

**NICOLE NOKUSIS, Applicant v SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Respondent, and GOVERNMENT OF SASKATCHEWAN, Respondent**

LRB File No. 026-22; September 29, 2022

Vice-Chairperson, Barbara Mysko; Board Members: Kris Spence and Jim Holmes

The Applicant, Nicole Nokusis: Self-Represented

For the Respondent, Saskatchewan  
Government and General Employees' Union: Cory Hendriks

For the Respondent, Government of Saskatchewan: No one appearing

**Application for Religious Exclusion from Bargaining Unit – Section 6-8 of  
The Saskatchewan Employment Act – Test for Religious Exclusion Affirmed  
– Exclusion Granted.**

**REASONS FOR DECISION**

**Background:**

**[1] Barbara Mysko, Vice-Chairperson:** The applicant, Nicole Nokusis, applies to the Board for an order pursuant to section 6-8 of *The Saskatchewan Employment Act* [Act]. Section 6-8 of the Act allows the Board to make an order excluding an employee from a bargaining unit, as follows:

**6-8(1)** *Subject to subsection (2), the board may, by order, exclude an employee from a bargaining unit if the board is satisfied that the employee objects to joining or belonging to a union or to paying dues and assessments to a union as a matter of conscience based on religious training or belief.*

**(2)** *An employee excluded from a bargaining unit in accordance with subsection (1) shall pay an amount equal to any union dues and other assessments to a charitable organization registered in Canada pursuant to Part I of the Income Tax Act (Canada) that:*

*(a) is agreed on by the employee and the union; or*

*(b) if no agreement is made pursuant to clause (a), is designated by the board.*

**[2]** The respondent Union is the Saskatchewan Government and General Employees' Union. The respondent Employer is the Government of Saskatchewan. Neither respondent filed a reply to this application.

[3] A hearing with respect to this matter was held on September 14, 2022. Mrs. Nokusis presented evidence and argument on her own behalf. Ms. Hendriks attended the hearing as an observer on behalf of the Union. There was no one in attendance on behalf of the Employer.

**Evidence:**

[4] Mrs. Nokusis testified about her employment history, her faith history, and her belief system. What follows is a summary of that testimony.

[5] Mrs. Nokusis is a Jehovah's Witness. She was not raised in the faith. She took the initiative to study the faith as an adult and then, after years of studying, decided to become baptized. Her baptism took place in 2003.

[6] Mrs. Nokusis began working for the Canada Revenue Agency (CRA) in 1995. She was hired as a summer student, and then returned as a term employee. Eventually, a colleague, who was a Jehovah's Witness, described to her the process for requesting a religious exclusion from the bargaining unit to which she belonged. Mrs. Nokusis followed the process to request an exclusion and that request was honored.

[7] Mrs. Nokusis later came to work in the human resources (HR) department of the CRA. Some of her job duties required her to be familiar with and to interpret the collective bargaining agreement. Due to the nature of her position during that time, she was excluded from the bargaining unit.

[8] After her employment with the CRA came to an end, Mrs. Nokusis found non-unionized employment with one or more First Nations organizations in the province.

[9] She later started a family and decided to stay home to focus on raising children and to work for her husband who was self-employed.

[10] In February 2022, Mrs. Nokusis began working as an Income Assistance Worker with the Ministry of Social Services in the Government of Saskatchewan. She knew when she applied for the position that union membership was a condition of employment, but she assumed, based on her working history and her interpretation of human rights law, that she would be excluded from the bargaining unit. Shortly after assuming the position with the Ministry, on February 15, 2022, Mrs. Nokusis made this application to the Board.

**[11]** In the course of her testimony, Mrs. Nokusis described her belief system, at times quoting from scripture and at times providing her personal interpretation of her faith based on her years of study. As a follower of Jehovah, Mrs. Nokusis has taken a vow to support the kingdom of God and to let God's will be done on earth as in Heaven. In line with this vow, she believes that she is to have only one loyalty and it is to the kingdom of God.

**[12]** In Mrs. Nokusis's interpretation of the scriptures, Jesus instructed his followers not to be involved in the worldly political affairs of the day. Jehovah's Witnesses are expected or considered to be politically neutral. How that principle is interpreted by any member of the faith is dependent on the person. In Mrs. Nokusis's view, if she were to provide support to an earthly political entity, she would be acting in contravention of her vow by allowing her loyalties to be divided.

**[13]** For Mrs. Nokusis, the combined effect of her vow, her interpretation of the scriptures, and her understanding of the nature of unions places her in an irreconcilable conflict. She characterizes unions as "political entities", not just because they might be engaged in making political contributions or performing political advocacy, but because they are organizations that are representative of a body of employees and of the rights and interests of those employees. Just as she cannot belong to or provide support for any other political entity, she cannot belong to or provide support to a union. Her objection is not limited to participating in specific union activities (although she did mention collective bargaining and striking) but is about the very fact of belonging to a union.

**[14]** She acknowledges that many governments and unions try to improve the conditions of peoples' lives but there are limitations to what earthly governments and political entities can really accomplish. The kingdom of God is a solution to all problems on earth and will bring about the conditions to benefit all people. It will replace all other earthly governments and will remove any need for "man-made" institutions.

**[15]** Mrs. Nokusis strives to live by Biblical principles. Since her baptism, she has not participated in any elections. She does not participate in political movements. She has not worked in a unionized environment without an exclusion from the relevant bargaining unit. Currently, while she is aware of ongoing or upcoming CBA renewal negotiations, she has no idea what issues are up for discussion and does not want to be involved in any way.

**[16]** She admits that living by her vow of neutrality can be difficult, especially when she is subjected to unjust actions or circumstances. But, in her view, she must either be fully committed

to her support for the kingdom of God or not at all. The personal challenges are something that she has to accept.

[17] Still, Mrs. Nokusis acknowledges that there are practical limitations on her ability to practice her beliefs. She must submit to authority, and she must, to some extent, support the infrastructure that is required to live in a community. The extent to which she should submit to authority and support existing infrastructure is relative and depends on the authority in question. Government bureaucracy provides interim solutions, through service delivery, to the existing problems on earth. She is comfortable participating in the delivery of those services. But ultimately, she answers to God.

[18] Mrs. Nokusis acknowledges that not all people who are Jehovah's Witnesses feel the need to request a religious exclusion from a bargaining unit. However, based on her beliefs, belonging to a union means that she is not exercising the neutrality that is demanded by her faith.

[19] Finally, Mrs. Nokusis ended her testimony by explaining that, for her, whether she belongs to a union could mean the difference between everlasting life or not. In other words, "it is a matter of life and death".

### **Analysis:**

[20] Next, the Board must decide whether to grant the requested exclusion. Much of the case law on this issue arises from the Board's consideration of the relevant statutory provision of the now repealed *Trade Union Act*, RSS 1978, c T-17, section 5(l):

**5** *The board may make orders:*

...  
(l) *excluding from an appropriate unit of employees an employee whom the board finds, in its absolute discretion, objects;*

*(i) to joining or belonging to a trade union; or*

*(ii) to paying dues and assessments to a trade union;*

*as a matter of conscience based on religious training or belief during such period that the employee pays:*

*(iii) to a charity mutually agreed upon by the employee and the trade union that represents a majority of employees in the appropriate unit; or*

*(iv) where agreement cannot be reached by these parties, to a charity designated by the board;*

*an amount at least equal to the amount of dues and assessments that a member of that trade union is required to pay to the trade union in respect of such period;*

[21] The predecessor and current provisions are substantially similar.

[22] The reported cases include the following: *Mary Ann Enns v Kindersley Union Hospital and Saskatchewan Union of Nurses*, [1993] 3rd Quarter Sask Labour Rep 149 [Enns]; *Loewen v Royal University Hospital and Saskatchewan Union of Nurses, Local 75*, LRB File No 031-96; *Funk v Canadian Union of Public Employees, Local 4254 and Saskatoon (West) School Division No. 42*, LRB File No 098-99; *Lohmeyer v Communication, Energy and Paperworkers' Union of Canada and Saskatchewan Watershed Authority*, [2005] Sask LRBR 94 [Lohmeyer]; *A.R.R. v Saskatchewan Government and General Employees' Union*, 2011 CanLII 8557 (SK LRB). All of these cases were decided pursuant to *The Trade Union Act*.

