

GRAIN AND GENERAL SERVICES UNION (ILWU-CANADA), Applicant v NUTRIEN AG SOLUTIONS (CANADA) INC., Respondent

LRB File No. 218-18; September 11, 2020

Chairperson, Susan Amrud, Q.C.; Board Members: Aina Kagis and Allan Parenteau

For Grain and General Services Union
(ILWU-Canada):

Ronni A. Nordal, Q.C.

For Nutrien Ag Solutions (Canada) Inc.:

Roger S. Hofer, Q.C.

Amendment – Certification Order amended to add reference to three new Agricultural Crop Input Centres that consolidated Centres previously named in Order – Opening of new Centres and transfer of Union members to them is material change in circumstances – Amendment necessary to prevent erosion of bargaining unit – Representation vote not required.

REASONS FOR DECISION

Background:

[1] **Susan C. Amrud, Q.C., Chairperson:** On October 31, 2018, Grain and General Services Union (ILWU-Canada) [“Union”] filed an Application to Amend¹ the Certification Order granted by the Board on July 25, 2017², with respect to certain employees of Crop Production Services (Canada) Inc. [“Employer”]. The Certification Order granted July 25, 2017 was made on the joint application of the Union and the Employer. The description of the bargaining unit is (subject to management exceptions):

all employees of Crop Production Services (Canada) Inc., in the Province of Saskatchewan, who are employed at the Saskatoon and Watrous Research, Development and Innovation Locations; the Nipawin Seed Plant, the Regina Office Operations, and at the following Agricultural Crop Input Centres: Aberdeen, Albertville, Canora, Carnduff, Choiceland, Colonsay, Craik, Delisle, Dinsmore, Drake, Eatonia, Edam, Elrose, Eston, Ethelton, Fillmore, Foam Lake, Gerald, Gravelbourg, Grenfell, Hagen, Hamlin, Hoey, Humboldt, Indian Head, Ituna, Kelvington, Kerrobert, Kindersley, Landis, Lemberg, Lestock, Liberty, Luseland, Macklin, Maidstone, Major, Mankota, Maymont, Meadow Lake, Melfort, Montmartre, Morse, Neilburg, Paradise Hill, Pelly, Perdue, Ponteix, Porcupine Plain, Radisson, Radville, Raymore, Redvers, Regina, Rockhaven, Rosetown, Rosthern, Shaunovan, Southey, Sturgis, Swift Current, Theodore, Tisdale, Torquay, Valparaiso, Viscount, Wadena, Waldron, Watrous, Watson, Weyburn, Whitewood, Wilkie, Wolseley and Woodrow.

¹ LRB File No. 218-18.

² LRB File No. 268-16.

[2] The parties filed an Agreed Statement of Facts. It describes the background to the Certification Order as follows:

1. *The current operations of the Employer in Saskatchewan are the result of the merger of pre-existing businesses which operated various Agricultural Crop Input Centres (“Centres”) within Saskatchewan. Employees of one of the pre-existing businesses were represented by the Union and the employees of the others were not unionized.*
2. *In December 2016, the Parties, in a joint application to the Board, asked and the Board agreed that the employees of the pre-existing non-union businesses be given an opportunity to take part in a Board supervised vote on whether they wished to be represented by the Union. The vote occurred and those employees of the pre-existing non-unionized businesses chose not to be represented by the Union. As a result, the Employer operates a number of both unionized and non-unionized Centres in Saskatchewan.*
3. *Following the vote, the Parties negotiated and ultimately expressly agreed to the form of the order issued by the Board on July 25, 2017.*

[3] The Employer has 101 Agricultural Crop Input Centres [“Centres”]; 68 are unionized and 33 are not unionized. The Centres are named for a community in which or near to which they are located. All of the Centres are in the same business. They all sell seed, fertilizer and chemicals. Their storage capacities differ and, depending on the Employer’s capital investment at each, some Centres are able to provide more services and faster service. The Employer does not differentiate between unionized and non-unionized Centres when determining what services it offers. These are business decisions made on the basis of keeping pace with its competitors.

[4] In November 2018, the Employer opened a new Centre at Kincaid and closed or consolidated existing Centres at Mankota and Ponteix. Kincaid is 35 kilometres north of Mankota and 40 kilometres east of Ponteix. As of the date of the hearing, all but one of the in-scope employees previously employed at Mankota and Ponteix worked at the Centre in Kincaid (the one exception is an employee who has since retired) and there was one new employee.

[5] In January 2019, the Employer opened a new Centre at Norquay and closed or consolidated existing Centres at Pelly and Sturgis. Norquay is 15 kilometres west of Pelly and 35 kilometres east of Sturgis. As of the date of the hearing, all but one of the employees previously employed at Pelly and Sturgis worked at the Centre in Norquay (the one exception is an out-of-scope employee who has since retired) and two new employees were working there.

[6] In December 2018, the Employer opened a new Centre at Fielding and closed or consolidated an existing Centre at Maymont. The previously existing Centre at Radisson closed

in October 2018. Fielding is 15 kilometres southeast of Maymont and 15 kilometres northwest of Radisson. As of the date of the hearing, the employees previously employed at Maymont worked at the Centre in Fielding. Radisson historically was staffed by two employees; one was transferred to Maymont in December 2017, but has since passed away. The other is no longer employed by the Employer. As of the date of the hearing, one new employee was working at Fielding.

[7] Article 24 of the Collective Agreement in effect between the parties for the period November 1, 2015 to December 31, 2019 is entitled “Position Elimination”. It sets out the procedure to be followed and the benefits to be provided to employees if the Employer plans to eliminate positions. Paragraph 24.1 includes the following statement:

This article does not apply in the case of transfers that are 50 kms or less.

[8] The parties agree that while previous versions of Article 24 set out a specific list of circumstances when it applied (including consolidation), the current version applies to all situations in which the Employer plans to eliminate positions.

[9] The parties agree that the Certification Order should be amended to remove Whitewood, as the Centre previously located there is now closed. The parties agree that the Certification Order should be amended to reflect the Employer’s new legal name, Nutrien Ag Solutions (Canada) Inc. The parties agree that the Certification Order should be amended to remove Mankota, Ponteix, Pelly, Sturgis, Radisson and Maymont. The issue on which they disagree is whether the Certification Order should be amended to add Kincaid, Norquay and Fielding to replace those six Centres. The issue for the Board is whether it is necessary to amend the existing Certification Order to add to the bargaining unit the employees working at the new Centres at Kincaid, Norquay and Fielding.

Argument on behalf of the Union:

[10] The Union argues that an amendment is necessary. Both parties referred the Board to the four factors cited by the Board in *Unifor Canada, Local 594 v Consumers’ Co-operative Refineries Limited* [“*Unifor Canada*”]:

A review of these decisions would indicate that an existing certification Order of the Board may be amended either by consent of the parties or by demonstrating to the satisfaction of the Board that the desired amendment is “necessary”. In the case of the former, the primary consideration for the Board is the “appropriateness” of the resulting bargaining unit. In the case of the later, the considerations of the Board include a number of additional requirements that must be satisfied by the applicant:

