

**LABOUR RELATIONS BOARD  
Saskatchewan**

**A.R.R., Applicant v. SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION and SASKATOON OPEN DOOR SOCIETY INC., Respondents**

LRB File No. 176-10; February 17, 2011

Vice-Chairperson, Steven Schiefner; Members: Brenda Cuthbert and Bruce McDonald

For the Applicant:	Mr. Clifford A. Holm
For the Respondent Union:	Ms. Juliana Saxberg
For the Respondent Employer:	No one appearing.

**Religious exclusion – Test – Applicant seeks exclusion from bargaining unit on religious grounds – Applicant a member of Seventh Day Adventist Church – Union objects to applicant's exclusion on basis that there was insufficient evidence that Applicant's membership in Union would be irreconcilable with her religious beliefs and insufficient evidence that Applicant's objection related to the Divine – Board satisfied that Applicant sincere in her beliefs and that her objections specifically rooted in religious teachings and the interpretation of biblical scripture – Board grants religious exclusion.**

***The Trade Union Act, s. 5(l).***

**REASONS FOR DECISION**

**Background:**

[1] **Steven D. Schiefner, Vice-Chairperson:** The Saskatchewan Government and General Employees' Union (the "Union") is the certified bargaining agent for a unit of employees of the Saskatoon Open Door Society Inc. (the "Employer"). The Applicant applied to the Saskatchewan Labour Relations Board (the "Board") to be excluded from the bargaining unit and relieved of the requirement to paying dues to the Union under the religious beliefs exemption provided for in s. 5(l) of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "*Act*").

[2] The Applicant's application was heard by the Board on February 10, 2011 in Saskatoon. The Applicant testified in support of her application and called Mr. Collin Akre, the Executive Secretary for the Manitoba/Saskatchewan Conference of the

Seventh Day Adventist Church. The Union elected to call no evidence and the Employer did not participate in the proceedings.

**Evidence:**

**[3]** The Applicant was twenty-four (24) years of age and testified that she was a member of the Seventh Day Adventist Church; that she had grown up in an Adventist family, with her father being a pastor in the church; that she had attended Adventist school for most of her schooling, including attendance at an Adventist college in Nebraska, USA, for post-secondary education; and that she had been baptized in the church in 1999. The Applicant described her baptism as a public declaration of her faith in God, her belief in Jesus Christ, and her undertaking to following the teachings of her church. The Applicant testified that she continued to be an active member in the Adventist church.

**[4]** The Applicant testified that she was not sure when she specifically became aware that the teachings of her church precluded membership in trade unions but that it was commonly understood in her family as she grew up. The Applicant explained that, while attending college and starting to think about her career and her future in the workplace, she became more informed as to the role of trade unions in society and to the teachings of her church regarding participation therein. The Applicant testified that, when she first began looking for work, she avoided working in a unionized workplace. However, in September of 2010, she was hired by the Saskatoon Open Door Society Inc. as an “employment counselor”. This position was the first time she had worked for an employer that was certified to a trade union.

**[5]** The Applicant testified that when she was asked to complete a Union membership application, she advised the Employer that she could not do so because of her religious beliefs. The Applicant testified that she was advised by the Employer that membership in the Union was a condition of employment and even if she was not a member of the Union, she would be subject to the wages and other terms and conditions of the Union’s collective agreement with the Employer, as the Employer was not prepared to have separate employment agreements with its employees.

**[6]** The Applicant testified that her mother had previously worked for one or more certified employer(s) and that her mother was the one who advised her of the procedure of making application to the Board for a religious exemption. The Applicant testified that she was aware of and understood the teachings of her church regarding religious liberty, including the church's historical position that its members should not join or financially support labour unions or similar organizations. In particular, the Applicant confirmed that she was aware of the teachings of Ellen G. White, an author in the Adventist church, whom the Applicant described as divinely inspired. The Applicant described her understanding that the Adventist church objected to all trade unions in general and not to any particular trade union. The Applicant described her understanding that the source of the church's objections was found in the teachings of Jesus Christ that everyone be kind to each other, as well as the writings of Ms. White who abnegated participating in trade unions. The Applicant stated her personal desire to following the teachings of her church, including the writings of Ms. White.

**[7]** In cross-examination, the Applicant admitted that part of her concern was that she did not want a trade union speaking on her behalf because of the risk that a trade union might be "*confrontational*" with her employer. The Applicant also confirmed that she did not think it appropriate to participate in strikes or any other action by employees that attempted to force their will upon their employer. The Applicant testified that she had not participated in any proceedings of the Union, nor attended any meetings of the membership since starting to work for the Employer.

