JESSICA WILLIAMS, Applicant v. UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400 and AFFINITY CREDIT UNION (HAGUE BRANCH), Respondents

LRB File Nos. 262-13; February 24, 2014
Vice-Chairperson, Steven Schiefner; Members: Duane Siemens and Joan White

The Applicant:	Ms. Jessica Williams.
For the Respondent Union:	Mr. Drew Plaxton.
For the Respondent Employer:	Mr. John Beckman.

Decertification – Practice and procedure – Applicant's rescission application is declared before commissioner for oaths – Applicant recalls signing her rescission application in front of commissioner but has no recollection of making a declaration to the commissioner that the facts set forth in her application were true – Union argues that commissioner merely witnessed signature and did not properly administer requisite statutory declaration – Board not satisfied that statutory declaration was improperly administered – In alternative, Board not satisfied that defect sufficient to render Applicant's application void.

Decertification – Employer Interference – Applicant employee seeks information from management as to procedure to displace Union – Management advices employee that employer can not be involved and tells employee to contact Labour Relations Board – Staff of Board assist employee in completing her application - Employee uses employer's internal mail system to transfer her application to Regina – Applicant's reasons for wanting to displace union were vague and subjective - Union asks Board to draw inference of employer interference from the assistance provided by management and lack of plausible reason for wanting to displace the union – Board not satisfied that evidence demonstrated employer interference – Board satisfied that applicant was credible and that her reasons for wanting to displace the union found their genesis in her own desires – Board satisfied that employer maintained appropriate state of detachment and neutrality in dealing with its employees – Board directs that ballots from representational vote be tabulated.

The Trade Union Act, ss. 5(k) and 19.
Regulations and forms, Labour Relations Board, ss. 10 & 35.

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson**: Ms. Jessica Williams applied to the Saskatchewan Labour Relations Board (the "Board") for a rescission of an Order[1] of the Board dated June 7, 2010 designating the United Food and Commercial Workers, Local 1400 (the "Union") as the certified bargaining agent for a unit of employees employed by Affinity Credit Union (the "Employer") at a branch office located in Hague, Saskatchewan.

[2] A pre-hearing representational vote was conducted in October of 2013. However, the results of that vote have not been tabulated and the ballot box remains sealed because the Union has alleged that Ms. Williams' application is defective in two (2) respects. Firstly, the Union argues that the statutory declaration of the Commissioner for Oaths before whom Ms. Williams declared her recission application was improperly administered. Secondly, the Union alleges employer interference. In the first instance, the Union argues that Ms. Williams' application is void *ab initio*. In the second instance, the Union asks this Board to dismiss Ms. Williams' rescission application pursuant to s. 9 of *The Trade Union Act*, R.S.S. 1978, cT-17 (the "*Act*").

[3] For the reasons that follow, we are not satisfied that Ms. Williams' rescission application is defective or that it was the result of employer interference. As a consequence, we direct that the representational vote be tabulated.

Facts:

[4] The Employer is a financial institution with branches located in approximately forty (40) communities in Saskatchewan. Ms. Williams has worked for the Employer since 2009 and has held various positions of increasing responsibility. Since April of 2012, she has worked at the Hague Branch as a Relationship Banking Officer.

[5] The Union was certified to represent the employees of the Employer at the Hague branch in 2010. The Union represents many, but not all, of the branches operated by the

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[1] See: LRB File No. 043-10.

Employer. Ms. Williams has worked at several of the Employer's branches. However, the Hague branch was the first location she had worked for the Employer that was unionized.

[6] Ms. Williams testified that soon after moving to the Hague Branch, she had conversations with her coworkers regarding the Union. The result of these conversations was a belief that the majority of employees in the workplace would support an application to decertify the Union. In cross-examination, Ms. Williams admitted that she did not have any particular complaints or dissatisfaction with the Union nor that any kind of precipitating event had occurred that motivated her to want to get rid of the Union. Ms. Williams indicated that she simply was not a "union person" and she did not believe she needed to be represented by a trade union in her dealings with the Employer. When pressed by counsel for the Union, Ms. Williams indicated that she felt she would rather negotiate her own employment arrangements with the Employer but had not put much thought into how that would work.

