the certification question and therefore support the Applicant Employer's argument that certain employees have been disenfranchised by the conduct of the vote amongst only four (4) out of six (6) eligible employees.

**[20]** This argument may have been more compelling had the Applicant Employer raised the objection earlier, and had not participated in the establishment of the voter's list at four (4) employees, all of which voted. At no time prior to the conclusion of the vote did anyone on behalf of the Applicant Employer suggest that there were more than four (4) employees in the bargaining unit. That number was suggested by the Respondent Union, confirmed by the Applicant Employer, and again confirmed in the Statement of Employment provided by the Applicant Employer.

**[21]** At the hearing on November 24, 2011, it was agreed by the parties that the fourth ballot was improperly not counted by the Board Agent and the scrutineers. That deficiency was remedied at the hearing and the vote counted. It turned out to be in favour of certification, making the vote of all four (4) employees, who were originally entitled to vote, unanimous.

**[22]** Mathematically, the addition of two (2) additional employees will make no difference to the vote. Even if the two additional employees in the unit vote against certification, the result will be the same. A majority would still exist in favour of certification.

**[23]** We concur with counsel for the Respondent Union that s. 8 of the *Act* does not apply in these circumstances. Of the employees eligible to vote (even including the two (2) newly eligible employees), a majority of the employees have voted (4 out of 6). Those votes are unanimous in favour of the certification.

**[24]** In the circumstances, conducting a vote of the new employees at this stage would be fruitless as their votes can have no impact upon the outcome. Similarly, given the strong level of support in favour of certification from the other employees, it would, we think, impose possible prejudice upon the Respondent Union.

[25] Practically, should these employees determine that they do not wish to be represented by the Respondent Union, they may annually apply to the Board to have the certification rescinded. In the circumstances of this case, we believe this is the preferable course of action to the conduct of a fresh vote after such a lengthy delay having been imposed upon the process.

[26] Having found that the representative vote conducted by the Board's Agent showed majority support for the certification application, the certification applied for in L.R.B. File No. 112-11 shall be granted as follows:

**THE LABOUR RELATIONS BOARD** pursuant to Sections 5(a), (b), and (c) of *The Trade Union Act* **HEREBY ORDERS:**

- (a) That all employees employed by the Rural Municipality of Blaine Lake, No. 434, within the Rural Municipality of Blaine Lake, Saskatchewan, except the Administrator, the Public Works Superintendent and Planners, are an appropriate unit of employees for the purpose of bargaining collectively;
- (b) That the International Union of Operating Engineers Hoisting & Portable & Stationary, Local 870, a trade union within the meaning of *The Trade Union Act*, represents a majority of employees in the appropriate unit of employees set out in paragraph (a);
- (c) The Rural Municipality of Blaine Lake, No. 434, the Employer, to bargain collectively with the trade union set forth in paragraph (b), with respect to the appropriate unit of employees set out in paragraph (a).

**DATED** at Regina, Saskatchewan, this **1st** day of **December, 2011**.

**LABOUR RELATIONS BOARD**

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Kenneth G. Love, Q.C.  
Chairperson