

**The Labour Relations Board
Saskatchewan**

**WORKERS UNITED CANADA COUNCIL, Applicant v. WINNERS MERCHANTS
INTERNATIONAL, L.P., Respondent**

LRB File Nos. 133-12(a) & (b), December 7, 2012

Vice-Chairperson, Steven Schiefner; Members: John McCormick and Mick Grainger

For Applicant Union: Mr. Gary Caroline

For Respondent Employer: Ms. Susan Barber, Q.C.

UNION – Status – Applicant organization makes application to amend two existing certification Orders to be recognized as the certified bargaining agent for employees of employer – Applicant organization formed following merger of provincial bargaining agents – Applicant organization not previously certified to represent employees in Saskatchewan – Board hears evidence as to history of organization, its formation, constitution and activities – Board satisfied that applicant organization is a trade union – Board grants amendment to certification Orders to transfer bargaining rights.

The Trade Union Act, ss. 2(k) and (l)

REASONS FOR DECISION

Background:

[1] Steven D. Schiefner, Vice-Chairperson: These proceedings involve the exercise of this Board's role in ensuring that new labour organizations seeking to represent employees in organized workplaces have the requisite standing to do so because, in collective bargaining (as in life), the only constant appears to be the presence of change.

[2] On April 7, 2005, UNITE HERE was certified¹ by the Saskatchewan Labour Relations Board (the "Board") as the bargaining agent for a unit of employees of Winners Merchants International, L.P. (the "Employer"). This particular unit included employees working at one of the Employer's two (2) retail stores in Saskatoon, Saskatchewan. On November 8, 2007, UNITE HERE was also certified² as the bargaining agent for a unit of employees of the Employer working at its store in Prince Albert, Saskatchewan. However, at the same time as these workplaces were being organized, internal discussions were taking place involving changes in the organization of UNITE HERE and the affiliation of the Manitoba Joint Council.

¹ See: LRB File No. 049-05.

² See: LRB File No. 126-07.

These discussions culminated in applications to this Board seeking to transfer the bargaining rights that had previously been granted to UNITE HERE to Workers United Manitoba Joint Council. On February 2, 2011 this application was granted and Workers United Manitoba Joint Council was certified³ as the bargaining agent for the two (2) units of employees that had previously been represented by UNITE HERE.

[3] Apparently, however, change for the Manitoba Joint Council was continuing. At this same time, discussions were also taking place involving other provincial councils of Workers United. One of the parties involved in these discussions was the Workers United Manitoba Joint Council, who, in 2010, entered into an affiliation agreement with the Workers United Ontario Council. In 2011, the Workers United British Columbia Council also agreed to participate in this merger. These discussions culminated in the formation of the Workers United Canada Council, following the merger of provincial councils representing workers in British Columbia, Saskatchewan, Manitoba, Ontario and Quebec.

[4] On July 24, 2012, Workers United Canada Council (the "Applicant") filed an application with the Board seeking to amend the two (2) certification Orders that had recently been issued by the Board to Workers United Manitoba Joint Council. The Applicant's application would see the bargaining rights previously held by Workers United Manitoba Joint Council transferred to it and the Applicant named as the bargaining agent for the subject employees. However, unlike the previous application, the Applicant had not been previously certified to represent employees in Saskatchewan. As a consequence, it was required to establish its status as a trade union within the meaning of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "Act").

[5] The matter was heard by the Board on December 4, 2012 in Regina, Saskatchewan. The Applicant called Mr. Barry Fowlie, a Director with Workers United Canada Council.

Facts:

[6] Mr. Fowlie testified that the Applicant organizes and represents workers throughout Canada, including British Columbia, Saskatchewan, Manitoba, Ontario and Quebec. Its members work primarily in the apparel, textile and retail sectors. Mr. Fowlie estimated that, at

³

See: LRB File Nos. 066-10 & 067-10.

the time of the hearing, the Applicant represented approximately 8,000 members in various bargaining units across Canada.

[7] The Applicant operates from offices located in Toronto, Ontario. However, it also has staff representatives located in Manitoba and British Columbia available to service members in Saskatchewan. Mr. Fowlie indicated that staff representatives are deployed to Saskatchewan for collective bargaining, for training of shop stewards, and to otherwise service members located in this province. In total, Mr. Fowlie estimated that the Applicant had approximately 400 to 500 members in Saskatchewan.

[8] The Employer has voluntarily recognized the Applicant as the bargaining agent for those employees previously represented by Workers United Manitoba Joint Council. There are approximately 200 employees in the affected bargaining units. In furtherance of this voluntary recognition, the Employer and the Applicant negotiated new collective agreements covering the period January 1, 2011 to December 31, 2013. Mr Fowlie testified that the members of the bargaining units have each ratified their respective bargaining agreements.

[9] A copy of the Applicant's Constitution was provided to the Board. Section 5 of that document sets forth the Objectives of the Applicant, which include, *inter alia*, "(i) to organize unorganized workers; (ii) to improve the working conditions, terms of employment and welfare of such workers, increase their job security, and assure full employment;" and "(iii) to establish and maintain collective bargaining throughout the trades and industries within its jurisdiction; and to present, adjust and settle bona fide grievances against employers, through all lawful means, including strike action".

[10] In addition, Article 2 of the Applicant's Constitution sets forth the Applicant's governance model and internal structures, including the composition of its "Convention". In this regard, it is noted that members from Saskatchewan are eligible for election to the Convention and each local is entitled to send delegates to the Convention proportionate to the size of the local. Delegates at the Convention have prescribed voting rights. Mr. Fowlie testified that a member from Saskatchewan had already been elected to the Applicant's governing body.

Relevant Statutory Provisions:

[11] The relevant provisions of *The Trade Union Act* are as follows:

2 *In 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;

Analysis and Conclusions:

[12] In *Canadian Staff Union v. Canadian Union of Public Employees*, 2011 CanLII 61200, L.R.B. File No. 077-11, this Board reviewed its jurisprudence regarding the obligation on an organization that has not previously been certified to represent employees pursuant to the Act to establish it's eligible to do so prior to the granting (or in this case transfer) of bargaining rights. Specifically, at paragraph 10, this Board made the following comments:

The jurisprudence of this Board is to compel an applicant seeking to represent a group of employees, that has not previously been certified in this Province, to establish its status and, in particular, its standing to be certified to represent employees for the purpose of collective bargaining. See: Health Sciences Association of Saskatchewan v. University Hospital, [1965-74] Dec. Sask. L.R.B. Volume III, LRB File No. 225-72. Simply put, an applicant organization must satisfy the Board that it is a trade union with the meaning of *The Trade Union Act*. In this regard, it should be noted that this is not an enquiry into the relative strength or tenacity of the applicant organization in terms of achieving particular collective bargaining goals or its adherence to particular ideological beliefs. In this exercise, the Board is simply concerned with whether or not the organization is dedicated to advancing the interests of its members by means of collective bargaining and that its internal structure possesses certain hallmarks of organizational legitimacy associated with a trade union. See: Board of Education Administrative Personnel Union v. Board of Education and Regina Collegiate Institute, [1978] June Sask. Labour Rep. 44, LRB File No. 380-77. See also: Regina Musicians Association, Local 446 v. Saskatchewan Gaming Corporation, [1997] Sask. L.R.B.R 273, LRB File No. 012-97.

[13] It was clear from the evidence presented in these proceedings that the Applicant was established for the purpose of collective bargaining and resulted from the merger of trade unions with a not-insignificant history of collective bargaining on behalf of its members. In our opinion, the Applicant has unequivocally demonstrated that collective bargaining is among its purposes.

[14] The Applicant's Constitution defined its structures and processes for collective bargaining. These internal structures appeared to be transparent, democratic and membership-


driven. These structures enable local participation in governance notwithstanding the national scope of the Applicant's jurisdiction. Simply put, members in Saskatchewan can have a voice through a variety of means, including the election of delegates and officers. In our opinion, the Applicant has also demonstrated the requisite hallmarks of organizational legitimacy anticipated by this Board.

[15] Finally, there was no allegation or any evidence that the Applicant was not a *bona fide* trade union by means of company domination. As a consequence, having reviewed the evidence presented in these proceedings, we were satisfied that the Applicant is a trade union and thus has standing to be certified in the Province of Saskatchewan pursuant to *The Trade Union Act*.

[16] Having come to the above determination, we are satisfied that the amendments to the certification Orders of this Board dated February 2, 2011 in LRB File Nos. 066-10 and 067-10 sought by the parties ought to be granted. Orders to that effect shall issue concurrent with these Reasons for Decision.

DATED at Regina, Saskatchewan, this **7th** day of **December, 2012**.

LABOUR RELATIONS BOARD



Steven D. Schiefner,
Vice-Chairperson