[23] Given the similarities between the predecessor and current provisions, the foregoing cases remain relevant to the Board's current consideration.

[24] In considering an application for a religious exclusion, the Board must take into account the broader statutory purpose of Part VI of the Act. In brief, religious exclusions are an "extraordinary exception to the statutory scheme of majority rule, union security and compulsory dues check-off in organized workplaces".<sup>1</sup> They are to be treated as such. As explained in *Enns* at 151:

*In providing for exclusion from a bargaining unit on religious grounds, the legislature has acknowledged that, for certain persons, involvement in trade union activity may be inconsistent with strongly held religious beliefs, and has concluded that public policy justified making an exception to the general principle that employees are compelled to conform to the wish of the majority to enjoy trade union representation. In determining whether individual applicants are among those who fall within the scope of the exclusion, labour relations boards must be satisfied that the nature of the objection to trade union involvement which is being put forward is of a genuinely religious nature, and that the possibility of exclusion on religious grounds does not become a means by which employees who object on other grounds are relieved of the consequences of the decision of the majority.*

[25] For these reasons, the Board is to scrutinize a request for a religious exclusion carefully.<sup>2</sup>

[26] In assessing the request for a religious exclusion, all of the foregoing cases apply the test set out by the Canada Labour Relations Board in *Barker v Teamsters' Union, Local 938*, 86 CLLC 16,031 [Barker], at 14,288:

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<sup>1</sup> *A.R.R.* at para 16.

<sup>2</sup> See, *Enns*, at 154, citing *Neufeld v Saskatchewan Legal Aid Commission and CUPE*, LRB File No 089-86.

(1) *The applicant must object to all trade unions, not just to a particular trade union.*

*Like the conscientious objector who must be opposed to "any and all wars", the applicant must object to any and all trade unions.*

(2) *The applicant does not have to rely on some specific tenets of a religious sect to base his objections.*

*In the same manner as the British Columbia and Ontario boards, we believe it is not for us to disqualify some convictions because they are personal to the applicant. While it will be easier for the latter to convince the Board that his belief is "religious" when this belief forms part of the dogma of a sect, we believe we would misconstrue section 162(2) if we were to get involved with religious orthodoxy.*

(3) *An objective inquiry must be made into the nature of the applicant's beliefs in the sense that they must relate to the Divine or man's perceived relationship with the Divine, as opposed to man-made institutions. For our purposes, a religious conviction or belief should be construed as the "recognition on the part of man of some higher unseen power as having control of his destiny, and as being entitled to obedience, reverence and worship" (Regina v. Leach, Ex Parte Bergsma, 1965 CanLII 175 (ON SC), [1965] 2 O.R. 200 (Ont. H.C.J.), page 213). By the way, this test has been used not only in British Columbia but in all the latest cases of the Ontario Board.*

(4) *Finally, the applicant must convince the Board that he is sincere and that he has not rationalized his objections to the union on religious grounds after he was made aware of the provisions of the Code.*

**[27]** The Board will proceed to consider each of these criteria, in turn.

**[28]** In relation to the first criterion, it is clear that Mrs. Nokusis objects to all unions. She identifies unions, in general, as the source of her concern. She made no suggestion that she has a concern directed at one union or at a particular group of unions. She bears no ill-will to the Union that is the respondent to this application. Her objection pre-dates her having obtained a position in the workplace in issue.

**[29]** Next, the second "criterion" is not so much a criterion as a caution for the Board. The caution is to not focus too narrowly on the question of whether there are specific tenets of the relevant religion that justify the requested exclusion. The Board is expected to heed this caution when carrying out its analysis pursuant to criterion no. 3.

**[30]** Criterion no. 3 requires an objective inquiry into whether an applicant's beliefs relate to the Divine or to one's perceived relationship with the Divine, as opposed to institutions constructed by people. In considering this criterion, the Board must be especially aware of the limits of its expertise. The Board is not and is not expected to be an expert in matters of theology.<sup>3</sup> It would

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<sup>3</sup> See, also, *A.R.R.* at para 16.

be inappropriate for the Board to delve into an assessment of the legitimacy or merits of any purported religious orthodoxy. Nor is it for the Board to engage in a probing assessment of the internal logic of an applicant's belief system or to apply judgments of the rightness or wrongness of an applicant's beliefs.

**[31]** Relatedly, the Board does not require that the applicant's beliefs be situated within existing dogma. In other words, the tenets of the religion are not the decisive factor. Instead, the Board's inquiry focuses on the applicant's "belief and understanding" of their religion.<sup>4</sup>

**[32]** As was explained in *Enns*, "[s]ince this is perhaps the most personal of all issues, no two cases will be the same".<sup>5</sup> Each case is highly factual and must be determined on its own merits:

*It is clearly a difficult task for a labour relations board, whose expertise does not ordinarily include issues of theology, to differentiate matters of religious "training or belief", as alluded to in Section 5(l), from other kinds of principles by which individuals may feel their consciences to be bound. This is particularly true in a case, such as this one, where the applicant does not rely on explicit doctrine pronounced by an organized church, but has formed the objection on the basis of her own religious study and meditation. Each case must be carefully considered on its own merits; nonetheless, the observations of this and other boards as they struggle to define the criteria by which they make these determinations are instructive.*<sup>6</sup>

**[33]** There is one previous reported decision of this Board involving a person, who was a Jehovah's Witness, and had requested an exclusion pursuant to section 5(l) of *The Trade Union Act*. That case is *Lohmeyer*. In *Lohmeyer*, the Board described the evidence given by the applicant:

*[4] Ms. Lohmeyer stated that she objected to joining any trade union that required a pledge of allegiance as she viewed it as anathema to the concept that there is only one kingdom that being the kingdom of God. Ms. Lohmeyer further objected to the payment of dues to the Union because she believed that it made political donations. She said that because of her religious beliefs she does not belong to any political party and does not vote in governmental elections.*

**[34]** The Board dealt with this evidence in the following way:

*[9] In our opinion, the present case does not satisfy the test adopted by the Board. Ms. Lohmeyer does not have any apparent objection to union membership that does not involve a pledge of allegiance. In any event, that is a moot point because the Union has agreed that she is not required to apply for membership. The present case is confined to Ms. Lohmeyer's objection to the payment of dues. Her objection is limited to the fact that a*

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<sup>4</sup> *Enns* at 152, citing *Straub v CUPE and School District No. 33*, [1976] 1 CLRBR 261.

<sup>5</sup> *Enns* at 154.

<sup>6</sup> See, *Enns*, at 151-2.

*portion of the dues that would be remitted on her behalf of the Union might be contributed by the Union to a political party.*

**[35]** As in *Lohmeyer*, Mrs. Nokusis has not been able to point to any church doctrine that directly prevents her from becoming a member of a union or that cautions her against doing so.

**[36]** However, the Board in the present case has benefited from Mrs. Nokusis's detailed, nuanced explanation of her belief system, which has assisted the Board in understanding the basis of her objections. In contrast with the evidence as described in *Lohmeyer*, Mrs. Nokusis has not raised the specific, isolated concerns about making a pledge of allegiance or about being involved in the making of political contributions. Her objections are broader and more comprehensive, relating instead to the potential for affiliation with a union in general. The primary focus of Mrs. Nokusis's concern stems from her understanding of unions as "political entities"; she has taken a vow to support only the kingdom of God and she believes that her affiliation with any political entity, including a union, will contravene that vow.

