



Government
of
Saskatchewan

Saskatchewan Labour Relations Board

1600-1920 Broad Street
Regina, Canada S4P 3V2

Tel - (306) 787-2406

Fax - (306) 787-2664

www.sasklabourrelationsboard.com

August 25, 2016

The W Law Group
Barristers and Solicitors
300, 110 – 21st Street East
Saskatoon, Saskatchewan
S7K 0B6

Plaxton Jensen
Barristers and Solicitors
500, 402 - 21st Street East
Saskatoon, Saskatchewan
S7K 0C3

Attention: Mr. Adam Touet

Attention: Ms. Heather Jensen

Dear Ms. Jensen and Mr. Touet:

**Re: LRB File No. 166-16 – SEIU-West v. Voyager Retirement V Genpar Inc.,
c.o.b. as Caleb Village, Moose Jaw, Saskatchewan – Application for
Bargaining Rights**

This application came before the Board comprised of Members Mike Wainwright, Hugh Wagner and myself, as Vice-Chairperson on August 17, 2016. After hearing testimony from the witnesses called by SEIU-West (the “Applicant”) and oral submissions from counsel, the Board reserved its decision.

At that time, the Board undertook to provide counsel and the parties with a summary of our final decision as soon as reasonably possible. This letter provides this summary.

The Application

This particular application is brought pursuant to section 6-9 of *The Saskatchewan Employment Act*, S.S. 2013, c.S-15.1 (the “SEA”). The Applicant seeks to be certified as bargaining agent for the following unit of employees:

All employees employed by Voyager Retirement V Genpar Inc. at Caleb Village in Moose Jaw, Saskatchewan, except the General Manager, Kitchen Manager, one Confidential Secretary, and any other employee at or above the rank of Manager.

Prior to the hearing, a certification vote of eligible employees was held by way of mail-in ballots pursuant to Orders of this Board in LRB File Nos. 167-16 and 168-16 dated July 21, 2016. At the present time, all ballots cast remain sealed and the outcome of the vote is unknown. The Applicants are seeking from this Board a direction that the ballots be counted once it is determined whether the employees whom the Applicant seeks to exclude from any future bargaining unit are eligible to have their votes counted.

One further development should be noted at the outset. On August 4, 2016, the parties to this application executed an irrevocable election as authorized by subsection 6-11(4)(a) of the *SEA*.

Initially, the Applicant objected to four (4) individuals being included in any future bargaining unit. These individuals are: (1) Audrey Mack, the General Manager of Caleb Village Retirement Home in Moose Jaw; (2) Marlene L'Hoir, the Kitchen Supervisor at that facility; (3) Charlene Mack who the Applicant describes as a confidential secretary, and (4) Al Selinger who is a casual employee at the facility but also the spouse of Audrey Mack.

Subsequently, the parties agreed that Audrey Mack should not be included in the bargaining unit because of her managerial responsibilities. However, they remained at odds respecting the three (3) other employees.

The Hearing that occurred on August 17 was to determine whether these employees should be excluded from any future bargaining unit as asserted by the Applicant.

Summary of Conclusions

After considering the evidence and submissions of counsel, the Board has decided:

- **Marlene L'Hoir** – Ms. L'Hoir's responsibilities are supervisory, and not managerial, in nature. As a consequence, she falls with the definition of a supervisory employee set out in subsection 6-1(1)(o) of the *SEA*. Accordingly, she will be included in the scope of the bargaining unit in accordance with the irrevocable election referred to earlier.
- **Charlene Mack** – Ms. Mack was characterized by the Applicant as a "confidential secretary", although the organizational chart describes her current position as an administrative assistant. The Board is of the view that she could be perceived as fulfilling managerial functions. She works in very close proximity to the General Manager and fulfills some of the General Manager's responsibilities when Audrey Mack is away. The Board heard evidence that employees who are unable to work their shift will call Ms. Mack when they are unable to speak to the General Manager. Ms. Mack testified that she would attempt to find another person to work the shift and when she is unable to find such an individual she has on occasion worked the shift herself. It would appear that Charlene Mack is very much the operational "gate-keeper" and performs functions that are integrally confidential within the labour relations context.

The Board is also concerned about the close personal relationship between Ms. Mack and the General Manager, Audrey Mack who is her sister. However, the evidence was somewhat equivocal and we could not conclude this familial

relationship was sufficient on its own to disqualify Charlene Mack from inclusion in any future bargaining unit.

On balance, the Board concludes that the nature of Charlene Mack's role in the day-to-day operations and management of Caleb Village satisfy us her loyalties would be more closely aligned with management than with other employees in the bargaining unit and likely her position would be incompatible with participation in union affairs. Accordingly, we direct that Ms. Charlene Mack be excluded from any future bargaining unit and her ballot not be counted.

- **Al Selinger** – Mr. Selinger is a casual employee at Caleb Village and the spouse of Audrey Mack, the General Manager. The duties he carries out vary from week to week; however, he testified that he drove the Caleb Village van when the regular driver was not available; worked as a night shift supervisor on occasion and carried out regular maintenance and grounds-keeping duties around the facility.

The responsibilities of this position would ordinarily dictate that it be included in any future bargaining unit. However, the Board concluded that because the incumbent is also the General Manager's spouse he should be excluded by reason of this familial connection. We acknowledge that Mr. Selinger testified that he would be able to keep confidential information about the workplace from his spouse; however we conclude that his assurances are more apparent than real. Accordingly, we concluded that it is more likely than not his loyalties would be more closely aligned with management than with the other employees in the bargaining unit and for this reason he should be excluded from any future bargaining unit and his ballot not counted.

In arriving at our Decision, the Board considered counsels' oral submissions, the Applicant's written Brief and the case authorities provided to us. In particular, we found the following authorities of great assistance: *Re Wheatland Regional Centre Inc.*, LRB File No. 145-15, [2015] S.L.R.B.D. No. 33; *United Food and Commercial Workers Local No. 1400 v. Ne-Ho Enterprises Ltd.*, LRB File No. 229-88, [1989] S.L.R.B.D. No. 24; *United Steel Workers of America, Local Union 5917 v. Doepker Industries Ltd.*, LRB File No. 016-00, [2000] S.L.R.B. No. 26; *Re Van Vliet Construction Company*, [1986] B.C.L.R.B.D. No. 179; *SEIU, Local 333 v. Bethany Pioneer Village Inc.*, LRB File No. 036-06, 2007 CarswellSask 909, and *St. Thomas More College Faculty Union (1997) v St. Thomas More College*, LRB File No. 105-02, 2003 CarswellSask 945.

Order

The Board orders:

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- That the position of Kitchen Supervisor currently held by Ms. Marlene L'Hoire be included in any future bargaining unit;
- That the position of Administrative Assistant currently held by Ms. Charlene Mack be excluded from any future bargaining unit;
- That the casual maintenance position currently held by Mr. Al Selinger be excluded from any future bargaining unit, and
- That the ballots cast in the certification vote except those cast by Ms. Charlene Mack and Mr. Al Selinger be unsealed and tallied as soon as possible.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Graeme G. Mitchell".

Graeme G. Mitchell, Q.C.
Vice-Chairperson