CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4875, Applicant v. NORTH EAST SCHOOL DIVISION No. 200, Respondent

LRB File No. 222-12; July 11, 2013
Chairperson, Kenneth G. Love Q.C.; Members: Maurice Werezak and Greg Trew

For the Applicant: Ms. Aimee Martin
For the Respondent: Mr. James McLellan

Appropriate Unit of Employees – Union applies to certify 23 Educational Assistants employed in 3 schools within the School District – Union already representing other employees in the School District, including other Educational Assistants – Board finds unit to be appropriate – Orders vote to be tabulated.

Appropriate Unit of Employees – Board reviews previous jurisprudence with respect to determining appropriateness of unit – On consideration of factors normally reviewed by the Board, the unit applied for by the Union found to be appropriate.

Appropriate Unit of Employees – Board considers recent decision which supported the establishment of larger, more inclusive units – Decision distinguished on basis that it dealt with a newly formed unit whereas in present case the smaller unit was an accretion to a larger well established unit of employees that included similar employees.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Q.C., Chairperson:** The Canadian Union of Public Employees, Local 4875, (the "Union") is certified as the bargaining agent for a unit of employees of the North East School Division (the "Employer") pursuant to s. 5 of *The Trade Union Act*, R.S.S. 1978, c.T-17, the "*Act*" by an Order of the Board dated April 3, 2013, LRB File No. 220-13.

[2] On December 21, 2012, the Union applied to the Board to add other employees of the Employer into the bargaining unit. The employees that the Union sought to add to the bargaining unit were Educational Assistants employed at Central Park Elementary School

(Seven (7) employees), L.P. Miller School (Eleven (11) employees) and Wagner Elementary School (Five (5) employees).

[3] The Employer objected to the Union's application. In its Reply it cited the following as the material facts which it intended to rely on in support of its reply:

> 1. *The Respondent Employer operates 22 schools and 5 associated work locations;*
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> 2. *The Respondent Employer also directs all of its operations from a central division office located at 402 Main Street, Melfort, Saskatchewan;*
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> 3. *The Application seeks to represent only Educational Assistants at three named schools, and does not seek to represent 39 other employees at those same schools, namely Administrative Assistants, Outreach Workers, Library Clerks, Library Technicians, Food Service Supervisor, Cafeteria Assistants, Certified Caretakers and Bus Drivers.*
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> 4. *Certification of only some of the employees at these three named schools would not create an appropriate unit.*

[4] The issue before the Board was whether or not the addition of 23 employees, as requested by the Union, represented an appropriate unit. The Union argued that the addition of these employees was appropriate. The Employer argued the contrary.

[5] The Union called two (2) witnesses who described the various working locations and the development of the bargaining unit through various re-organizations of the school districts in Saskatchewan over the years.

[6] The Employer called one (1) witness who also described the organization of the school division and the function of educational assistants in that organization.

[7] The Union, as noted above, argued that the addition of the 23 employees was appropriate in the circumstances of the segmented organizational history of bargaining units in current and legacy school divisions. In support of their position, the Union filed six (6) decisions

of the Board. The Employer argued that the Board should insist upon a larger, more inclusive, unit of employees. The Employer also cited cases in support of its position.

Relevant statutory provision:

[8] Relevant statutory provisions include:

> *5 The board may make orders:*
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> *(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;*
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> *(c) requiring an employer or a trade union representing the majority of employees in an appropriate unit to bargain collectively;*

Analysis and Decision:

[9] The Board's approach to the determination of an appropriate unit of employees was most recently discussed in the Board's decision in *United Food and Commercial Workers Union, Local 1400 v. Hometown Co-operative Association Ltd.*[1] In that decision, the Board quoted with approval its decision in *Canadian Union of Public Employees v. The Board of Education of the Northern Lakes School Division No. 64* where at paragraphs 116- 117 the Board said:

> *The basic question which arises for determination in this context is, in our view, the issue of whether an appropriate bargaining unit would be created if the application of the Union were to be granted. As we have often pointed out, this issue must be distinguished from the question of what would be the most appropriate bargaining unit.*
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> *The Board has always been reluctant to deny groups of employees access to collective bargaining on the grounds that there are bargaining units which might be created, other than the one which is proposed, which would be more ideal from the point of view of collective bargaining policy. The Board has generally been more interested in assessing whether the bargaining unit which is proposed stands a good chance of forming a sound basis for a collective bargaining relationship than in speculating about what might be an ideal configuration.*

[1] LRB File No. 185-12.

[10] The Board also consistently applies the considerations found by it in *Graphic Communications International Union, Local 75M v. Sterling Newspaper Group, A Division of Hollinger Inc.,*[2] as follows:

> *From this review of cases, it would appear to the Board that under-inclusive bargaining units will not be considered to be appropriate in the following circumstances: (1) there is no discrete skill or other boundary surrounding the unit that easily separates it from other employees; (2) there is intermingling between the proposed unit and other employees; (3) there is a lack of bargaining strength in the proposed unit; (4) there is a realistic ability on the part of the Union to organize a more inclusive unit; or (5) there exists a more inclusive choice of bargaining units.*

[11] This proposed unit cannot, we think, be described as being under inclusive. While there are still some employees not organized in the employee unit, as noted by the Employer, this is not a situation such as occurred in *UFCW v. Hometown Co-operative*[3] which was a situation where a brand new bargaining unit was being sought. In that circumstance, the Board felt that a more inclusive unit was more appropriate.

[12] Here there is already a well-established unit of employees represented by the Union. That unit represents a significant number of the employees of the Employer. The addition of these employees can be viewed as an incremental step towards a larger, more inclusive unit.

[13] If we analyze this application using the criteria set out in *Graphic Communications International Union, Local 75M v. Sterling Newspaper Group, A Division of Hollinger Inc.,*[4] the unit is clearly appropriate. Firstly, by the addition of these employees, there is no boundary or discrete skill that distinguishes these employees from the others in the bargaining unit. The unit already includes 67 Educational Assistants. The addition of 23 more Educational Assistants will bring the total of represented Educational Assistants to 90 of 103 employed by the Employer.

[14] Secondly, rather than creating intermingling, it reduces the amount of intermingling in the unit by the inclusion of these Educational Assistants.

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[2] [1998] Sask. L.R.B.R. 770, LRB File No. 174-98 at 780.
[3] *Supra,* LRB File No. 185-12.

[15] Thirdly, because this is an already established bargaining unit which is being added to, there is no problem with a lack of bargaining strength for this unit.

[16] It could be argued that there is a realistic ability to organize a more inclusive unit. However, as noted above, this unit has been cobbled together from prior existing units organized in relation to different geographic areas of jurisdiction of the various school units (now divisions) over time. The addition of these employees goes towards the strengthening of the unit into a more inclusive unit. In addition, we must have regard to the historic organizing pattern in education and the determination that this unit will have a good chance of success and represents movement towards a more inclusive unit.

[17] Finally, while there is another choice of a more inclusive bargaining unit, we again would look to the historic pattern of organizing, the historic pattern of bargaining units, the fact that this unit is an addition to an existing successful unit and that it moves the unit towards a more inclusive unit.

[18] For these reasons, we find the unit proposed to be added to the unit now represented by the Union to be an appropriate unit for the purposes of collective bargaining, The pre-hearing representation vote conducted by the Board shall be counted and the results of that vote provided to an *in camera* panel of the Board for further determination. This panel shall not be further seized with this matter.

DATED at Regina, Saskatchewan, this 11th day of July, 2013.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson

[4] [1998] Sask. L.R.B.R. 770, LRB File No. 174-98 at 780.