**[37]** It is not for the Board to engage in a probing assessment of the internal logic of an applicant's belief system. Reasonable or interested persons might have questions about this, but the Board is satisfied that Mrs. Nokusis's beliefs are grounded in her religious faith, which is informed by her interpretation of scripture. A similar comment was made in *Loewen*, by the majority of the Board, at 4:

*This Board finds that Ms. Loewen's objections to belonging to the Union meet all of the requirements listed above. She holds the belief that peaceable resolution of disputes is a basic tenet of Christianity. While we might disagree with this interpretation of Christianity and dispute the view that trade unions promote other than peaceable resolution of employment disputes, nevertheless, the belief is genuinely held, founded in an interpretation of Christian teachings and Church dogma, and it did not surface in an opportunistic fashion.*

**[38]** Relatedly, nor is it for the Board to thoroughly consider and definitively determine whether unions are properly described as "political entities". To be sure, it bears mentioning that a source of Mrs. Nokusis's understanding that unions are political entities is a human resource manual – not a religious source. The manual describes unions as political organizations as demonstrated by their internal structure. However, the secular nature of this source, which has informed Mrs. Nokusis's understanding of unions, does not detract from the religious nature of her beliefs about her relationship with God, and the spiritual consequences of affiliating with unions.<sup>7</sup>

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<sup>7</sup> See discussion, *Enns*, at 152, citing *Freedhoff v York University Faculty Association and Board of Governors of York University* (1982), OLRB Rep Jan 135.



[39] Moreover, Mrs. Nokusis's own explanation of unions as political entities goes beyond that which is described in the manual and extends to their representative interests. Her characterization of unions is certainly not absurd or foreign. And it is consistent with the theme that runs throughout Mrs. Nokusis's testimony - an objection to joining an organization involved in or participating in advocacy, the aim of which is to change the conditions of people on earth. Involvement with such an entity is said to detract from the ultimate source of liberation from those conditions, being the kingdom of God.

[40] The Board is satisfied that Mrs. Nokusis's objections are based on religious grounds, as opposed to philosophical, political or social grounds, however deeply held.

[41] In relation to the last criterion, criterion no. 4, the Board is convinced of Mrs. Nokusis's sincerity and the sincerity of her objection. She was a very credible witness. She provided a detailed description of her faith history, her scripture studies, and the thought process underlying her objection. She was frank and consistent in describing the personal significance of her faith.

[42] Mrs. Nokusis's actions are consistent with her expressed beliefs. She has previously requested an exclusion from a union on religious grounds and her request has been honored. She made the current application shortly after commencing her current job.

[43] The Board has no concerns that Mrs. Nokusis is rationalizing an objection that is otherwise insincere. She is not acting in an opportunistic fashion. She is certainly not rationalizing her objection to the Union after having been made aware of section 6-8 of the Act. On the contrary, she sought to learn about the process for making such an application so that she could remain true to her beliefs after having benefited from a similar request in a previous workplace.

[44] To conclude, the Board will grant the application. Mrs. Nokusis shall be excluded from the bargaining unit and the union dues and assessments that otherwise would be payable by her will be forwarded by the Employer to a charity mutually agreed on by the Union and Mrs. Nokusis. In the event they are unable to agree on a charity, the Board will remain seized to determine the issue.

[45] In closing, the Board will reiterate the caution that was expressed in *Neufeld v Saskatchewan Legal Aid Commission and CUPE*, LRB File No 089-86, an early but comparable case that was cited in *Enns*:

*...In the Neufeld case, the Board considered an application from an employee whose objection to trade union activity was based on religious belief of a personal nature, not on the doctrinal teachings of the church of which he was a member. In coming to the conclusion that the application should be allowed, the Board emphasized the need for great care in assessing applications of this kind:*

*A note of caution is in order. The Board will continue to scrutinize applications of this kind very carefully. It recognizes that they operate as an exception to union security provisions which are basic to our collective bargaining system. It also recognizes that any applicant excluded from an appropriate unit on the basis of religious training or belief continues to share in the benefits acquired as a result of the negotiating strength acquired through union security provisions, even though he makes no personal or monetary contribution to the collective bargaining process.*

**[46]** Lastly, the Board wishes to thank Mrs. Nokusis for her thoughtful presentation of her case to the Board.

**[47]** This is a unanimous decision.

**DATED** at Regina, Saskatchewan, this **29th** day of **September, 2022.**

**LABOUR RELATIONS BOARD**

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Barbara Mysko  
Vice-Chairperson