

May 2, 2017

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Attention: Mr. Brent Matkowski

Attention: Mr. Greg D. Fingas

Dear Sirs:

RE: LRB File No. 280-16

Background:

1. The International Brotherhood of Electrical Workers, Local Union 2038 (the “Union”) applied to the Board on behalf of an employee of Seventy-seven Signs Ltd. (the “Employer”) seeking to represent that employee for the purposes of collective bargaining. The bargaining unit sought by the Union in its certification application was the Board’s standard “Newbery”¹ Bargaining unit which included “All electrical workers, journeyperson electricians, electrical apprentices, electrical foreman, and electrical general foreman employed by Seventy-Seven Signs Ltd. in the Province of Saskatchewan south of the 51st parallel”.

¹ The standard Newbery craft unit descriptions were named as such as they were established by the Board in its decision in *Construction and General Workers Union 890 and International Erectors and Riggers, a Division of Newbery Energy* [1979] Sept. Sask Labour Rep. 37, LRB File No. 114-79

2. The standard Newbery unit is generally utilized by the Board to describe craft units used within the Construction Industry as that term is defined in Division 13 of *The Saskatchewan Employment Act* (the “SEA”) and section 6-65(a) of that Division. In its application the Union alleged that the Employer’s business activities fell within that definition.
3. The application was heard on April 19, 2017 in Regina by a panel composed of Kenneth G. Love, Q.C., Chairperson of the Board, Mr. Ken Ahl, Board Member and Mr. John McCormick, Board Member. At the conclusion of the Union’s case, the Board considered the evidence heard from the Union and found it lacking. Accordingly, the Board exercised its authority under section 6-111(p) of the SEA to summarily dismiss the Union’s application for certification for lack of evidence. These are the reasons for that dismissal. This is a unanimous decision of the Board.

Evidence Heard by the Board

4. The Board heard evidence from two witnesses. Mr. Chris Unser, a membership development representative for the Union and from Mr. Jason Klassen, the affected employee. Prior to holding his position with the Employer, he was as journeyman electrician.
5. Mr. Unser described generally the scope of work normally conducted by a journeyman electrician. He described the electrical trade as being the work necessary to allow equipment to be energized with electrical power. He also described the jurisdictional limits of the Union to be limited to those electricians employed by employers south of the 51st parallel in the Province of Saskatchewan. He described that as being a line running generally east-west through the City of Yorkton.

6. In cross examination, Mr. Unser acknowledged that he was not aware that the Employer operated using a restrictive Contractor license which allows the Employer to do electrical installation, alteration and repair of Signs and outline lighting CEC Part 1, Section 34.
7. Mr. Klassen is a journeyman electrician and a member of the Union. He testified regarding his duties as an employee of the Employer. He testified that the job description under which he was hired made no reference to any qualification as an electrician. The Job Order details to which he responded provided, in part, as follows:

*Seventy-Seven Signs Ltd. (www.77signs.com) has a full-time, permanent employment opportunity in our outdoor installation department in Regina. We are prepared to train highly motivated and well qualified applicants. **The successful candidate will have several years [sic] experience in the general construction industry and a Class 5 drivers [sic] license with a clean drivers abstract.** [Emphasis added]*

8. Mr. Klassen testified that he was interviewed for the position and was ultimately the successful candidate. He commenced work on October 24, 2015. On hiring, he testified that Mr. Steven Miller, the Regina General Manager commented to him that he hoped that the Employer might be able to take advantage of his journeyman electrician status.
9. Mr. Klassen described his job duties as being to receive product at the Employer's place of business, transport it to site, and to install the product. He testified that nothing is manufactured or produced at the facility in Regina and finished products are shipped there for inspection, transport, and installation. He estimated that 65 – 70% of his time was devoted to installation of signs for the Employer. He estimated that 20% of his time was devoted to service calls

and the balance was spent in checking and insuring his work vehicle and other equipment was properly serviced and in working order. He was required to conduct regular maintenance and keep a log in respect to his vehicle service requirements.