1. *There must have been a material change in circumstances involving or affecting the parties since the enactment of the most recent certification Order. See: Sobey's Capital Inc. (o.s. IGA Garden Market), supra; and Canadian Blood Services, supra. See also: Aecon Construction Group Inc., supra; and Battlefords and District Co-operative Limited, supra. Furthermore, there must be a correlation between the material change and the desired amendment.*
2. *The Board must be satisfied that the desired amendment is "necessary". This is an objective test. While necessity is often the corollary of a material change in circumstances, the applicant must, nonetheless, demonstrate that the desired amendment is justified. In other words, not only must there be a correlation between the material change which has occurred and the desired amendment but the Board must be satisfied that the desired amendment is necessary under the circumstances. See: Battlefords and District Co-operative Limited, supra.*
3. *If the desired amendment involves a change to the description of the bargaining unit, the Board must be satisfied that the resulting unit is "appropriate" for collective bargaining. See: University of Saskatchewan, supra. The appropriateness of any bargaining unit is always a consideration for the Board irrespective of whether the matter comes before the Board in an initial certification, when considering an amendment application (by consent or otherwise), or in an application seeking to consolidating existing certification Orders.*
4. *If the desired amendments will bring previously excluded employees or positions within the scope of the bargaining unit, the amendment application must be accompanied by evidence of support from the employees in the accretion. Furthermore, a representational vote will generally be conducted to determine the wishes of the affected employees. See: Sunnyland Poultry Products, supra; and Horizon School Division, supra. The exception being, if the number of employees to be added to a large bargaining unit is relatively few, the Board has the option of granting the amendment without conducting a representational vote of the affected employees. See: United Steelworkers of America v. A-1 Steel & Iron Foundry Ltd., et. al. & International Molders & Allied Workers Union, Local 83, [1985] Oct. Sask. Labour Rep. 42, LRB File No. 001-85. See also: Communication Energy and Paperworkers Union v. Government of Saskatchewan, et. al., [2002] Sask. L.R.B.R. 615, 2002 CanLII 52911 (SK LRB), LRB File No. 141-02.³*

[11] In determining whether an amendment is necessary, the Board must first be satisfied that there has been a material change in circumstances. When a bargaining unit is site specific, the Union argues, a change in the location of the business is a material change. The change in location of the six old Centres to the three new Centres constitutes a material change.

[12] Second, the Board must be satisfied that the amendment is necessary or justified on an objective standard. In its view, the amendment is needed to prevent the erosion of its bargaining rights. The Union argues that it is not, by this application, seeking to expand its bargaining unit,

³ 2015 CanLII 43766 (SK LRB) at para 23.

but to protect existing members; the positions they are seeking to add to the Certification Order are not new positions.⁴ The Employer moved existing Union members to a location that is less than 50 kilometres from their previous places of employment, thus Article 24 of the Collective Agreement recognizes that these are transfers of existing Union members, not the elimination of existing positions and the creation of new, different positions.

[13] The Union argues that the key issue is whether the new Centres are derivative, in that they arise out of the old Centres, or whether they are new independent business activities. The Union argues that there are not significant differences between the operations at different locations. They do not all provide the same services, but they all do the same business. They all sell, but do not all store, seed, fertilizer and chemicals. They do the same work. The job titles, job descriptions, pay and benefits are the same. There are no assigned market trading areas; the customers decide which Centre they buy from. No services or products are offered at Kincaid, Norquay or Fielding that are not offered at one or more of the unionized Centres. The major difference with the three new Centres is with the speed and amount of services they provide. The storage spaces for products are bigger. They are doing the same work, but with updated technology. The Employer is consolidating some of its Centres, by moving previous Centres to more centralized or more natural market centres. The new Centres, and the work done at them, are derivative from the old Centres. Adding Kincaid, Norquay and Fielding to the Certification Order will not be adding to or expanding its scope, but is a necessary change to prevent erosion of the scope.

[14] Both parties agree that factor three is not an issue in this matter.

[15] The Union objects to the Employer's suggestion that, if the Board finds an amendment is required to add Kincaid, Fielding and Norquay to the Certification Order, a representation vote should be held to determine whether the employees support the Union. At most, there are five or six additional employees; the existing Union employees would not be required to vote. Therefore, the new employees' votes would not make a difference.

