



Government  
— of —  
Saskatchewan

Saskatchewan Labour Relations Board  
1600, 1920 Broad Street  
Regina, Canada S4P 3V2

April 16, 2016

3-Phase Electrical Ltd.  
65 Trottier Bay  
WINNIPEG MB  
R3T3R3

Gerrand Rath Johnson LLP  
700 – 1914 Hamilton Street  
REGINA, SK  
S4P 3N6

**Attention: Ms. Valeri Sicotte**

**Attention: Ms. Crystal Norbeck**

Dear Madams:

**RE: LRB File No. 273-15**

**Background:**

[1] The International Brotherhood of Electrical Workers, Local 2038 (“IBEW”) applied to be certified as the bargaining representative for employees employed as journeypersons electricians, electrical apprentices, electrical foremen, and electrical general foremen employed by 3-Phase Electrical Ltd. (“3-Phase”) within the Province of Saskatchewan south of the 51<sup>st</sup> parallel. Prior to the counting of the vote, the Union raised issues with respect to some of the persons determined by the Board’s agent as being employees eligible to vote. The Union alleged that 4 employees should not be eligible to vote. There objections were as follows:

**Employee**

Ryan Hitch

**Disqualifying Factor**

Was a site superintendent and therefore not a member of the unit applied for

Eric Fillion

The employer had taken steps to thwart his free expression of his wishes regarding representation.

Brad Angus

The employer had taken steps to thwart his free expression of his wishes regarding representation.

Ben Nussbaumer

The employer had taken steps to thwart his free expression of his wishes regarding representation.

At the close of the hearing, the Board panel provided its decision which was that all of the 9 employees identified by the Board's agent as eligible to vote, were eligible, and their votes should be counted to determine the employees wishes regarding representation by the IBEW.

**Issue:**

[2] Were the 4 employees challenged by the Union eligible to vote on the application for certification?

**Analysis and Decision:**

**Were the 4 employees eligible to vote?**

[3] The Employer provided documents at the commencement of the hearing which detailed the work history of all of the employees. Some of the employees had their permanent residence in Winnipeg and they travelled to and from Regina to perform

work at the site of a new hotel under construction in Regina. Other employees resided in Saskatchewan, albeit they were also required to travel to Regina to perform work.

[4] The Board heard evidence on behalf of IBEW from Christopher Unser, the IBEW's organizer, Mark Newans, an employee of 3-Phase, and Nathalie Cranston, another 3-Phase employee. Valeri Sicotte, the Controller of 3-Phase also testified.

[5] The test to be applied in these circumstances has been described by the Board in numerous decisions, which is, whether or not the employee has a sufficiently substantial employment relationship both in terms of connection to the workplace and a monetary interest in the matter. In *Canadian Union of Public Employees, Local 3077 v. Lakeland Regional Library Board*, the necessary relationship was described as follows:

*...the Board has also applied the principle that before anyone will be considered to be an "employee", that person must have a reasonably tangible employment relationship with the employer. If it were otherwise, regular full-time employees would have their legitimate aspirations with respect to collective bargaining unfairly affected by persons with little real connection to the employer and little, if any, monetary interest in the matter.*

[6] From the evidence adduced by the parties, we are satisfied that all of the employees identified by the Board's agent as eligible to vote satisfy this test.

[7] The employment records of all of the employees support this analysis as well. The only employee who was employed on the date of the application for certification, but not on the date of the vote was Austin Byczynski<sup>1</sup> who was laid off for lack of work on December 24, 2015. All of the other 9 employees were employed both on the date of the application and the date of the vote.

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<sup>1</sup> Mr. Byczynski was not included on the Board agent's list of eligible employees.

[8] In the case of Mr. Hitch, the evidence established that he was not a site superintendent, but rather was an electrical foremen or an electrical general foremen. He had no independent authority to hire or fire worker, but was required to gain approval from his superiors in Winnipeg in relation to that.

[9] Nor was there convincing evidence that the other employees had been interfered with such that their freedom to express their wishes regarding the representation question had been compromised. The test utilized by the Board in relation to this is an objective test, being whether or not a reasonable employee, that is, someone of reasonable intelligence and possessed of reasonable fortitude and resilience would be compromised.

[10] The only evidence brought forward in this regard was a copy of a text message sent to Mr. Unser from another 3-Phase employee, Kodi Cameron, who did not testify, which stated:

Ben [Nussbaumer] approached me today at 10:14 on 5<sup>th</sup> floor saying that Ryan [Hitch] would look for a position within 3 phase electrical in Winnipeg if Ben had any information that could sway the vote in their favour.

[11] We have no way to determine the veracity of this text, nor what impact, if any the approach had upon the sender (Cameron). He did not testify and while the Board was invited to draw a negative inference from the text message, we decline to do so without some corroboration of both its veracity or its impact.

[12] For these reasons, we are of the opinion that all of the 9 employees identified by the Board's agent are eligible to vote on the representation question.

[13] Following the oral disposition of this matter by the Board on April 7, 2016, the parties were invited to witness the counting of the ballots. The results of that vote were reported to the Board by the Board's agent that day as follows:

No. of eligible voters	9
No. of Votes for union	4
No. of Votes against union	5
No. of Votes cast	9
No. of employees not voting	0

[14] The votes against the union are in the majority. The Application for certification is therefore dismissed. An appropriate order will accompany these reasons.

[15] This is a unanimous decision of the Board.

Yours truly,

Kenneth G. Love Q.C.

Enclosure