



UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant v. THE NORTH WEST COMPANY LP carrying on business as GIANT TIGER (REGINA), Respondent Employer and TERRACE CANN, Respondent

LRB File No. 324-13; December 31, 2013

Chairperson, Kenneth G. Love, Q.C.; Members: John McCormick and Allan Parenteau

For the Applicant Union: Mr. Drew Plaxton
For the Respondent Terrace Cann: Self Represented
For the Respondent Employer: Mr. Gordon Hamilton

Objection to the Conduct of Vote – Union alleges that Employer interfered with employees by granting discounts on merchandise to employees, their families and invited friends and by purchasing meals for employees – Employer responds that this was normal “staff appreciation” events held annually in November and which were planned well before dates set for vote.

Objection to the Conduct of Vote – Union provides no evidence to link “staff appreciation” events to conduct of vote – Application dismissed for lack of evidence.

Sections 18(p) and 42 of *The Trade Union Act* and section 29 of the Regulations to *The Trade Union Act*

REASONS FOR DECISION

Background:

[1] Kenneth G. Love, Q.C., Chairperson: The United Food and Commercial Workers, Local 1400, (the “Union”) is certified as the bargaining agent for a unit of employees of The North West Company LP carrying on business as Giant Tiger (the “Employer”). Mr. Terrace Cann is an employee who brought a rescission application¹ on May 31, 2012.

[2] In response, the Union raised a number of issues, including one which predated the application for rescission. In a letter decision dated June 25, 2013, the Board determined that it would deal with five (5) issues between the various parties. These were:

LRB File No. 041-08

1. *Has a successorship occurred, and if so, should the Board order a vote of the affected employees?*
2. *Did Tora (or LP) commit an Unfair Labour Practice by failing to bargain collectively with UFCW?*

LRB File No. 109-12

3. *Should the application for rescission be granted?*

LRB File No. 129-12

4. *Was there a flaw in the conduct of the vote as alleged by the Union?*

LRB File No. 021-13

5. *Should the Board provide first contract assistance to the parties?*

[3] A hearing was held on November 5, 2013. At the commencement of the hearing, the Union requested that the rescission application² be summarily dismissed. The basis for the Union's application was that another rescission application had been filed with the Board on May 31, 2013.³ When the Board conducted a vote of the employees with respect to that application, the vote failed for lack of quorum. Additionally, the Union argued that the vote conducted by the Board on the Respondent's application, which vote had been sealed and not counted, did not represent the wishes of the current employees of the Employer.

[4] The Board considered the application for summary dismissal and found no merit in the arguments presented. Additionally, to avoid any questions concerning the wishes of the current employees, the Board ordered another vote be conducted pursuant to Section 18(v) of *The Trade Union Act*, R.S.S. c.T-17 (the "Act"). That vote was conducted as ordered, the votes tabulated and the results made known to the parties. The Board agent reported the following results to the Board:

No. of Eligible Voters	69
No. of votes for the Union	7
No of votes against Union	44

¹ LRB File No. 109-12.

² LRB File No. 109-12.

³ LRB File No. 132-13.

No. of spoiled ballots	0
No. of Ballots cast	57
No. of employees not voting	12
Votes which were double enveloped	6

[5] The Union then filed this objection to the conduct of this vote. For the reasons which follow, that application was denied.

Facts:

[6] In its application, and in the evidence presented to the Board, the Union alleged that the employer had interfered with the vote by providing inducements to the employees by way of discounts on merchandise purchased by employees, family and guests and by the provision of meals to staff. The Employer countered that the discounts on merchandise and provision of meals to staff was a normal and usual staff appreciation event which occurred every November, which events had been planned before the Board ordered the vote of the employees on November 5, 2013.

[7] The Union called four (4) witnesses, including the Respondent. At the close of the Union's case, the Board dismissed the application as the Union had not provided any evidence that the vote had in any way been impacted by the staff appreciation events.

Relevant statutory provision:

[8] Relevant statutory provisions are as follows:

The Trade Union Act

18. *The board has, for any matter before it, the power:*

...

(p) *to summarily dismiss a matter if there is a lack of evidence or no arguable case;*

...

42. *The board shall exercise such powers and perform such duties as are conferred or imposed on it by this Act, or as may be incidental to the attainment of the objects of this Act including, without limiting the generality of the foregoing, the making of orders requiring compliance with the provisions of this Act, with any regulations made under this Act or with any decision in respect of any matter before the board.*

Regulations

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 votes 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 objections 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:

[9] The Board recently reviewed its jurisprudence with respect to the conduct of votes in *SEIU-WEST v. Samaritan Place Corp.*⁴ In that case, the test adopted by the Board was “whether or not the conduct of the vote was such that it was tantamount to making it impossible for employees, by secret ballot, to freely express their choice”.⁵

[10] There was no evidence whatsoever which linked the staff appreciation events and the vote. The only issue at the vote was the eligibility of six (6) persons who wished to vote. Those persons votes were “double enveloped” and in the end result they were not statistically significant and were not opened or counted. There was no evidence that scrutineers present at the vote noted any irregularities in the conduct of the vote.

[11] There was no evidence, apart from the evidence concerning the staff appreciation events, that the Employer attempted to sway the employees to vote one way or the other. The Employer allowed the Union access to both of the workplaces to allow the union to meet with employees to discuss the upcoming vote. The Respondent, in his testimony, also noted that he did not campaign with employees, but did respond to questions from other employees when asked. All in all, the evidence showed that the vote was fair and that there was no interference with employees such that their ability to express their wishes by secret ballot was impaired.

⁴ LRB File No. 092-13 & 103-13.

⁵ See *Reese, Holiday Inn Ltd. and RWDSU* [1989] S.L.R.B.R. No. 33.

[12] An Order dismissing this application will accompany these reasons. Scheduling of a hearing with respect to LRB File No. 109-12 will be referred to Motions Day to be held on January 7, 2014.

DATED at Regina, Saskatchewan, this **31st** day of **December, 2013**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson