



CHURCHILL RIVER EMPLOYEES' ASSOCIATION (CREA), Applicant v TRON CONSTRUCTION & MINING LIMITED PARTNERSHIP, Respondent AND SASKATCHEWAN PROVINCIAL BUILDING AND CONSTRUCTION TRADES COUNCIL, Intervenor

LRB File No. 209-19; October 13, 2020

Vice-Chairperson, Barbara Mysko; Board Members: Maurice Werezak and Gary Mearns

For the Applicant, Churchill River Employees'
Association:

Kevin Buhler

Counsel for the Respondent, Tron Construction:

Brent Matkowski

Counsel for the Intervenor, Saskatchewan Provincial
Building and Construction Trades Council:

Gary Caroline

Certification Application – Applicant not previously certified to represent employees in Saskatchewan – Criteria to Satisfy Definition of Union – Applicant Fails to Discharge Onus – Certification Application Dismissed.

REASONS FOR DECISION

Background:

[1] Barbara Mysko, Vice-Chairperson: These are the Board's Reasons for Decision in relation to a Certification Application heard on September 1 and 2, 2020.

[2] On September 18, 2019, Churchill River Employees' Association [CREA] filed an Application for acquisition of bargaining rights pursuant to section 6-9 of *The Saskatchewan Employment Act* [the Act] in relation to certain employees of Tron Construction & Mining Limited Partnership [Tron]. CREA has not previously been certified to represent employees as a union in Saskatchewan. It is therefore required to satisfy the Board that it meets the definition of a union in the Act.

[3] The proposed bargaining unit is described as follows:

All employees of Tron Construction in Saskatchewan except supervisors, office staff, salaried employees and management personnel

[4] Tron operates a construction services business through which it services clients on various worksites around Saskatchewan.

[5] On September 19, 2019, Tron provided a list of employees falling within the scope of the proposed bargaining unit. On September 20, 2019, the Board issued a Direction for Vote pursuant to section 6-12 of the Act. The vote took place by mail-in ballot from September 24, 2019 to October 15, 2019.

[6] On September 30, 2019, Tron filed a reply to the Certification Application. Tron did not object to CREA's validity as a union under the Act, or take any position on the appropriateness of the proposed bargaining unit.

[7] On October 2, 2019, the Saskatchewan Provincial Building and Construction Trades Council [the Council] filed an Application to Intervene in the Certification Application, seeking status as an exceptional intervenor and/or a public law intervenor. On February 3, 2020, the Board ordered:

...The Saskatchewan Building Trades Council is granted standing as a public law intervenor in LRB File No. 209-19 to cross examine witnesses and make submissions with respect to whether Churchill River Employees' Association meets the definition of a union in the Act.¹

[8] This Certification Application was originally scheduled to be heard on April 7 and 8, 2020. Those dates were adjourned due to the Covid-19 pandemic, and then rescheduled to be heard via Webex on September 1 and 2, 2020, pursuant to the Board's Covid-19 Guidelines. The Board proceeded with the virtual hearing on those dates.

Argument on Behalf of the Parties:

CREA

[9] CREA says that it meets the definition of a union pursuant to the Act. It is dedicated to advancing the interests of its members through collective bargaining, and its internal structure possesses "certain hallmarks of organizational legitimacy" associated with a union. It acknowledges that it has some goals that extend beyond collective bargaining, but there is nothing wrong with this. The affected employees chose CREA as its representative agent. They have organized in a manner consistent with other well-established unions.

[10] In assessing CREA's Application, the Board should guard against becoming "distracted" by the Council's "fishing expedition". The Council's objections are not germane to the core issues,

¹ *Building and Construction Trades Council v CREA*, 2020 CanLII 10513 (SK LRB), at para 72.

but are akin to the hypothetical “peer-review process” censured by the Board in *Construction Workers Union, Local 151 v Tercon Industrial Works Ltd*, 2012 CanLII 2145 (SK LRB).² The Council has not been acting as a disinterested public intervenor, as it should be, but rather as an organization that is very interested in eliminating its competition. The fact that CREA is represented by Canadian Work Strategies is a moot point. CREA can receive assistance from whomever it chooses. There is simply no evidence that Canadian Work Strategies engages as a consultancy agency for employers, nor that CREA is an Employer-dominated organization.

Tron

[11] Tron takes no position in relation to the Certification Application except to recognize the employees’ “right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing”, pursuant to section 6-4 of the Act. It does, however, object to the Council’s unfounded allegations of Employer domination. In assessing these allegations, the Board should be guided by its tests for assessing allegations of Employer interference in unfair labour practice applications. The proper approach is to employ an objective test and a contextual analysis, with the goal of determining whether the Employer’s actions have compromised the free will of the employees. If the Board takes this approach, it will find that there is no evidence that Tron has done anything to dominate CREA, or anything to compromise the free will of the employees of Tron.

[12] Further, the Board is “not concerned with judging an organization on its strength, ideologies, and decisions” but only with determining whether it satisfies the statutory definition of a union. Setting aside the issue of Employer domination, the Board’s only concerns are whether CREA discloses a basic organizational structure and whether collective bargaining is among the CREA’s purposes. It is not for the Board to scrutinize details, such as the number of executive positions, the frequency of board meetings, or the requirements of the bylaws.

The Council

[13] The Council urges the Board to be guided in its determination by the purpose of Part VI of the Act:

To certify a labour organization that cannot adequately represent its members in collective bargaining would be to undermine the very purpose of Part VI of the Act. The effect of certification in such a circumstance would be to strip employees of core individual rights without conferring meaningful collective rights in their place. And to certify an employer-

² At para 66.

dominated organization would of course be particularly corrosive of employee rights and legislative intention.

[14] CREA has the onus to prove on a balance of probabilities that it satisfies the definition of a union under the Act. While an Employer-dominated organization will never be able to satisfy the governing test, even a non-Employer-dominated organization may fail to meet the definition of a union in an appropriate case. If the organization is “insufficiently dedicated to advanc[ing] the interests of its members by means of collective bargaining” or if its internal structures lack the requisite hallmarks of organizational legitimacy, then it should be found not to have met the test.

[15] CREA has called only one witness in support of its Application, and this witness’ evidence was wholly insufficient to establish that CREA meets the definition of a union. Instead, it raised more questions than it answered. While the applicable test is not an onerous one, CREA has failed to address the very serious concerns about possible Employer influence in the formation of CREA, and has failed to establish that it has as one of its purposes collective bargaining. CREA has failed to meet its onus, and it is therefore incumbent on the Board to dismiss the Application.

Applicable Statutory Provisions:

[16] The following provisions of the Act are applicable:

6-1(1) *In this Part:*

...

- (p) “union” means a labour organization or association of employees that:
- (i) has as one of its purposes collective bargaining; and
 - (ii) is not dominated by an employer.

...

6-4(1) *Employees have the right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing.*

(2) *No employee shall unreasonably be denied membership in a union.*

...

6-9(1) *A union may, at any time, apply to the board to be certified as bargaining agent for a unit of employees appropriate for collective bargaining if a certification order has not been issued for all or a portion of that unit.*

(2) *When applying pursuant to subsection (1), a union shall:*

(a) *establish that 45% or more of the employees in the unit have within the 90 days preceding the date of the application indicated that the applicant union is their choice of bargaining agent; and*

(b) *file with the board evidence of each employee’s support that meets the prescribed requirements.*

Evidence:

[17] CREA called only one witness - Jason Morin [Morin]. Morin is an employee of Tron and the President of CREA. He works at Tron as a Safety Advisor, on an hourly basis. He was asked a number of questions apparently intended to elicit evidence about whether he has supervisory authority over employees. He acknowledged that he has on one occasion had to send someone home, but he does not discipline employees; he oversees safety, not employees. He has no knowledge of the associated budget, and he does not assign tasks to employees – in Morin’s words, there are supervisors for that.

[18] Two individuals were key to initiating the organizing drive for CREA: Shawn Daniels [Daniels] and Mark Phillips [Phillips]. Daniels is another employee of Tron. Daniels approached Morin one day and invited him to a meeting in Saskatoon about unionizing. Apparently, Daniels had contacted Phillips, a representative with Canadian Work Strategies. Phillips would be leading the meeting. Morin had not heard of Canadian Work Strategies before. Daniels told him that the company helps people to unionize.

[19] On May 13, 2019, Morin attended the meeting in Saskatoon. In Morin’s words, Phillips had organized everything. Also in attendance at the meeting were Daniels and two other Tron employees, Cherokee Wapass and Clayton Paul. The employees had travelled from various locations across Saskatchewan to be there. Phillips had flown in to attend.

[20] At the meeting the group of employees told Phillips that they wanted to unionize. According to the minutes, Phillips explained to the group the purpose of establishing an employees’ association. The group passed a motion that the “Association be established to organize workers in order to promote their interests through collective bargaining and other means of mutual aid or protection”.

[21] Phillips also spoke with the employees about adopting a Constitution. He gave the employees some ideas about this, provided a sample Constitution, and then the employees changed some things to make the Constitution their own. As to what specifically was changed, Morin could not recall, except that the employees filled in some blanks in the Constitution, in particular with the name, CREA. Together, the four employees had come up with the name, representing their common connection to the Churchill River.

[22] Morin could not recall how the group made the other decisions reflected in the Constitution, for example, how they decided on the frequency of meetings. Prior to the meeting, he had not

spoken to anyone about what the Association would look like; nor had he been given a copy of the Constitution.

[23] A copy of CREA's Constitution was filed with the Board. Article 2 states,

The purpose of the CREA is to organize construction and allied workers in order to promote the interests of workers through collective bargaining and other means of mutual aid or protection. To cultivate prosperous and meaningful employment for indigenous people and the broader construction community, through innovation, capacity building and strong partnerships with our Employers, while honouring our indigenous heritage. And, to create profitable and sustainable business opportunities for our membership, while strengthening the indigenous and construction presence in our territory.

[24] At the meeting, Morin was elected the President, and the three remaining employees took the positions of Vice-President, Secretary, and Treasurer. According to the minutes, a motion was passed that "the initiation fee for membership in the Association be set at \$10, unless said fee is waived by the Board or one of its duly appointed representatives". Morin has not paid any initiation fees, and is not aware of anyone else who has. He could not recall if they were waived at some point.

[25] According to Morin, if Tron's employees are successful in their efforts to unionize they might be able to obtain more work through the available jobs for a union shop. Because they are not unionized, they are not able to secure those jobs. There are lots of places they cannot work. Currently, the industry is slow, business is suffering, and Tron's employees are working from contract to contract. Eventually, the hope is that the Association would expand beyond the employees of Tron and organize employees in other workplaces, as well.

[26] Morin made some references to employee empowerment and collective bargaining. He was asked what specifically the employees wanted to change at Tron. The following exchange occurred between Morin and the Council's lawyer:

Q: Did you guys discuss what you wanted to, um, what kind of, uh, how you'd like to change things ...working at Tron when you met?

A: What do you mean?

Q: Well did you say well, geez you know, like I think everybody should get a two-dollar an hour increase so we've gotta fight for that and we're gonna get other people to sign cards and we're gonna negotiate a better agreement, or better terms than we have now, we're gonna get an RRSP with the company, we, uh you know, uh, we want ... a way ...that we could deal with problems without the employer just firing us, did you, anything like that come up?

A: During when?

Q: When you were setting up the organization, in May of 2019?

A: Uh, just that we wanted a better retirement package and that's what we, uh, want for ourselves.

Q: With Tron or with all the employers in the area?

A: Just through, uh, through our fees if we're accepted as an organization.

Q: So you'd pay for it yourself you mean, like a group RRSP for workers?

A: Well, I don't know the details or how it works but I don't know something like that maybe.

Q: So this would be something that the workers would pay for. It had nothing to do with Tron?

A: No, it has nothing to do with Tron.

Q: Okay. Did you have any, did you have any discussions about what you would like to get from Tron?

A: Mmmm, no.

Q: Are you all pretty happy?

A: We're pretty happy, yes.

Q: Glad to hear it. So...what you needed was more work though, right?

A: Yes.

[27] According to Morin, the employees want but do not have a retirement package, but they have not spoken to "Tron" about this. They expect to establish an employee-funded retirement plan. Morin also explained that, two or three years ago, the employees approached Tron for the purpose of requesting benefits and are now on a benefit plan.

[28] Morin was asked questions about CREA's relationship with Canadian Work Strategies. Morin acknowledged that he was aware that Canadian Work Strategies is based in Abbotsford, B.C., but was not concerned about the costs associated with retaining a company located so far away. Morin has never spoken with Phillips about the expenses he has incurred while helping the employees organize. Once CREA unionizes and starts collecting union dues from its members, Canadian Work Strategies will be paid a portion of those dues. Morin could not recall how much.

It would be measured in “cents”. As of yet, Morin has not paid any amount to Canadian Work Strategies. He does not know if anyone else has.

[29] Morin has communicated with Phillips three or four times, mainly by email. He denied meeting with or speaking to any other representative of Canadian Work Strategies.

[30] Between May and September, no one tried to raise money for CREA. There was no income coming in from dues. Morin pointed out that he was not allowed to organize employees at the workplace, and then tentatively suggested that he did not do so. He observed that it was difficult to organize employees based in different reserves situated in various locations across the province.

[31] In September, Tron employees congregated in Saskatoon for a training session held at Tron’s head office. It was then that two separate meetings were held offsite, apparently after the training session was over, for the purpose of organizing. Morin did not attend these meetings. He wanted the employees to buy into the idea of unionizing without his influence.

[32] In his testimony, Morin demonstrated a conspicuous lack of knowledge about a number of subjects. He was not aware of, or did not recall, whether there is a written agreement between CREA and Canadian Work Strategies (but he insisted that “he’s working for us”); he could not recall if any cards were signed between May and September; he could not recall whether the CREA Board met during that same timeframe; he could not recall where the September meetings were held (although, in fairness, he stated that he did not attend); he admitted that he was not told how things went after the first meeting in September; and he could not recall if he was part of the decision to have Phillips sign the Certification Application, even though that is what happened.

[33] Morin insists that no one from Tron has spoken to him about unionizing, and that the employees were given no special treatment or time to organize.

Analysis:

Preliminary Issue:

[34] At the outset of the hearing, the Council raised a concern about Buhler’s ability to represent CREA in these proceedings due to the prohibition against the unauthorized practice of law contained in section 30 of *The Legal Profession Act, 1990*. Section 30 sets out a number of exceptions to the prohibition against unauthorized practice, including the exception contained at

clause (b), which reads “a person authorized to practice in accordance with the rules made pursuant to clause 10(i) while the person is acting within the scope of that authorization”.

[35] Rule 1002(1)(a)(ii) of *The Rules of the Law Society of Saskatchewan*, made pursuant to clause 10(i), provides an exemption for “a person participating in labour negotiations, arbitrations, conciliations or proceedings respecting collective bargaining rights or agreements”.³ This matter is a proceeding respecting collective bargaining rights, being a proceeding held to assess an Application for the acquisition of bargaining rights. Therefore, Buhler falls squarely into the exemption set out at Rule 1002(1)(a)(ii).

[36] The Board also found that Buhler would be of assistance to CREA and to the Board pursuant to Rule 1002(1)(a)(xii).

[37] The Board reached these conclusions solely for the purpose of determining whether Buhler is exempt from the prohibition against unauthorized practice for the within proceeding; these conclusions should not be taken to impact any of the substantive issues arising in the proceeding.

Substantive Analysis:

[38] No concerns have been raised about CREA’s description of the bargaining unit, as outlined in the Certification Application.

[39] The main issue to be resolved is whether CREA meets the definition of a union pursuant to clause 6-1(1)(p) of the Act. For ease of reference, the definition reads:

6-1(1) In this Part:

(p) “union” means a labour organization or association of employees that:
 (i) has as one of its purposes collective bargaining; and
 (ii) is not dominated by an employer.

[40] As the Applicant, CREA bears the onus to demonstrate on a balance of probabilities that it qualifies as a union pursuant to clause 6-1(1)(p) of the Act. The evidence presented must be sufficiently clear, convincing, and cogent.

³ *Law Society of Saskatchewan Rules*, January 1, 2020.

[41] The Board has had many opportunities to consider whether an applicant meets the definition of a union contained in the predecessor legislation, *The Trade Union Act*. That definition reads:

2 *In this Act:*

...

(j) “labour organization” means an organization of employees, not necessarily employees of one employer, that has bargaining collectively among its purposes;
 (l) “trade union” means a labour organization that is not a company dominated organization;

[42] For the purpose of this Application, these two definitions are substantially similar. The Board has repeatedly applied the principles developed under the predecessor definition to the current definition of a union.⁴

[43] Since it was decided, the Board has consistently relied on the reasoning in *Canadian Staff Union v CUPE*, 2011 CanLII 61200 (SK LRB) [*CSU v CUPE*], a decision issued pursuant to the previous legislation. Paragraphs 11 and 12 of that decision are particularly helpful:

[11] The jurisprudence of this Board is to compel an applicant seeking to represent a group of employees, that has not previously been certified in this Province, to establish its status and, in particular, its standing to be certified to represent employees for the purpose of collective bargaining See: Health Sciences Association of Saskatchewan v. University Hospital, [1965-74] Dec. Sask. L.R.B. Volume III, LRB File No. 225-72. In this regard, it should be noted that this is not an enquiry into the relative strength or tenacity of the applicant organization in terms of achieving particular collective bargaining goals or its adherence to particular ideological beliefs. In this exercise, the Board is simply concerned with whether or not the organization is dedicated to advancing the interests of its members by means of collective bargaining and that its internal structure posses [sic] certain hallmarks of organizational legitimacy associated with a trade union. See: Board of Education Administrative Personnel Union v. Board of Education and Regina Collegiate Institute, [1978] June Sask. Labour Rep. 44, LRB File No. 380-77. See also: Regina Musicians Association, Local 446 v. Saskatchewan Gaming Corporation, [1997] Sask. L.R.B.R 273, LRB File No. 012-97.

[12] It was clear from the evidence presented in these proceedings that the Applicant had a long history of collective bargaining, albeit exclusively for employees employed by the Employer and primarily based upon the Employer’s voluntary recognition of the Applicant as the bargaining agent for its employees. The Applicant’s Constitution defined its structures and processes for collective bargaining. In our opinion, the Applicant’s history of labour relations, including the numerous, nationally-recognized collective agreements it had negotiated, together with the Applicant’s Constitution, unequivocally demonstrated that collective bargaining is among its purposes. Furthermore, the Applicant’s internal structures appeared to be transparent, democratic and membership-driven. These structures operate at both a national and regional level. Saskatchewan is a Region within the Applicant’s organization structure, ensuring that members within Saskatchewan can have a voice at both the local and national level through a variety of means, including the election of officers. In our opinion, the Applicant demonstrated the requisite hallmarks of

⁴ *North Battleford Community Safety Officers Police Association, v City of North Battleford*, 2017 CanLII 68783 (SK LRB), at para 41.

organizational legitimacy anticipated by this Board. For the foregoing reasons, we were satisfied that the applicant organization was a labour organization within the meaning of The Trade Union Act.

[44] The threshold for satisfying the definition of a union is not onerous.

[45] To frame the analysis, it is worth repeating the Board's description of its role in assessing whether an applicant has established its union status, as per *CSU v CUPE*, at paragraph 11:

In this exercise, the Board is simply concerned with whether or not the organization is dedicated to advancing the interests of its members by means of collective bargaining and that its internal structure posses [sic] certain hallmarks of organizational legitimacy associated with a trade union.

[46] In *Saskatchewan Institute of Applied Science and Technology Faculty Association v SGEU*, 2012 CanLII 65539 (SK LRB) [*SIAST v SGEU*], the Board provided additional detail about its process in making this assessment, at paragraph 22:

[22] In doing so, the Board reviews whether the organization has a suitable Constitution, which includes collective bargaining on behalf of employees among its purposes. It also reviews whether or not the Constitution has been ratified and adopted by the members of the organization, whether the members have then obtained membership in accordance with the provisions of the Constitution and whether from those members it has elected officers with the authority to engage in collective bargaining and conduct the affairs of the organization.

[47] In line with *SIAST v SGEU*, the Board has before it a Constitution, which includes as a purpose collective bargaining on behalf of employees. That Constitution has been ratified and adopted by members of the Association. As for whether the members of CREA have obtained membership in accordance with the provisions of the Constitution, the evidence is unclear. However, officers have been elected to the Association.

[48] Apart from the text of the Constitution, the Board has the benefit of Morin's testimony, which discloses three primary motivations underlying the organizing drive. The Board will assess each of these separately.

[49] First, the Board will consider CREA's stated wish to obtain more work as a union shop. As Morin explained, the pace of the industry means that business is suffering, and Tron's employees are working from contract to contract. The employees hope that once they are unionized they will be able to take advantage of jobs that are currently unavailable to them. This aspiration aligns with Article 2 of the Constitution, which includes as a purpose of CREA "to create profitable and sustainable business opportunities for our membership". In short, this aspiration does not assist

CREA in meeting its onus to satisfy the definition of a union. Clearly, the desire to obtain more work as a union shop is not a collective bargaining purpose. None of the parties suggest that it is.

[50] Second, CREA defended its members' desire to be represented by an Association that reflects their shared values. In anticipation of an argument that was both raised and spent by the Council in the intervention matter, CREA's representative argued that CREA is free from "embedded discriminatory bias". To be clear, the Board is in no way concerned that CREA is a discriminatory Association. The Board refers, again, to its decision in *Building Trades Council v CREA*, 2020 CanLII 10513 (SK LRB), and in particular, the following passages:

[66] Relatedly, the Board will now summarize its findings in relation to the second issue, that is, whether "different or special considerations apply to the certification of an [I]ndigenous-oriented labour organization under the Act". As previously alluded to, there are parallels between this argument and the "religious base" argument raised in Tercon.[10]

[67] The Board finds that an assessment of the Latimer factors does not support the granting of intervenor status on the basis of the second issue. Principally, neither of the parties has raised this subject in the underlying proceedings. Nor is it an issue that needs to be addressed through the Board's assessment of whether CREA is a union or through its assessment of whether the proposed bargaining unit is appropriate. There is certainly no statutory or jurisprudential imperative to do so. Therefore, by raising the subject matter independent of the parties, and independent of any legal requirement, the Council has raised a new issue and has proposed to widen the lis in the certification hearing.

[68] Evidence and argument on this issue would also be very likely to transform the Board hearing into a political arena, and unnecessarily so. The Council theorizes about a dispute based entirely on speculation and, perhaps unintentionally, constructs a narrative grounded on unhelpful stereotypes. The supporting argument is therefore predictably ambiguous, raising concerns about the Respondents' ability to mount a defense. For these reasons, the Council's request for public law intervenor status on the basis of the second issue is denied. The Board is therefore restricting its grant of intervenor status to the issue of whether CREA satisfies the definition of a union pursuant to clause 6-1(1)(p) of the Act.

[51] Further to the Board's direction above, the Council did not pursue the aforementioned argument at this hearing, and therefore there is no need to address this issue further. The Board agrees with CREA's assertion that it "can have other goals and objectives, again, such as the supporting of Indigenous employment opportunities, without running afoul of the Act's requirements".

[52] Third, the Board will consider CREA's stated purpose of collective bargaining. The Board is asked to review whether the organization has a suitable Constitution, which includes collective bargaining on behalf of employees among its purposes. Article 2 of CREA's Constitution states that "[t]he purpose of the CREA is to organize construction and allied workers in order to promote the interests of workers through collective bargaining and other means of mutual aid or

protection”. Likewise, the CREA Board passed a motion at its inaugural meeting in which it referred to collective bargaining as one of its purposes.

[53] The Board has frequently confirmed that the threshold for acquiring union status is not onerous. It does not involve a probing inquiry. But this does not mean that the test is artificial. The Board must give effect to the definition of a union in the Act. It must ensure that the definition has meaning that aligns with the purpose of Part VI. Section 6-4 of the Act sets out the “right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of [the employees’] own choosing”. This provision reinforces the Board’s role in facilitating collective bargaining rights. In this role, the Board both enables the acquisition of those rights while according them the requisite significance.

[54] As outlined above, the Board in *SIAST v SGEU* described its “requirements for an organization to show its *bona fides*”. However, the Board does not take this to mean that in all cases where an organization presents with a predetermined structure, absent evidence of Employer domination, that said organization must automatically be found to have met the definition of a union under the Act. The Board must still exercise its role in assessing whether an organization meets the definition of a union. The Board must take the context into account in making its determination. The Board in *CSU v CUPE* did this, while undertaking an analytical assessment of the proposed union’s history of collective bargaining, and the organization’s internal structures.

[55] Along these lines, the Board in *North Battleford* described the assessment carried out in *SIAST v SGEU* in this way: “the Board [in *SIAST v SGEU* had] identified various factors that would point to an applicant association satisfying the *C.S.U.* inquiry” [emphasis added]. In *SIAST v SGEU*, the Board had observed that “the group which got together was motivated by a desire to manage their own affairs rather than being a part of a larger trade union”.⁵ The applicant in *SIAST v SGEU* was clearly dedicated to advancing the interests of its members, but wished to advance those interests through a new organization. Similarly, in *North Battleford*, the applicant’s witness had recounted a number of attempts to join other, existing unions to facilitate a capacity to “‘speak with one voice’ in ... dealings with the City”.⁶ As described by the Board, “[f]oiled at every turn, the CSOs then chose to form their own association[.]”⁷

⁵ At para 7.

⁶ *North Battleford*, at para 14.

⁷ At para 17.

[56] Having reviewed these authorities, and all relevant authorities filed by the parties, the Board interprets the requirements for *bona fides* as guideposts in its determination, not as a checklist that once completed results in the automatic acquisition of union status.

[57] The Board will proceed to outline the impact of Morin's testimony on its assessment of whether CREA has as one of its purposes collective bargaining.

[58] Given this testimony, the Board is compelled to conclude that CREA's purposes in pursuing unionization are to obtain work as a union shop, and to some extent, to establish an employee-funded RRSP. Unionization is an avenue for the creation of work opportunities for Tron's employees. Morin was able to explain this purpose clearly and logically, and with relatable context. By contrast, Morin's references to collective bargaining came across as vague, mechanical, and lacking in conviction. As President, Morin has been unusually uninvolved with the Association, the organizing drive, and the Certification Application. Similarly, Morin displayed a concerning lack of familiarity with the Constitution, with the process of unionizing, with the specifics of this organizing drive, and with the CREA Board's role.

[59] Morin's testimony demonstrated that CREA has very little interest, and certainly not dedication to, collective bargaining. For instance, Morin had many opportunities to provide context for the assertion that Tron employees wish to engage in collective bargaining; despite this, he was unable to communicate a single subject matter that might form the basis of collective bargaining. The employees' desire for a retirement package, in Morin's words, "has nothing to do with Tron". There have been no discussions about anything that the employees "would like to get from Tron". Granted, in the right case, one might attribute imprecise goals to the growing pains of early stage organizing. But here, practically speaking, collective bargaining is not on CREA's radar.

[60] To be clear, this is not a question of CREA's strength or tenacity in achieving collective bargaining goals, or a question of whether CREA is optimal for collective bargaining.⁸ This is a question of whether CREA is dedicated to advancing the interests of its members by means of collective bargaining, and has collective bargaining as one of its purposes.

[61] The Board appreciates that a union can have more than one purpose. However, there is no apparent legitimacy to the collective bargaining purpose exhibited in CREA's Constitution. It is

⁸ See, *CSU v CUPE*, at para 11; *Construction Workers Union, Local 151 v Tercon Industrial Works Ltd*, 2012 CanLII 2145 (SK LRB) at para 67.

evident that CREA, through Canadian Work Strategies, has attempted to check off the boxes for union certification by ratifying a superficially acceptable Constitution, and then following the motions of union certification. The Board acknowledges that CREA has also demonstrated certain hallmarks of organizational legitimacy, for example, holding an inaugural meeting, electing officers with the authority to engage in collective bargaining and conduct the affairs of the Association, and setting out timelines for meetings. However, in this case, these “hallmarks” are mere window dressing meant to cloak CREA in union status under the Act.

[62] To be fair, the Board does not expect that employees will understand all of the intricacies involved in unionization. The Board also accepts that employees will rely on their union organizer to guide them through the unionizing process. A brand new organization will not necessarily be judged by the same standard as an arm of an otherwise established union. It is not determinative, for example, that CREA does not have a bank account, or that the members made no efforts to raise money during the intervening months. Nor is it necessarily determinative whether there is direct evidence of the members having obtained membership in accordance with the provisions of the Constitution. On the other hand, the whole of Morin’s testimony discloses an underlying indifference rather than dedication to collective bargaining. The stated purpose of collective bargaining is not legitimately so. CREA does not have as one of its purposes collective bargaining.

[63] It would undermine the integrity of the certification process to find that an organization satisfies the definition of a union when it is so plainly not dedicated to advancing the interests of its members through collective bargaining. Doing so could prevent future unions, seeking to represent the interests of its members through collective bargaining, from forming in its place. Doing so would undermine the purpose for which the statutory collective bargaining regime exists.

[64] In conclusion, CREA has failed to demonstrate, on a balance of probabilities, that it has as one of its purposes collective bargaining. CREA does not satisfy the definition of a union pursuant to clause 6-1(1)(p) of the Act.

Employer Domination

[65] The Council suggests that CREA is an Employer-dominated organization, and as such, does not meet the definition of a union. To that end, the Council urges the Board to draw an adverse inference based on CREA’s failure to call Phillips as a witness in this proceeding. The Council points out that Phillips travelled to Saskatoon on at least two occasions to establish CREA and organize Tron employees; conducted the founding meeting of CREA; provided CREA with all

or substantially all of the text of its Constitution; and prepared and signed the Certification Application.

[66] The Council says further, that in preparing for this Webex hearing, Philips attended a Board test run with the Board Registrar, and his name appeared on the witness list that was exchanged between the parties but then was abruptly pulled off that list. CREA explains his absence by stating that it should have been sufficient for the purpose of meeting its onus to call as a witness the President of CREA.

[67] Given the Board's conclusion that CREA does not satisfy the definition of a union, it is not necessary to consider the issue of Employer domination, and it is therefore not necessary to consider whether to draw an adverse inference in relation to Phillips' absence.

[68] For the foregoing reasons, the Certification Application in LRB File No. 209-19 is dismissed.

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

DATED at Regina, Saskatchewan, this **13th** day of **October, 2020**.

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson