

The Labour Relations Board Saskatchewan

SASKATCHEWAN INSTITUTE OF APPLIED SCIENCE AND TECHNOLOGY FACULTY ASSOCIATION, Applicant v. SASKATCHEWAN GOVERNMENT and GENERAL EMPLOYEES' UNION, Respondent Union and SASKATCHEWAN INSTITUTE OF APPLIED SCIENCE AND TECHNOLOGY, Respondent Employer

LRB File No.: 106-12; October 30, 2012

Chairperson, Kenneth G. Love Q.C.; Members: Ken Ahl and John McCormick

For the Applicant: Gordon D. Hamilton
For the Respondent Union: Rick Engel and Greg Fingas
For the Respondent Employer: David Stack

Certification – Labour Organization – Board reviews jurisprudence regarding determination that an organization is a “labour organization” as defined in the Act.

Certification - Board reviews whether the organization has a suitable Constitution, which includes collective bargaining on behalf of employees among its purposes. Board reviews whether or not the Constitution has been ratified and adopted by the members of the organization, if the members have then obtained membership in accordance with the provisions of the Constitution, and whether from those members it has elected officers with the authority to engage in collective bargaining and conduct the affairs of the organization.

Certification – Board determines that the Applicant Organization meets the test to be a “labour organization”. Absent any evidence of that organization being “company dominated”, the organization qualifies as a “trade union” and may represent employees for collective bargaining.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love Q.C., Chairperson:** The Saskatchewan Government and General Employees' Association, (the “Respondent Union”) is certified as the bargaining agent for Academic employees of the Saskatchewan Institute of Applied Science And Technology (the “Employer”).

[2] On or about May 30, 2012, the Saskatchewan Institute of Applied Science and Technology Faculty Association (the “Applicant”) made application to the Board for certification of those employees currently represented by the Respondent Union in what is colloquially

termed a “raid”. The Application was made within the “open period” provided for in s. 5(k) of *The Trade Union Act*, R.S.S. 1978, c.T-17, the “Act”.

[3] The Applicant has not been certified by the Board to bargain on behalf of employees pursuant to s. 5(a), (b), and (c) of the *Act*. In its reply to the application, the Respondent Union alleged that the Applicant’s was not a “labour organization” as that term is defined in s. 2(j) of the *Act* and hence could not be a “trade union” as described in s. 2(l) of the *Act*.

[4] A hearing to determine if the Applicant met the definition of “labour organization” in s. 2(j) of the *Act*, and the definition of “trade union” in s. 2(l) of the *Act* was held by the Board on September 17, 2012. At that hearing, the Board heard evidence from the Applicant as more particularly described under the heading “Facts”, which follows, and heard argument from the Applicant and the Respondent Union regarding the matters at issue. Following the hearing, the Board reserved its decision, but later advised the parties that it had reached a determination on the matters in issue, and reconvened to deliver an oral determination, which was that the Applicant met the definition of “labour organization”. Furthermore, by virtue of the fact that there was no evidence adduced to suggest that the Applicant was a “company dominated organization”, that it also met the definition of “trade union”.

[5] The Board, in delivering its oral determination, advised the parties that it would issue written Reasons for its decision. These are those written Reasons.

Facts:

[6] The Board heard evidence from Warren White, the secretary of the Applicant with respect to the formation of the Applicant. He testified that a group of academic employees at the Saskatchewan Institute of Applied Science and Technology (“SIAST”) got together to consider the formation of a union to represent academic employees at SIAST, which employees were currently represented by the Respondent Union. He further testified that he had been part of a group who had tried unsuccessfully to seek certification for academic employees at SIAST in 1988.

[7] Mr. White testified that the group which got together was motivated by a desire to manage their own affairs rather than being a part of a larger trade union. He testified that he

believed that academic employees at SIAST had the necessary skills and expertise to represent their fellow employees.

[8] Mr. White testified that they took advice from other faculty associations in Alberta and British Columbia in respect to the formation and the constitution of the organization, but tailored it to the realities of the Saskatchewan situation, in particular to accommodate the decentralized structure of SIAST.

[9] Mr. White further testified that the small organizing group also did an initial survey among academic employees of SIAST to determine the level of support they might achieve for their new organization. They found sufficient support and determined to proceed. They contacted legal counsel to provide advice; they drafted a Constitution for the organization, and took steps to become a trade union and the collective bargaining agent for the academic employees of SIAST.

[10] A group of eleven (11) academic employees of SIAST met on March 31, 2012. Mr. White acted as the Secretary at that meeting. The Minutes of the meeting disclose that the purpose of the meeting was “to discuss the possibility of setting up an association to be known as “Saskatchewan Institute of Applied Science and Technology (SIAST) Faculty Association“.

[11] The Constitution, which had been drafted, was presented to the meeting and was adopted. Those present were then invited to apply for membership in the Association, which they did. The members of the Association then nominated and elected officers of the Association, with Mr. White being elected as Secretary of the new Association. The meeting then determined to offer membership in the Association to other academic employees at SIAST and obtain support from those employees for an application for certification to this Board.