[7] The Hague branch is a small workplace, consisting of four (4) in-scope employees, two (2) out-of-scope employees and a local manager. Either because of the collegial atmosphere of the workplace or its relative small size, all of the staff routinely have coffee together and do so on more or less a daily basis. Ms. Williams testified that during a conversation with her manager, she asked whom she should contact if she had questions about changing her union representation. Ms. Williams was advised that she could talk to the Employer's Labour Relations Officer, Ms. Humm, if she had questions involving labour relations. Ms. Williams testified that she did not pursue the issue any further with her manager and emailed Ms. Humm and asked specifically how a change could be made to the union status of the Hague Branch. Ms. Williams received the following response from the Employer's Labour Relations Manager:

> *Hi Jessica,*
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> *If employees want to dissolve the union, you can contact the Saskatchewan Labour Relations board (www.sasklabourrelationsboard.com or call 306-787-2406) and they should be able to provide you with direction on the process. There is also lots of information available on the internet. Employees do have a certain time frames that they can do this and you should be able to get advice from the Saskatchewan Labour Relations Board.*
>
> *I apologize for providing little information but the employer <u>cannot</u> be involved or interfere with the wishes of the employees. I hope this is the information you are looking for.*
>
> *Lolita Humm, CHRP, LRC, HRAC*

Labour Relations Manager
Affinity Credit Union

[8] Thereafter, Ms. Williams contacted staff at the Board, was provided with a blank application for rescission, and was referred to the Board's website for information regarding the Board's procedures and processes. The Board staff also helped Ms. Williams calculate the open period for her workplace and explained how to complete an application.

[9] About this same time, Ms. Williams arranged to meet with her coworkers at a local restaurant. Ms. Williams told the attendees that she was preparing an application to displace the Union and asked them to write individual letters either for or against her application and to place those letters in sealed envelopes. The employees did so and those envelopes were gathered by Ms. Williams unopened and added to her application for rescission.

[10] Ms. Williams then took her completed application to Ms. Lorie Foster, a clerk at the Town of Osler, to have it commissioned. In cross-examination, Ms. Williams testified that she signed her application before Ms. Foster but had no recollection of whether or not Ms. Foster asked her if the facts set forth in her application for rescission were true before it was signed. Ms. Foster's jurat indicates that she is a Commissioner for Oaths in and for the Province of Saskatchewan and her commission expires on December 31, 2017.

[11] Ms. Williams testified that, as she was completing her application, she was aware that she was close to the end of the open period and so she used the Employer's interoffice mail system to transport her application to a branch office in Regina and asked an employee of that branch to place her application in the mail. Ms. Williams' application for rescission was received by the Board on September 30, 2013 (within the open period). In cross-examination, Ms. Williams denied that anyone in management gave her permission to use, or had any knowledge that she had used, its interoffice mail to transport her application to Regina.

Argument of the Parties:

[12] As indicated, the Union argues that Ms. Williams' application is defective in two (2) respects; that the statutory declaration was improperly administered; and/or that her application was the result of employer interference.

[13] In the first instance, the Union points to the evidence of Ms. Williams that she did not remember being asked by Ms. Foster whether or not the facts set forth in her application were true when she signed her rescission application. The Union argues that for Ms. Williams' application to be valid, the statutory declaration thereon must be properly administered. The Union argues that the required declaration was not properly administered because the Commissioner for Oaths failed to have Ms. Williams declare that the facts set forth in her application were true when she signed it. The Union notes that subsection 10(4) of the *Regulations and forms, Labour Relations Board*, Saskatchewan Regulations 163/72 (the "*Regulations"*) states that applications to the Board shall be verified by statutory declaration. The Union argues that Ms. Williams' application is defective and that this is not the type of defect that can or should be cured pursuant to s.19 of the *Act*. The Union argues that Ms. Williams' application can not be cured by her testimony at the hearing because that occurred outside the open period.