10. In cross-examination, Mr. Klassen was provided a copy of a job description for the position which he occupied. He acknowledged that it accurately described his job duties and responsibilities. That job description provided, in part as follows:

Sign Installation & Service Technician

Responsible for Installation & Service of Illuminated and non-illuminated signs

Reports to Operations Manager

Duties Include

- *Installing & servicing all types of signage*
- *Confirm the operation of installed or serviced signs*
- *Conduct precise field surveys*
- *Taking photos of completed installations*
- *Obtaining Customer sign-offs and completing paperwork*
 - *Which includes documenting install/service & travel time*
 - *Detailed description of work done*
 - *Listing of all materials used*
 - *Completing Job Hazard Assessment forms for **every** job performed*
- *Maintaining Log books for vehicles*
- *Fill out and hand in Daily and monthly checklists*
- *Maintain cleanliness of vehicles*
- *Maintain stock level in vehicles*
- *Workers are responsible for their own hand tools*
- *Workers are accountable for Company tools and equipment*

11. Also, in cross-examination, Mr. Klassen acknowledged that he was aware that he being hired as a sign installer and technician, not as an electrician. He also acknowledged that he was aware that the Employer operated under a restricted electrical license.
12. Through both his examination in chief and cross examination, the Board was provided with work orders and other documentation regarding the various job duties which he was required to perform. One of those job orders (Job 017971-1-1 provided for the “the final electrical hook-up by our electrician”. This work order was with respect to the replacement of an LED upgrade kit on a light above a propane tank. Another employee of the Employer, Kevin Mallet, performed the necessary hook up.
13. Mr. Klassen testified that he did perform one electrical hook up to a sign installed pursuant to work order 018019-1-1. That work order specifically provided “Electrical connection not included and to be done by customer supplied electrician”. Mr. Klassen testified that the customer had failed to provide an electrician to perform that job. He says he consulted with his supervisor and was given permission to complete the electrical connection as he was qualified to do so.
14. He also testified that he had done a similar hook up in respect of another installation, but we were provided no work order for this work he says he performed, nor were any other details provided in his testimony.
15. A review of the work orders and work logs provided to the Board do not provide any record of electrical work being performed by Mr. Klassen other than the isolated incident referenced above. Generally speaking, the work performed was the installation of signage or lettering for signage, maintenance

work on signage, and site surveys for installation of signage, all in accordance with his job description.

16. Generally speaking, the hook up of the signage to the electrical power was not included in the service/install work orders provided. This work was specifically excluded and/or was to be performed by the customer or his/her electrician. Mr. Klassen also acknowledged this in his cross-examination.

Discussion and Analysis

17. Section 6-111(1)(p) specifically permits the Board to summarily dismiss a matter, “if, in the opinion of the Board, there is a lack of evidence...”. Following the close of the Union’s case, the board considered the evidence which had been provided and formed the opinion that the Union had failed to provide sufficient evidence to support its view that Mr. Klassen was in any way engaged by the Employer to perform electrical work. As described by Mr. Unser as being “the work necessary to allow equipment to be energized with electrical power”. The evidence, in our opinion drew the opposite conclusion.
18. Both the document under which Mr. Klassen was hired, and the job description for the position that he accepted, make no provision for the performance of any duties other than as described, none of which include the performance of electrical work or the energization of signage. While he is a journeyman electrician, this is not a job requirement and he would appear to be underemployed given his qualifications. That however is presumably his choice to make.
19. For the most part, electrical connection of signage to the current supply is not performed by the Employer or its employees. The one exceptional case noted

above², is just that, exceptional. If Mr. Klassen did not possess the necessary qualifications and presumably was in agreement to assist the customer, he was not required by his job description to perform that service. Nor did his testimony indicate that he was instructed by his Employer to perform the hook up.

20. Having heard the evidence as outlined above, we could not reach the conclusion that Mr. Klassen was employed in any of the classifications referenced in the bargaining unit description requested.

Decision and Order:

21. As noted above, we summarily dismissed the application following the close of the Union's case. Our formal order dismissing the application will accompany these letter reasons.

Yours truly,

Kenneth G. Love, Q.C.
Chairperson

² work order 018019-1-1