**[8]** Mr. Akre confirmed the Applicant was a member of the Adventist church. Mr. Akre testified that the Adventist church, dating back to the original formation of the church in 1860 and the writings of Ms. Ellen G. White, had great concerns with respect to participation in trade unions by members of the church. Mr. Akre also confirmed that in 1972 the North American Division of the Adventist church passed a resolution formally declaring (from the church's perspective "reaffirming") the church's position that members should not join or financially support labour unions or similar organizations. Mr. Akre confirmed that this continues to be the position of the Adventist church and has, for example, been expanded upon by the church in working policy. Mr. Akre tendered a copy of portions of a document entitled "Working Policy (2009-2010 Edition) of the North American Division of the General Conference of the Seventh Day Adventist church. The

portions of this document tendered with the Board dealt with the church's position on religious liberty generally and included policy statements on participation in and financial support for trade unions by members of the Adventist church.

[9] In cross-examination, Mr. Akre admitted that, if the Applicant was forced to join a trade union (and did so), she would not be subject to any sanction or punishment by the Adventist church. Mr. Akre testified that the church took the position that it was a matter of personal choice as to how an individual member follows the teachings of the church.

**Arguments:**

[10] Mr. Holm argued that the Applicant had fully satisfied the requirements of the *Act* with respect to the granting of a religious exemption and asked the Board to grant the Applicant's application.

[11] Ms. Saxberg, on behalf of the Union, argued that the onus was on the Board to conduct a searching inquiry into whether or not the Applicant's beliefs were both sufficiently religiously-based and irreconcilably in conflict with membership in and support for the Union. To which end, Ms. Saxberg relied on the letter decision of this Board in *Kathy Loewen v. Service Employees' International, Local 333 and Saskatoon City Hospital*, [1990] Fall Sask. Labour Rep. 61, LRB File No. 073-90, as standing for the proposition that, for the Applicant to succeed in her s. 5(l) application, the Board must be satisfied that the Applicant believes that her membership in the Union (or any trade union) is irreconcilable with her religious beliefs. To which end, the Union argued that, while the Applicant admitted that being forced to join the Union would present a "very difficult problem" for her, she did not testify that doing so would be "irreconcilable" with her religious beliefs. In this regard, Ms. Saxberg pointed to the evidence of Mr. Akre that the Applicant would not be subject to discipline by her church if she joined the Union. In addition, counsel for the Union also pointed to the following article in the Adventist's church's working paper on religious liberty which Ms. Saxberg argued allowed members of the Adventist church to join a trade union, if force to:

***FL 11 20 Union Membership*** – *Seventh-day Adventist employees in secular workplaces are to follow the dictates of their consciences in matters of labour union membership. They are to avoid unchristian*

*activities and avoid blanket or blind support of partisan political campaigns. Where union membership is required for employment in a given industry or position, and the member elects to remain in said position, he or she should minimize participation, serve in humanitarian projects, and request that his or her union dues be applied to charitable organization.*

**[12]** Ms. Saxberg pointed to the letter decisions of this Board in *Marilou Dohms, Dennis Exner, & Pat G. Milo v. Canadian Union of Public Employees, Local 2399 & Integ Management and Support Services Ltd.*, [1989] Summer Sask. Rep. 49, LRB File Nos. 010-89, 013-89 & 088-89, and *Loewen, supra*, and the decision of this Board in *Jennifer Lohmeyer v. Communication, Energy and Paperworkers' Union of Canada and Saskatchewan Watershed Authority*, [2005] Sask. L.R.B.R. 94, LRB File No. 118-03, as example of where other applicants had failed to satisfied the evidentiary expectations of the Board.

**[13]** Simply put, counsel for the Union argued that the Applicant had not satisfied the evidentiary requirement for an application pursuant to s. 5(l) of the *Act* and asked the Board to dismiss the Applicant's application.

**Relevant statutory provisions:**

**[14]** The relevant provision of *The Trade Union Act*, being s.5(l), provides as follows:

5. *The board may make orders:*

*(l) excluding from an appropriate unit of employees an employee whom the board finds, in its absolute discretion, objects:*

*(i) to joining or belonging to a trade union; or*

*(ii) to paying dues and assessments to a trade union;*

*as a matter of conscience based on religious training or belief during such period that the employee pays:*

*(iii) to a charity mutually agreed upon by the employee and the trade union that represents a majority of employees in the appropriate unit; or*

*(iv) where agreement cannot be reached by these parties, to a charity designated by the board;*

*an amount at least equal to the amount of dues and assessments that a member of that trade union is required to pay to the trade union in respect of such period;*

### **Analysis & Decision:**

[15] The Board exercises a great measure of caution when considering applications for exclusion under s. 5(l) of the *Act*. Firstly, the term “exclusion” is somewhat of a misnomer as conscientious objectors are not “excluded employees” within the meaning normally ascribed to that term by this Board. Generally speaking, employees excluded on the basis of religious belief enjoy the same terms and conditions of employment as do other workers who fall within the scope of the bargaining unit with the exception that they are exempted from the compulsory obligation to join and pay dues to the certified trade union. See: *Canadian Union of Public Employees, Local 1138 v. Regina Pioneer Village Ltd. & Marlene Volk*, [1992] 2<sup>nd</sup> Quarter Sask. Labour Rep. 60, LRB File No. 209-91. Exempted employees are considered to be, or are deemed to be, members of the bargaining unit for most purposes including seniority, bidding on postings, etc. See: *Re: Yorkton Union Hospital*, [1993] 7 W.W.R. 129, CanLII 6637 (Sask. C.A.). Furthermore, exempted employees continue to be responsible for the payment of a sum equivalent to union dues to a mutually agreeable charity as a condition of maintaining exempt status.

[16] Secondly, religious exemptions are an extraordinary exception to the statutory scheme of majority rule, union security and compulsory dues check-off in organized workplaces. Although this Board’s expertise is not in matters of theology, our role is to scrutinize applications by conscientious objectors to ensure that the applicant’s objection (to compulsory participation in a trade union) finds its genesis in his/her religious beliefs; whether those beliefs appear to be genuinely held; and whether the applicant’s beliefs are the motivational source for his/her application to be exempt from the bargaining unit.

[17] As the Board stated in *Mary Ann Enns v. Kindersley Union Hospital and Saskatchewan Union of Nurses*, [1993] 3<sup>rd</sup> Quarter Sask. Labour Rep. 149, LRB File No. 135-93, at 151:

*In providing for exclusion from a bargaining unit on religious grounds, the legislature has acknowledged that, for certain persons, involvement in trade union activity may be inconsistent with strongly held religious beliefs, and has concluded that public*

*policy justified making an exception to the general principle that employees are compelled to conform to the wish of the majority to enjoy trade union representation. In determining whether individual applicants are among those who fall within the scope of the exclusion, labour relations boards must be satisfied that the nature of the objection to trade union involvement which is being put forward is of a genuinely religious nature, and that the possibility of exclusion on religious grounds does not become a means by which employees who object on other grounds are relieved of the consequences of the decision of the majority.*

[18] Of paramount consideration in such cases is our determination of whether the objection to involvement in a trade union asserted by an applicant is genuinely grounded in a religious belief and not simply opposition to trade unions, *per se*. To assist in this determination, the Board utilizes the following criteria set out by the Canada Labour Relations Board in *Barkers v. Teamsters' Union, Local 938*, (1986), 86 C.L.L.C. 16,031, at 14,288, as a lens through which to view applications for religious exemption:

(1) *The applicant must object to all trade unions, not just to a particular trade union.*

*Like the conscientious objector who must be opposed to "any and all wars", the applicant must object to any and all trade unions.*

(2) *The applicant does not have to rely on some specific tenets of a religious sect to base his objections.*

*In the same manner as the British Columbia and Ontario boards, we believe it is not for us to disqualify some convictions because they are personal to the applicant. While it will be easier for the latter to convince the Board that his belief is "religious" when this belief forms part of the dogma of a sect, we believe we would misconstrue section 162(2) if we were to get involved with religious orthodoxy.*

(3) *An objective inquiry must be made into the nature of the applicant's beliefs in the sense that they must relate to the Divine or man's perceived relationship with the Divine, as opposed to man-made institutions. For our purposes, a religious conviction or belief should be construed as the "recognition on the part of man of some higher unseen power as having control of his destiny, and as being entitled to obedience, reverence and worship" (Regina v. Leach, Ex Parte Bergsma, [1965] 2 O.R. 200 (Ont. H.C.J.), page 213). By the way, this test has been used not only in British Columbia but in all the latest cases of the Ontario Board.*

(4) *Finally, the applicant must convince the Board that he is sincere and that he has not rationalized his objections to the union on religious grounds after he was made aware of the provisions of the Code.*

**[19]** In the present case, we are fully satisfied that the Applicant has met the criteria outlined above. Specifically, we are satisfied that the Applicant objects to all trade unions, not just the respondent Union, and does so on the basis of her religious beliefs. In coming to this conclusion, we were satisfied that the Applicant bears no particular ill-will towards trade unions in general or the Union in particular. The evidence demonstrated that the Applicant's convictions pre-dated her involvement with this particular Union and this particular workplace.

**[20]** Furthermore, we note that the Applicant's objection to compulsory inclusion in a trade union is based upon specific tenets of the Adventist church; tenets rooted in interpretation of biblical scripture by the Adventist church; and tenets which this Board has previously recognized as relating to a person's relationship with the Divine (for members of the Seventh Day Adventist church). See: *Sharron Glover v. Saskatchewan Union of Nurses & Gateway Lodge Inc.*, [1993] 1<sup>st</sup> Quarter Sask. Rep. 120, LRB File No. 255-92. We are satisfied that the Applicant personally subscribes to these tenets and that the tenets of the Adventist church are the source of the Applicant's objection to compulsory membership in and payment of dues to the Union. As the Applicant entered the workforce following the completion of her education, she endeavored to avoid working in a unionized workplace but when her career aspirations brought her into the employ of the Employer (where membership in the Union was a condition of her employment), she immediately advised the Employer of her religious beliefs and stated the nature of her objection. Soon thereafter she commenced the within proceedings.

**[21]** Simply put, the Applicant presented herself as a thoughtful person of religious conviction rooted in the theology of her church. We saw nothing in the evidence to suggest that the Applicant's motives in bringing her application were anything other than to avoid a personal conflict with her religious beliefs.

**[22]** Counsel for the Union argued that the evidence did not adequately demonstrate that a sufficiently irreconcilable conflict existed between the Applicant's requirement to obtain membership in the Union and her beliefs. Counsel pointed to the evidence of Mr. Akre that the Applicant would not be punished by her church if she were



compelled to join a trade union as a condition of employment, as well as language in the Adventist's own "Working Policy on Religious Liberty" that counsel interpreted as providing a method of reconciling membership in the Adventist church and compulsory participating in a trade union.

**[23]** In determining a s. 5(l) application, while the Board will examine the consequences for the Applicant of her not being granted the desired exemption, with all due respect, the issue for this Board is not whether or not the Applicant will be punished by her church or whether a loop hole can be found in the church's teachings. To do so asks this Board to evaluate the merits of the Applicant's beliefs; something well beyond our expertise. As indicated, the issue for the Board is whether or not we are satisfied that the Applicant's objection finds its genesis in the tenets of her religious beliefs; whether those beliefs appear to be genuinely held; and whether the Applicant's beliefs are the motivational source for her application to be exempt from the bargaining unit.

**[24]** In our opinion, the evidence demonstrated that participation in a trade union would represent an irrevocable conflict for the Applicant and that her beliefs in this regard were genuinely held and rooted in the theology of her church. During cross-examination, when asked what she would do if she was forced to join the Union, while her words articulated a "*difficult decision*", the change in the Applicant's demeanor, the quivering in her voice, and the expression on her face, spoke volumes of a deeply religious person being forced into an irreconcilable conflict between the teachings of her church and her desire to pursue her chosen profession. In our opinion, the purpose of s. 5(l) of the *Act* is to prevent persons, such as the Applicant, from being placed into that kind of very difficult dilemma.

**[25]** In conclusion, the Board will grant the application. The Applicant shall be excluded from the bargaining unit and the union dues and assessments that otherwise would be payable by her will be forwarded by the Employer to a charity mutually agreed to by the Union and the Applicant. In the event the parties are unable to agree to a charity, the Board will remain seized to determine that issue.

**[26]** During these proceedings, the Board heard evidence involving personal information of the Applicant; information relevant to this Board's analysis and

conclusions. However, because these Reasons for Decision contain personal information of the Applicant, we have elected for privacy reasons to replace the Applicant's name in these Reasons for Decision with the initials "A.R.R."

**DATED** at Regina, Saskatchewan this **17th** day of **February, 2011**.

**LABOUR RELATIONS BOARD**

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Steven D. Schiefner,  
Vice-Chairperson