[14] In the second instance, the Union asks this Board to draw the inference that Ms. Williams' application was the result of employer interference. In this regard, the Union asserts that the Employer assisted Ms. Williams by advising her to contact the Labour Relations Board assisted and by allowing her to use its interoffice mail system. The Union relies on the decisions of this Board in *Ben Shaeffer et. al. v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Lorass Disposal Services Ltd.*, [1998] Sask. L.RB.R. 573, LRB File No. 019-98, and *Kim Paproski v. International Union of Painters and Allied Trades, Local 739 and Jordan Asbestos Removal Ltd.*, 2008 CanLII 47038 (SK LRB), [2008] Sask. L.R.B.R. 1, LRB File No. 173-06, in arguing that employer influence can result even without conscious intention on the part of the employer to do so. The Union also relies upon the decision of this Board in *Tyler Nadon v. United Steel Workers of America and X-Potential Products Inc.*, 2003 CanLII 62864 (SK LRB), [2003] Sask. L.R.B.R. 383, LRB File No. 076-03.

[15] In addition, the Union argues that Ms. Williams' stated reasons for wanting to displace the Union were neither credible nor plausible. While the Union acknowledges that an applicant's reasons do not have to be "good" or even correct, the Union relies on the decisions of this Board in *Betty Wilson v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Remai Investment Co. Ltd. (Imperial 400 Motel)*, [1990] Fall Sask. Labour Rep. 97, LRB File No. 088-90, and *Paproski v. International Union of Painters and Jordan Asbestos,*

supra, in arguing that an inference of employer interference can be drawn when an applicant does not have plausible or credible reasons for wanting to displace the union.

[16] Simply put, the Union argues that the totality of the circumstances in the present application ought to compel this Board to draw an inference of employer interference. For these reasons, the Union asks that Ms. Williams' rescission application be dismissed. Counsel on behalf of the Union filed a memorandum of argument, which we have read and for which we are thankful.

[17] In reply, Ms. Williams denies that her rescission application was the result of any advice from, or influence by, the Employer.

[18] The Employer takes some umbrage with the Union's assertion that it interfered in Ms. Williams' application or in the wishes of the employees at the Hague Branch in their desire to displace the Union. The Employer argues that its managers remained appropriately neutral in all their dealings with Ms. Williams and the other employees in the workplace. The Employer relies on this Board's decision in *Gordon Button v. United Food and Commercial Workers, Local 1400 and Wal-Mart Canada Corp.*, [2011] 199 C.L.R.B.R. (2nd) 114, as standing for the proposition that merely advising an employee to contact the Labour Relations Board if they want information about displacing a trade union does not constitute employer interference within the meaning of s. 9 of *The Trade Union Act*. Simply put, the Employer argues that there is no evidence of any conduct on the part of the Employer upon which this Board could draw any inference other than of neutrality.

[19] The Employer has filed a brief of law, which we have read and for which we are thankful.

Relevant Statutory Provisions:

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

> *5 The board may make orders:*
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> *(k) rescinding or amending an order or decision of the board made under clause (a), (b) or (c) where:*

(i) there is a collective bargaining agreement in existence and an application is made to the board to rescind or amend the order or decision during a period of not less than 30 days or more than 60 days before the anniversary of the effective date of the agreement; or

(ii) there is no agreement and an application is made to the board to rescind or amend the order or decision during a period of not less than 30 days or more than 60 days before the anniversary date of the order to be rescinded or amended;

notwithstanding that a motion, application, appeal or other proceeding in respect of or arising out of the order or decision is pending in any court;

. . .

9 The board may reject or dismiss any application made to it by an employee or employees where it is satisfied that the application is made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by, the employer or employer's agent.

. . .

19(1) No proceedings before or by the board shall be invalidated by reason of any irregularity or technical objection, but the board may, at any stage of proceedings before it, allow a party to alter or amend his application, reply, intervention or other process in such manner and upon such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy in proceedings.