[12] Mr. White also provided a copy of the Applicant’s Constitution, which had been adopted on March 31, 2012. He drew the Board’s attention to the Mission Statement contained in Article III of the Constitution, which provides as follows:

1. *Mission Statement*

The Saskatchewan Institute of Applied Science and Technology Faculty Association will advance and protect the professional and employment interests

of our members with their employer, the Saskatchewan Institute of Applied Science and Technology, through collective bargaining, and through genuine and fair representation on all workplace issues raised by our members under the provisions of the Saskatchewan Trade Union Act.

[13] Under that same Article, at paragraph 2. b), the Constitution also provides that one of the purposes of the Association is:

b) to act as the negotiating body for academic faculty members in reaching collective agreements with SIAST, including to bargain collectively for or on behalf of the members of the Association within the province of Saskatchewan

[14] Mr. White testified that the Association received no support or assistance from SIAST in its formation or organization. He noted that the Association had found it necessary to file an Unfair Labour Practice application with the Board because it felt that SIAST was treating them differently from other organizations and negatively impacting on the Associations ability to obtain members and seek support for their certification application.

Relevant statutory provision:

[15] Relevant statutory provisions are as follows:

2 *In this Act:*

(e) "company dominated organization" means a labour organization, the formation or administration of which an employer or employer's agent has dominated or interfered with or to which an employer or employer's agent has contributed financial or other support, except as permitted by this Act;

...

(j) "labour organization" means an organization of employees, not necessarily employees of one employer, that has bargaining collectively among its purposes;

...

(l) "trade union" means a labour organization that is not a company dominated organization.

Applicant's arguments:

[16] Counsel for the Applicant filed a written argument with authorities which we have read and found to be of assistance. The Employer argued that the Association had met the legal

requirements to be a “labour organization” as defined in the *Act*. Furthermore, it argued that as there was no evidence that the Association was “company dominated”, that it also met the definition of “trade union” in the *Act*.

[17] Counsel for the Applicant pointed to several previous Board decisions which outlined the formalities involved in the formation of a labour organization which needed to be observed. It relied upon the Board’s decision in *Canadian Staff Union v. Canadian Union of Public Employees*¹, the decision in *Health Sciences Association of Saskatchewan v. University Hospital*², the decision in *Board of Education Administrative Personnel Union v. Board of Education and Regina Collegiate Institute*³, as well as the Board’s decision in *Regina Musicians Association Local 446 AF&M v. Saskatchewan Gaming Corporation*⁴.

[18] The Applicant’s counsel argued that all of the procedural requirements had been properly observed and the Constitution of the Association clearly stated that the Applicant had collective bargaining among its purposes.

Respondent Union’s arguments:

[19] Counsel for the Respondent Union also filed a written Brief and case authorities which we have reviewed and found helpful. Counsel argued that the Board should not find that the Association was properly formed because the Constitution of the Association had been adopted and approved by only a small group of employees, and had not been the subject of discussion or ratification by all of the members of the Applicant.

[20] The Respondent Union argued that the onus of proof fell to the Applicant to prove that it was a “labour organization” that was not a “company dominated organization”. Furthermore, it argued that the Applicant must show that it is a properly constituted entity in accordance with the Board’s decision in *Deer Park Employees Association v. Deer Park School Division #26*⁵ and a decision from the Alberta Board in *United Association of Journeymen and*

¹ [2011] CanLII 6120 (SKLRB), LRB File No. 077-11

² [1965-74] Dec. SLRBR Vol. III, LRB File No. 225-72

³ [1978] June Sask. Labour Reports 44, LRB File No. 380-77

⁴ [1977] Sask. LRBR 273, LRB File No. 273

⁵ [1991] S.L.R.B.D. No. 6

*Apprentices of The Plumbing and Pipefitting Industry of the United States and Canada, Local Union 496 and the Uni-Melt Employees Association and Uni-Melt Ltd.*⁶

Analysis:

[21] The Board has recently reviewed the requirements for an organization to show its *bona fides* to the Board so as to accorded status as a trade union entitled to represent employees pursuant to s. 3 of the *Act*. In *Canadian Staff Union v. Canadian Union of Public Employees*,⁷ the Board reviewed its previous jurisprudence regarding establishment of status to represent employees in Saskatchewan.

[22] In doing so, the Board reviews whether the organization has a suitable Constitution, which includes collective bargaining on behalf of employees among its purposes. It also reviews whether or not the Constitution has been ratified and adopted by the members of the organization, whether the members have then obtained membership in accordance with the provisions of the Constitution and whether from those members it has elected officers with the authority to engage in collective bargaining and conduct the affairs of the organization.

[23] The evidence presented by the Applicant satisfied the Board on all of these requirements. Furthermore, there was no evidence that the Applicant was a “company dominated” organization.

[24] An appropriate Order shall issue according status to the Saskatchewan Institute of Applied Science and Technology (SIAST) Faculty Association as a “trade union” under the *Act*.

DATED at Regina, Saskatchewan, this 30th day of October, 2012.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson

⁶ [1986] Alta L.R.B.R. 229

⁷ [2011] CanLII 61200 (SKLRB), LRB File No. 077-11