Argument on behalf of the Employer:

[16] The Employer argues that the new Centres are more than a derivation or consolidation of the old Centres. The new Centres were built for business reasons, to keep up with competition and the demands of customers. The new Centres have better, newer technology; more capacity; faster, more efficient service; and a wider range of services. They are better able to service larger

⁴ *Unifor Canada*, at para 30.

farms, whose operators are purchasing larger volumes of their products and services. The Employer is beginning to have difficulty recruiting staff to the old, outdated Centres. The massive increase in scope, magnitude and capacity of the new Centres means that they are not derivative from the previous Centres. Unlike *Unifor Canada*, the employees at the new Centres are not doing the same work that they did at the old Centres. Employee transfers do not make the work derivative.

[17] With respect to the four *Unifor Canada* factors, the Employer says there has been no material change in circumstances. When the Union agreed to a site specific Certification Order, it knew there was a potential for new Centres to be built elsewhere. Since the new Centres are not listed in the Certification Order, the employees working in those Centres are not in the bargaining unit.

[18] The amendment is not necessary. The opening of new Centres does not put the bargaining unit at risk. There is no justification for an amendment to add the new Centres to the Certification Order.

[19] The Employer also argues that, if the Board decides it is appropriate to add the new Centres to the Certification Order, it should hold a vote first to determine support for the Union from the employees in those Centres before amending the Order. The Board should not assume that the existing employees will support the Union just because they previously worked at unionized Centres.

Relevant Statutory Provisions:

[20] The Union applied for an Order pursuant to the following provisions of *The Saskatchewan Employment Act* ["Act"]:

Board powers

6-104(2) *In addition to any other powers given to the board pursuant to this Part, the board may make orders:*

(f) rescinding or amending an order or decision of the board made pursuant to clause (b), (c), (d) or (e) or subsection (3), or amending a certification order or collective bargaining order in the circumstances set out in clause (g) or (h), notwithstanding that a motion, application, appeal or other proceeding respecting or arising out of the order or decision is pending in any court;

(g) amending a board order if:

(i) the employer and the union agree to the amendment; or

(ii) in the opinion of the board, the amendment is necessary;

Analysis and Decision:

[21] In determining whether the requested amendment is necessary, the first issue for the Board to decide is whether the Union has satisfied the Board that there has been a material change in circumstances since the last Certification Order was granted on July 25, 2017.

[22] The Certification Order effectively divided the Centres that existed at that time into two groups: those that were unionized and those that were not unionized. It does not address the issue of the three new Centres. The opening of these new Centres, and the transfer of Union members to them from Centres currently identified in the Certification Order, establishes a material change in circumstances. The Employer has moved members of the Union's bargaining unit and the work they performed at the previous Centres to its new Centres in Kincaid, Norquay and Fielding. The Board is satisfied that there has been a material change in circumstances.

[23] The Union has also satisfied the Board that the amendment is justified. As the Union argued, the amendment will not expand the scope of the bargaining unit. The Union is not seeking to add new positions to its bargaining unit, but to prevent its erosion. The Employer cannot amalgamate two unionized Centres, move them to a different location, give the new Centre a different name and thereby unilaterally deprive the employees of their Union. This is similar to the situation in *Unifor Canada*, where the Board held that including the employees of the employer working at a new location was not an expansion of the union's existing certification order.⁵

[24] The Board agrees with the parties that factor three is not an issue in this matter.

[25] The final issue is whether a vote is required. In *Unifor Canada*, the Board held that a vote was not required:

As a consequence, we find that the Union is not seeking to add any new positions to its bargaining unit. To the contrary, we are satisfied that the affected positions were either in existence at the time the Union's most recent certification Order was granted and have been moved or are performing work that has been transferred to new locations. In any event, we are satisfied that all of the work presently being done at the Employer's new Park Street location is derivative from, or in support of, the Employer's refinery operations. If there are any new employees who will be affected by the change we propose be made to the Union's certification Order, the number of affected employees would be overwhelmingly small compared to the size of the Union's existing bargaining unit. As a consequence, we agree that the Union does not need to demonstrate support from the affected employees and a representational vote is not required to determine their wishes in proceeding with the Union's desired geographic amendment.⁶

⁵ At para 25.

⁶ At para 28.

[26] The Employer cited a number of cases to support its argument that a vote is required in this case⁷. None of those cases is equivalent to the situation in this case. Those cases all deal with situations where the employees to be added were not previously part of the bargaining unit. The difference is that, in this case, the existing, unionized employees were moved to the new Centres. It cannot be said that these employees are being added to the bargaining unit. The amendment to the Certification Order will maintain their membership in the Union. Adding the three new Centres to the Certification Order will not sweep in previously unrepresented employees. It will ensure that their decision to be represented by the Union is respected and protected. There is no change in the scope of the bargaining unit.

[27] The Board held in *United Food and Commercial Workers, Local 1400 v Westfair Foods Ltd.*⁸ that the disputed positions in that case were included in the scope of the bargaining unit, and therefore evidence of support was not required. That is the situation in this case. These employees are not being added to the bargaining unit. The Employer could have chosen to build the new Centres in one of the existing locations that they are replacing. If it had done that (as it did when it built a new Centre in Gravelbourg), this application would not be before the Board. It cannot, by moving the new Centre a few kilometres down the road, deprive its employees of their Union. This interpretation is bolstered by Article 24 of the Collective Agreement that denies these employees Position Elimination benefits “in the case of transfers that are 50 kms or less”.

[28] The Employer relied on section 6-4 of the Act:

Right to form and join a union and to be a member of a union

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.

This provision, it argues, which gives to employees the right to join a union of their own choosing, supports its argument that a vote should be held. The Board does not agree. The in-scope employees identified in paragraphs 11 (Kincaid), 16 (Norquay) and 22 (Fielding) of the Agreed Statement of Facts are employees who moved from the old Centres to the new Centres, and have already chosen this Union. There is no requirement to have their choice re-tested.

[29] Paragraph 7 of the Agreed Statement of Facts reads as follows:

⁷ *Sunnyland Poultry Products Ltd (Re)*, [1993] SLRBD No 43; *CUPE Local 4799 v Horizon School Division No 205*, 2007 CarswellSask 834, 144 CLRBR (2d) 271 (SK LRB); *RWDSU v Pioneer Co-operative Assn Ltd*, 2005 CarswellSask 967, [2005] SLRBD No 29 (SK LRB).

⁸ 2007 CanLII 68768 (SK LRB).

The Parties have agreed, without prejudice to their respective positions on the application, that pending final resolution of this matter all employees that were members of the bargaining unit who are moved by the Employer to what the Employer considers to be a non-unionized site (Kincaid, Norquay and Fielding) will continue to maintain their union status. Any current non-union employees as well as any new positions hired into what the Employer defined as non-unionized site, will be non-union.

The Board has determined that the Employer was incorrect in its determination that Kincaid, Norquay and Fielding are non-unionized sites. Therefore, the new hires and non-Union employees hired into these new Centres (other than the Branch Managers) should have become Union members, as a condition of employment, in accordance with Article 5 of the Collective Agreement.

[30] The Board finds that a vote is not required in this matter.

[31] With these Reasons the Board will issue an Order that amends the existing Certification Order to:

- (a) Delete Whitewood;
- (b) Change the name of the Employer from Crop Production Services (Canada) Inc. to Nutrien Ag Solutions (Canada) Inc.;
- (c) Delete Mankota, Ponteix, Pelly, Sturgis, Radisson and Maymont;
- (d) Add Kincaid, Norquay and Fielding.

[32] The Board thanks the parties for their helpful submissions. All were considered in reaching this decision.

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

DATED at Regina, Saskatchewan, this **11th** day of **September, 2020**.

LABOUR RELATIONS BOARD

Susan C. Amrud, Q.C.
Chairperson