(2) The board may at any time and on such terms as the board may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

(3) For greater certainty but without limiting the generality of subsections (1) and (2), in any proceedings before it, the board may, upon such terms as it deems just, order that the proceedings be amended:

(a) by adding as a party to the proceedings any person or trade union that is not, but in the opinion of the board ought to be, a party to the proceedings;

(b) by striking out the name of a person or trade union improperly made a party to the proceedings;

(c) by substituting the name of a person or trade union that in the opinion of the board ought to be a party to the proceedings for the name of a person or trade union improperly made a party to the proceedings;

(d) correcting the name of a person or trade union that is incorrectly set forth in the proceedings.

(4) The board may at any time correct any clerical error in any order or decision made by the board or any officer or agent of the board.

[21] The relevant provision of the *Regulations and Forms, Labour Relations Board*, read as follows:

> ***10****(3) Any trade union or person directly concerned by an order or decision of the board made pursuant to clause 5(a), (b) or (c) of the Act may apply to the board for an order rescinding that order or decision.*
> *(4) An application made pursuant to subsection (3) shall be in Form 6.1 and shall be verified by statutory declaration.*
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> . . .
>
> ***35*** *Noncompliance with any of these regulations shall not render any proceedings void unless the board shall so direct.*

Analysis:

[22] This application raised two (2) issues requiring determination by this Board.

Was there a defect in Ms. Williams' Rescission Application?

[23] The Union's first allegation is that Ms. Williams' application is defective on the basis that it was not verified by a statutory declaration; in other words, that it was not properly administered by the Commissioner for Oaths, Ms. Foster. The Union bears the onus of establishing that Ms. Foster's statutory declaration was not properly administered and must do so on the balance of probabilities. The Union did not call Ms. Foster. Instead, the Union relies on its counsel's cross-examination of Ms. Williams and her recollection as to what transpired when she attended to Ms. Foster's office to have her rescission application completed. Simply put, Ms. Williams did not remember whether or not she was asked if the facts stated contained in her application were true when she signed her application before Ms. Foster. In our opinion, it is doubtful that most people would remember their interactions with a Commissioner for Oaths in that level of detail but it is possible that Ms. Foster did not properly administer the statutory declaration. On the other hand, Ms. Foster holds public office as a Commissioner for Oaths and her jurat is *prima facie* evidence that the declaration therein was properly administered. The Union argues that Ms. Williams' testimony is sufficient to rebut the presumption of validity associated with Ms. Foster's jurat. With all due respect, we disagree. In our opinion, Ms. Williams' testimony provides an insufficient evidentiary foundation to disturb the presumption of validity associated with a statutory declaration completed by a Commissioner for Oaths.

[24] Even if there was a defect in how Ms. Foster administered the statutory declaration (a proposition we do not accept), that alone would not render her application void as

the Legislature has seen fit to grant this Board with generous authority to cure technical defects or irregularities in an application. See: s. 19 of *The Trade Union Act*. Furthermore, s. 35 of the *Regulations* specifically provides that noncompliance (including of this type) shall not render any proceeding void unless the Board so directs.

[25] The requirement that Ms. Williams' application be verified by statutory declaration is imposed by s. 10(4) of the *Regulations*. All proceedings before this Board are commenced by completing an application and the form of our applications are, for the most part[2], set forth in the *Regulations*. Our applications are a blend of both pleadings and evidence. In the first instance, a completed application defines the *lis*; the nature of the dispute between the parties or the scope of infraction or violation which is alleged to have occurred. Applicants are also required to set forth the essential facts upon which their allegations are based in their applications. Deponents may be cross-examined on the evidentiary component of their applications, as Ms. Williams was in the present application. Furthermore, if a deponent were to make a knowingly false statement, he/she could be subject to prosecution for perjury or giving of false evidence. There is no doubt that the requirement that applications be verified by statutory declaration serves a purpose in our proceedings. However, is a defect in a statutory declaration alone sufficient to render an application void? In the present case, the Union argues that, if Ms. Foster failed to properly administer the statutory declaration, this Board ought to render Ms. Williams' application void. In the Union's opinion, Ms. Williams' application was void *ab initio* if all Ms. Foster did was witness Ms. Williams' signature. With all due respect, we are not persuaded by this argument.

[26] In our opinion, this Board ought to be slow to render an application void on the basis of an irregularity or technical objection save for valid a labour relations reason or in the event of prejudice to another party. In our view, it is not apparent that the defect, if any, in Ms. Williams' application could have any bearing on the real issues in dispute in these proceedings; namely, the desire of Ms. Williams and her colleagues to revisit the representational question and whether or not we believe the right of those individuals to do so ought to be withheld on the basis of employer interference. Furthermore, it is not apparent that the Union has suffered any prejudice in these proceedings even if a defect existed in the completion of Ms. Williams'

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[2] The *Regulations and forms, Labour Relations Board, S.R. 163/7,* were enacted in 1972 and were last amended in 1983. Because these Regulations, including the forms contained therein, were last updated over 30 years ago, it has been the practice of the Board to permit applicants to modify the prescribed forms as necessary for the circumstances.

application. Counsel on behalf of the Union cross-examined Ms. Williams at some length as to the facts set forth in her application. We are satisfied that she believed the relevant facts stated therein to be true at the time she signed her application and she continued to believe those facts to be true at the time of the hearing.

[27] Having considered the evidence in these proceedings, we are not satisfied that there was a defect in administering the statutory declaration on Ms. Williams' application. However, even if there was, we are not satisfied that such defect ought to render her application void.

Was Ms. Williams' Application the Result of Improper Employer Interference?

[28] It may be useful to preface our s. 9 analysis with some context. Collective bargaining through a trade union of one's choosing is a protected associational activity for employees. The employees of a particular workplace have the right to decide whether or not they wish to be collectively represented by a trade union in their dealings with their employer. They also have the right to periodically revisit the representational question. These rights are not unlimited but they are fundamental rights protected by *The Trade Union* Act and now the *Canadian Charter of Rights and Freedoms*.

[29] It has been recognized by our courts that freedom of association protects certain collective actions by employees, including the freedom to organize, to form a trade union and to bargain collectively in pursuit of workplace goals. It is also recognized by our courts that these associational rights encompasses, *inter alia*, the right of employees to revisit the representational question and to choose to no longer collectively associate. See: *Francis Edmund Mervyn Lavigne v. Ontario Public Service Employees* Union, et. al., [1991] 2 S.C.R. 211, 1991 CanLII 68 (S.C.C.). When employees collectively pursue workplace goals, often the interests of their union and the employees are synonymous. However, as noted by Ball J. in *Saskatchewan Federation of Labour v. Saskatchewan (Government of) et.al.*, [2012] 211 C.L.R.B.R. (2nd) 1, 2012 SKQB 62 (CanLII), Q.B.G. No. 1059 of 2008, when employees exercise their right to revisit the representation question, the interests of their union and the interests of the employees diverge. In these situations, s. 2.(d) of the *Charter* protects the interests of employees; not the interests of trade unions.

[30] Section 9 of *The Trade Union Act* represents an important adjunct to the fundamental right of employees to decide the representational question. When invoked, s. 9 provides a shield for employees to ensure that an employer has not used its authoritative position to improperly influence the actions of its employees in the exercise of their rights. In numerous cases, including those cited by the Union, this Board has acknowledged its obligation to be alert to signs that an application for decertification has been initiated, encouraged, assisted or influenced by the actions of the employer. This Board has repeatedly stated its intention to be vigilant in guarding against applications to decertify a trade union that appear to reflect the will of the employer instead of the wishes of the employees. However, in doing so, it is important to keep in mind that the purpose of s. 9 is to protect employees from the improper influences of management; not to protect trade unions from a desire for change in their membership.

[31] Generally speaking, the cases where this Board has invoked s. 9 of *The Trade Union Act* have generally fallen into one of two (2) categories:

1. Circumstances where the Board had compelling reason to believe that the real motivating force behind the decision to bring a rescission application was the will of the employer rather than the wishes of the employees. Examples of such cases include *Wilson v. RWDSU and Remai Investment Co., supra; Larry Rowe and Anthony Kowalski v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Canadian Linen and Uniform Services Co.*, [2001] Sask. L.R.B.R. 760, LRB File No. 104-01; *Tyler Nadon v. United Steelworkers of America and X-Potential Products Inc.*, [2003] Sask. L.R.B.R. 383, 2003 CanLII 62864 (SK LRB), LRB File No. 076-03; and *Paproski v. International Union of Painters and Jordan Asbestos Removal, supra*.

2 Circumstances where the Board lost confidence in the capacity of the employees to independently decide the representational question because the nature of an employer's improper conduct was such that it likely impaired them of their capacity to freely do so. Examples of such cases include, *Schaeffer v. RWDSU and Loraas Disposal Services, supra*; and *Patricia Bateman v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Empire Investments Corporation (Northwood Inn & Suites)*, 2009 CanLII 18238 (SK LRB), LRB File No. 149-08.

[32] It is also important to keep in mind that s. 9 is invoked by stripping employees of the very right it is intended to protect; the right to decide the representational question. Where the Board is satisfied that improper employer conduct has tainted a rescission application, the remedial response is to reject or dismiss that application. Thus, a compelling labour relations justification is necessary before this Board will withhold the right of employees to decide for themselves whether or not they wish to continue to be represented. As this Board has stated on many occasions in exercising the discretion granted pursuant to s. 9 of the *Act*, this Board must carefully balance the right of employees to revisit the representational question (now recognized as a protected associational activities) against the need to be alert to signs of improper employer influences. To do so, this Board examines the impugned conduct of the employer and measures the likely impact of that conduct on employees of reasonable fortitude giving due consideration to the circumstances occurring in the workplace at the relevant time, including the maturity and status of collective bargaining.

[33] This is an objective test and the Board starts from the presumption that employees are possessed of reasonable fortitude and are capable of receiving a variety of information; of evaluating that information, even being aided or influenced by that information; without necessarily losing the capacity for independent thought or action. Employees are not presumed to be timorous minions cowering in fear of their masters. Rather, the Board presumes that employees are capable of deciding what is best for them and that they will weigh any information they receive, including information from their employer, and will make rational decisions in response to that information. For this reason, not every impugned statement made or action taken by an employer will necessarily lead to the conclusion that a rescission application has been made as the result of improper influence, interference, assistance or intimidation by the employer. See: *Ray Hudon v. Sheet Metal Workers International Association, Local 296 and Inter-City Mechanical Ltd.*, [1984] Aug. Sask. Labour Rep. 32, LRB File No. 105-84. In exercising the discretion granted pursuant to s. 9 of the *Act*¸ the democratic rights of employees should not be withheld merely because employees have received information from their employer and that information may have assisted them. See: *Button v. United Food and Commercial Workers, Local 1400 and Wal-Mart Canada, supra*. Rather, the impugned conduct of the employer must approach a higher threshold; it must be of a nature and significance that the probably impact of that information will be to compromise the ability of employees (of reasonable fortitude) to freely exercise their rights under the *Act*. *See: Shane Reese v.*

Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Holiday Inn Ltd., [1989] Summer Sask. Labour Rep. 84, LRB File No. 207-88 & 003-89.

[34] Finally, it should be noted that this Board has modified its definition of objectionable communication by an employer in applying s. 9 of *The Trade Union Act* concomitant with legislative changes to the scope of permissible communication by an employer within the meaning of s. 11(1)(a) of the *Act*. See: *Robert Schan v. United Brotherhood of Carpenters and Joiners of America, Local 1805 and Little-Borland Ltd.,* [1986] Feb. Sask. Labour Rep. 55, LRB File Nos. 221-85 & 275-85. See also: *Button v. United Food and Commercial Workers, Local 1400 and Wal-Mart Canada*, supra. Section 11(1)(a) of the *Act* has changed over the years moving up and down a policy continuum that saw differing emphasis being placed on the need to accommodate the so-called "freedom of speech" interests of employers and tolerance for the capacity of employees to receive information and views from their employer. At times, the scope of permissible communication by an employer has been expanded and at times it has been restricted through various legislative amendments. At the present time, the scope of permissible communication by employers would be considered more generous than it has been in the past (for example, during the period from 1994 until 2008 or prior to 1983). While the scope of permissible employer communications is beyond the scope of these Reasons for Decision, there can be little doubt that the amendment that occurred to s. 11(1)(a) in 2008 signaled a greater tolerance by the legislature for the capacity of employees to receive information and views from employers.

[35] Turning to the case at hand, Ms. Williams impressed this Board as an assertive, confident and thoughtful individual, who genuinely desired, for her own personal reasons, to no longer work in a unionized workplace. She gave her evidence in a straightforward and candid manner and we found no reason to question the sincerity of her testimony.

[36] The Union asks this Board to draw the inference that Ms. Williams' application was the result of employer interference. The Union argues that Ms. Williams' stated reasons for wanting to displace the Union were neither credible nor plausible. The Union also asserts that the Employer assisted Ms. Williams by advising her to contact the Labour Relations Board assisted and by allowing her to use its interoffice mail system. With all due respect, we are not persuaded by either of these arguments.

[37] This Board has repeatedly indicated that employees are not required to demonstrate that they have a good or valid reason for wanting to displace a trade union. Employees have the fundamental right to revisit the representational question and that right is not withdrawn merely because an applicant employee may be mistaken or incorrect in her understanding of the utility of unionization or the service performed by her trade union. As this Board noted in *Bob Corbeil v. United Food and Commercial Workers, Local 1400 and L & L Lawson Enterprises, et. al. (Best Western Seven Oaks Inn)*, 2009 CanLII 24611 (SK LRB), LRB File No. 133-07, the only purpose of examining the motives of an applicant is to determine whether those motives are the employee's own or whether they are merely a façade for some hidden motivating factor and, if so, if that motivating factor finds its origin in the influences of management. In this respect, we rely on the decision of this Board in *Stephen Makelki v. International Union of Painters and Allied Trades, Local 739 and Western Painting & Decorating Inc.*, 2008 CanLII 47034 (SK L.R.B.), LRB File No. 152-08.

[38] Ms. Williams' reasons for wanting to displace the Union were perhaps vague and subjective, consisting of little more than her belief that she didn't need the protection of a trade union in her dealings with her employer and that she could do better bargaining on her own. She indicated that there was no precipitating event that caused her to become disenchanted with the Union. Rather, she indicated that she just wasn't a "union person". Some may disagree with Ms. Williams' perception of the benefits of unionization. However, we are completely satisfied that Ms. Williams' motives in bringing her application were entirely her own. Unlike the applicants in *Rowe & Kowalski v. RWDSU and Canadian Linen, supra*, Ms. Williams' evidence did not contain any "*remarkably inadequate*" explanations. Also, Ms. Williams would not reasonably be perceived as having a close relationship with management and there was certainly no evidence that she was receiving any special treatment from the Employer, as was the case in *Paproski v. International Union of Painters and Jordan Asbestos*, *supra*. Finally, the facts in *Wilson v. RWDSW and Remai Investment Co.*, *supra*, are clearly distinguishable. In that case, the Board found Ms. Wilson's evidence to be wholly inconsistent with events transpiring in the workplace at the time of her application. In the present case, we saw no evidence from which we could infer that the motivating force behind Ms. Williams' desire to displace the Union found its genesis in any place other than her own personal beliefs.

[39] We also saw no evidence that the Employer did anything other than maintain an appropriate state of detachment and neutrality in its dealings with Ms. Williams. The Union did

not allege, and this Board saw no evidence of, intimidation by the Employer or a desire on the part of the Employer to foster a hostile environment for the Union. Rather, the Union's argument was that the information provided by the Employer's Labour Relations Manager, together with the use of its interoffice mail system, enabled the applicant to obtain the information she needed to make her application and to deliver it to the Board within the prescribed open period. The corollary of the Union's position being; but for the assistance provided by the Employer (both knowingly and unknowingly), it is doubtful that Ms. Williams would have been able to successfully navigate the requirements to complete her rescission application. The Union argues that the Employer should have simply advised Ms. Williams that it could not discuss matters of union representation with her. To do any more, the Union argues, is to no longer remain neutral in the representational question.

[40] In our opinion, the impugned conduct of the Employer fell well below the type of employer influence or interference contemplated by s. 9 of *The Trade Union Act*. To the contrary, the Employer's conduct was consistent with the state of detachment and neutrality expected by this Board of employers in their dealing with employees desiring to revisit the representational question. As this Board noted in *Darryl Markowski v. United Food and Commercial Workers, Local 1400 and 612362 Saskatchewan Ltd. (National Hotel)*, [2011] 196 C.L.R.B.R. (2nd) 218, 2011 CanLII 27488 (SK LRB), LRB File Nos. 153-10 & 160-10, employees wishing to decertify a trade union are at an informational disadvantage compared to employees wanting to become unionized. While the longstanding goal of the Board is to provide a simplified and efficient forum wherein employees, trade unions and employers alike can exercise their respective labour rights without fear of overly technical objection, the process of displacing a trade union is fraught with technical requirements. There are restrictions on the period of time when a rescission application must be filed with the Board. There are formalities in the completion of an application. There are requirements for gathering evidence of support. Unlike employees desiring to become unionized, employees wanting to revisit the representational question typically must navigate these requirements on their own. While some irregularities in an application can be cured by this Board, as result in the *Markowski* case demonstrates, some defects are fatal.

[41] While acknowledging that employers have no legitimate role to play in determining the outcome of the representational question, this Board is aware that conversations take place between employees and managers about all aspects of the workplace, including

unionization. It is reasonable to assume that an employee in a certified workplace who no longer wishes to be represented by a trade union will seek out information on how to displace the union. It is not surprising to this Board that, at some point, an employee may turn to management for information. In such circumstances, while this Board expects employers to remain detached and patently neutral in all their dealings with employees as to the representational question, we do not expect employers to leave employees wandering in the wilderness without access to basic information as to their rights.

[42] As this Board noted in *Button v. United Food and Commercial Workers, Local 1400 and Wal-Mart Canada Corp. supra*, advising employees to contact the Labour Relations Board (if they want information about displacing a trade union) or calculating the open period does not constitute employer interference within the meaning of s. 9 of *The Trade Union Act*. Similarly, in *Alan Anderson v. International Union of Painters and Allied Trades, Local 739 and Allan's Glass Products Ltd.*, 2009 CanLII 47593 (SK LRB), LRB File No. 045-09, the Board was not satisfied that providing an employee with a copy of a collective agreement constituted employer interference, even if doing so enabled that employee to prepare his rescission application. While the provision of such information may assist an employee in completing an application to the Board, it is not the kind of information likely to motivate him/her to do so; nor is it the kind of information that could reasonably impair the capacity of employees in the bargaining unit to decide the representational question. While caution must be taken by this Board to ensure that employers remain demonstrably neutral in their dealings with their employees regarding the representational question, a trade union is <u>not</u> the only permissible source of information for employees regarding their workplace or their rights under the *Act*. To the contrary, certain basic information may be obtained from or provided by an employer without necessarily triggering the application of s. 9 of the *Act*.

[43] In considering the whole of the evidence, we are not satisfied that Ms. Williams' application was the result of interference by or influence from the Employer. We certainly saw no evidence, nor was there any basis upon which we could infer, that the employees at the Hague Branch are unable to independently decide the representational question. As a consequence, we are not satisfied that this is an appropriate circumstance for the Board to exercise its discretion pursuant to s.9 of the *Act* to withhold the right of the employees to decide whether or not they wish to continue to be represented by the Union.

Conclusion:

[44] Having considered the evidence in these proceedings and the argument of able counsel, we are satisfied that Ms. Williams' application is not defective. In the alternative, if it is defective, we are not satisfied that it ought to be rendered void. With respect to the allegations of employer interference, we are not satisfied that this is an appropriate case to exercise our discretion pursuant to s.9 of *The Trade Union Act*. As a consequence, we direct that the ballot box containing the ballots from the within representational vote be unsealed and the ballots therein tabulated.

DATED at Regina, Saskatchewan, this **24th** day of **February, 2014.**

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson