

ANNETTE CHRISTINE PURCHASE, Applicant v CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1161, Respondent and EAGLESTONE LODGE PERSONAL CARE HOME INC., Respondent

LRB File No. 134-24; September 17, 2024

Chairperson, Kyle McCreary; Board Members: Curt Talbot, K.C. and Hugh Wagner

For the Applicant, Annette Christine Purchase: Self Represented

For the Respondent, Canadian Union of Public Employees, Local 1161: Dawid Werminski

For the Respondent, Eaglestone Lodge Personal Care Home Inc.: No one appearing

Decertification – Dismissed – Petitions not acceptable support evidence

REASONS FOR DECISION

Background:

[1] Kyle McCreary, Chairperson: The Applicant applied for rescission pursuant to s. 6-17 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (“the Act”). The Board dismissed the application without oral hearing on July 26, 2024. These are the reasons for that dismissal.

[2] On July 4, 2024, the Applicant filed an application to cancel a certification order pursuant to s 6-17 of the Act, with a petition as support evidence.

[3] On July 5, 2024, the Board Registrar advised the Applicant of the Board's policy as it relates to the use of petitions for support evidence and asked for the Applicant to confirm if the application was to be filed in its current form.

[4] On July 5, 2024, the Applicant confirmed the intention to have the application filed with the petition support evidence.

[5] The Board's policy on acceptable support evidence on a rescission application is contained in a document on the Board's website titled “How is a Union removed from the workplace in which it is certified”:

How is a Union removed from the workplace to which it is certified?

A Certification Order is issued by the Board, pursuant to The Saskatchewan Employment Act, s 6-104, or under the former Trade Union Act (repealed April 29, 2014). Whether issued under the current or previous legislation, that Order remains in place until such time as the Board cancels the Order. The cancellation of the Certification Order is commonly referenced as a 'recission' or 'decertification' or 'revocation'.

...

2. What is support evidence?

As is the case when a Union is certified in the workplace, there must be the support of those affected. In order to have the Board consider the removal of the Union, it must first be satisfied that at least 45% of those employees who are covered by the Certification Order, are in support of the application.

Support can only be evidenced through individual items of support evidence, which are normally secured by the applicant (employee making the application), from each employee. A petition is not considered valid support evidence.

Acceptable support evidence for each employee* supporting the application must include;

- a. Name
- b. Home Address and telephone number
- c. Email address (if available)
- d. Occupation at the workplace, (whether casual, full-time, on Leave).
- e. Date of Hire
- f. A statement supporting the application. An example is as follows;

"I, _____ (name) as an employee of _____ (name of employer), no longer wish to be represented by the _____ (name of Union), as it relates to my terms and conditions of employment. I sign and date this document of my own free will and I confirm that I was not harassed, intimidated or forced to sign this document, and that the Employer has not initiated or promoted this initiative"

*this information is not shared with anyone except the Registrar/Agent.

In addition, the Applicant to whom the support evidence is provided must keep the information confidential and is not to be shared with the Employer or any other Employee. Finally, the applicant must prepare a listing of the support evidence on a separate sheet of paper(s), listing the Name, Home Address, and Occupation.

...

[Emphasis in original]

Relevant Statutory Provisions:

[6] This application is pursuant to s. 6-17 of the Act, which sets out the requirements for an application to be considered:

Application to cancel certification order – loss of support

6-17(1) An employee within a bargaining unit may apply to the board to cancel a certification order if the employee:

- (a) establishes that 45% or more of the employees in the bargaining unit have within the 90 days preceding the date of the application indicated support for removing the union as bargaining agent; and

(b) files with the board evidence of each employee's support that meets the prescribed requirements.

(2) On receipt of an application pursuant to subsection (1), the board shall direct that a vote be taken of the employees in the bargaining unit.

(3) If a majority of the votes cast in a vote directed in accordance with subsection (2) favour removing the union as bargaining agent, the board shall cancel the certification order.

(4) An application must not be made pursuant to this section:

(a) during the two years following the issuance of the first certification order; or

(b) during the 12 months following a refusal pursuant to this section to cancel the certification order.

[7] Under s. 6-17(1)(b) of the Act, the Applicant must file support evidence meeting prescribed requirements. There are no requirements for support evidence under the various regulations to the Act, but the Board has the power to determine acceptable support evidence under ss. 6-111(e)-(f):

6-111(1) *With respect to any matter before it, the board has the power:*

. . .

(e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the board considers appropriate, whether admissible in a court of law or not;

(f) subject to the regulations made pursuant to this Part by the Lieutenant Governor in Council:

(i) to determine the form in which evidence of membership in a union or communication from employees that they no longer intend to be represented by a union is to be filed with the board on an application for certification or for cancellation; and

(ii) to refuse to accept any evidence that is not filed in the form mentioned in subclause (i);

. . .

[8] The Board also has the authority to decide any matter without holding an oral hearing as set out in s. 6-111(1)(q).

Analysis and Decision:

[9] The question before this Board is whether a petition is acceptable support evidence pursuant to ss. 6-17 and 6-111(1)(f)(i) of the Act. The Board finds that based on its published policies and decisions under *The Trade Union Act*, RSS 1978, c T-17, that a petition is not acceptable support evidence.

[10] The Board reviewed the requirements of support evidence on certification applications in *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) v JSN Motors Inc.*, 2022 CanLII 10925 (SK LRB):

[23] The basic minimum requirements for support evidence have developed through the Board's case law and are well-established. In Beaver Lumber Company and IWA, [1977] May Sask Labour Report 30 [Beaver Lumber], the Board described the requirements within the context of what was then the card-check system:

5 However, disregarding the petition does not bring the matter to an end. The policy of the Board in declining to consider any evidence as to events which transpired after the date of filing of an application for Certification applies to evidence submitted by the Applicant. As in most cases, and as provided in form #1 of the Board's Regulations, the Applicant in this case used, as proof of support, a number of authorization cards signed by employees of the Respondent in the proposed appropriate unit. A comparison of the signatures on the cards compared with the signatures on the Statement of Employment enables the Board to determine whether or not the Applicant represents a majority of employees in an appropriate unit. In order to be considered such authorization cards must meet certain minimum requirements:

- 1. They must be signed by an employee within the appropriate unit.*
- 2. They must expressly, or by necessary implication, authorize the Union in question to bargain collectively on behalf of the employee.*
- 3. They must bear a date not earlier than six months before the date of the application by reason of the provisions of Section 6 (2) and (3) of The Trade Union Act. Although Section 6 (2) and (3) does not apply to all applications for Certification, it would be illogical to use one date for some cases and another date for other cases.*

[24] An additional requirement is that separate documents or cards be filed for each employee. For a time, the Board accepted as evidence of support in the construction industry a declaration of membership in the union, which listed the employees of the employer who were members in good standing of the applicant union: International Woodworkers of America, Local 184 v the 77 Rogers Group Limited, [1979] February Sask Labour Report 35. The Board ended this practice due to concerns that the fact of membership in the union did not necessarily reflect the reality of whether the employee supported the union as the bargaining representative in respect of the employer in question: United Brotherhood of Carpenters and Joiners of America, Local 1990 v Work Force Construction Ltd (o/a Quadra Construction), [1988] Fall Sask Labour Report 42.

[25] The Beaver Lumber criteria have withstood the transition from the card-check to mandatory vote regime. Granted, the timeframe for indicating support has decreased from six months to within 90 days prior to the date that the application was filed with the Board. Otherwise, the Board continues to apply the Beaver Lumber criteria, and the requirement for separate cards, in assessing the support card evidence on certification applications.

[26] In *UFCW, Local 1400 v Canadian Salt Company Limited*, 2010 CanLII 65961 (SK LRB) [Canadian Salt], the Board relied on *Beaver Lumber* in assessing the minimum requirements for support evidence:

[101] In our opinion, the Union's evidence of support contained the minimum requirements expected by this Board, namely; that the evidence of support was contained in individual documents that were individually signed by supporting employees; that each document contained a written expression, or by necessary implication, authorization for the Union to bargain collectively on behalf of that employee; and that each document was signed not more than ninety (90) days prior to the date the application was filed with the Board. See: *International Woodworkers of America v. Beaver Lumber Company Limited*, [1977] May Sask. Labour Rep. 30, LRB File No. 112-77. While support evidence must correlate to a particular employer, the support cards are not the only means of establishing the necessary relationship and the Board may consider extrinsic evidence to find the requisite correlation. See: *United Food and Commercial Workers, Local 1400 v. Dude Management Ltd.*, [1987] September Sask. Labour Rep. 31, LRB File No. 213-86.

[27] In summary, the Board requires that support evidence consist of a separate card for each person; that the support cards be personally signed and dated by an employee within the proposed bargaining unit; that they expressly, or by necessary implication, authorize the Union to bargain collectively on behalf of the employee; and that they be signed no more than 90 days prior to the application being filed with the Board. These requirements are reflected in the Board's policy documents available online, in an article entitled, "How does the process work to secure a Union in the Workplace?" and are evident in the Board's current practice.

[11] The Board considered acceptable support evidence on a decertification application under *The Trade Union Act* in *Janzen v. Service Employees International Union, Local 336*, 2007 CanLII 68753 (SK LRB)("Janzen"):

[52] On relatively few occasions, the Board has commented on the level of scrutiny it will exercise in reviewing support evidence filed on a rescission application. In the recent decision of *James Walters v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Dimension 3 Hospitality Corporation o/a Days Inn*, [2005] Sask. L.R.B.R. 139, LRB File No. 238-04 the Board considered an argument by a union that the form of support used by the applicant on a rescission application was not properly informed support and that the purpose, intent and effect of the forms would not be clear to the employees who signed them. At 162 the Board stated:

[75] While there are no forms prescribed by the Act or the Regulations for use as evidence of support for an application for certification, it has been a longstanding practice of the Board to accept support cards at face value and not to make inquiries concerning evidence of support beyond the cards filed, absent an allegation that support may have been obtained in a manner contrary to the Act. As a matter of practice, the Board subjects the cards to a fairly high degree of scrutiny to determine their authenticity.

[76] While there have apparently been no previous cases where the Board has been asked to go behind the cards on a rescission application to determine whether the employees truly understood the nature of what they were signing, the Board has considered this issue in the context of a certification application. The Board's rulings in that regard are instructive.

[53] After reviewing the requirements set out in *Beaver Lumber, supra*, and the form of support used on the application (which was the same for every employee who signed a statement of support), the Board in *James Walters, supra*, stated at 164:

[80] The Board finds no reason to depart from its practice and accepts the cards filed by the Applicant as evidence of the wishes of the employees who signed the cards. The Board finds that the evidence of support was signed by employees in the appropriate unit, was dated within six months prior to the application being filed and that the wording on the support cards filed, while somewhat technical, appropriately expresses the intention to no longer have the Union represent the employee and allows the Board to draw an inference that the employees would have understood the implications of signing the same. The Board does not find that the obtaining of support was so contaminated by a lack of information that it could not be considered genuine. In addition, there was no evidence that would suggest that the support was improperly obtained and no employees have come forward to suggest that they did not understand the implications of what they signed. As stated previously, the Board's policy is to order a secret ballot vote on all rescission applications, unless there are extraordinary circumstances that the Board has determined are not present in this case. A vote would also protect against any misunderstanding that may have arisen on the part of any employee who signed in support of this application.

[54] Even though there is no reported decision of the Board that outlines the requirements for support evidence on a decertification application, the Board has published a policy on its website which outlines those requirements. When an individual contacts the Board with questions about the decertification process, the Board Registrar and other Board staff routinely refer the individual to the Board's website and/or verbally advise the individual of the process and the requirements for support based on the information on the website. Even though the Board would not find it necessary to conclude that the Applicant actually knew of the requirements for the form of support, we note that, in her evidence, the Applicant stated that she had reviewed the Board's website in order to determine how to file her application and therefore would have had access to information concerning the Board's requirements on the form of support. The following is an excerpt from the Board's website under "FAQ," or "Frequently Asked Questions":

How can I apply to decertify my workplace?

There are only 30 days each calendar year during which an application for rescission may be filed with the Board. The way to calculate this 30 day period is found in s. 5(k) of The Trade Union Act.

If there is a collective bargaining agreement in place between the union and the employer, the 30 day period runs from 60 days before the anniversary of the effective date of that collective agreement until 30 days before the anniversary of the effective date of that collective agreement.

If there is no collective bargaining agreement in place between the union and the employer, the 30 day period runs from 60 days before the anniversary of the date of the certification order until 30 days before the anniversary of the date of the certification order.

The application for rescission must be made by an employee and must be accompanied by evidence of support from a majority of employees in the bargaining unit. Each individual supporting the application must sign an individual written statement which is dated, identifies the union and the employer, indicates that the individual signing no longer wishes the union to represent him or her in

dealing with the employer and indicates that the individual signing supports the application for rescission. The original signed statements must be filed with the application for rescission. The evidence of support is kept confidential and neither the union nor the employer is aware of which or how many of the employees support rescission.

An employer may not make an application for rescission, nor may it influence or assist its employee(s) to do so. An employer influenced or assisted application may be dismissed without a vote pursuant to s. 9 of The Trade Union Act.

[55] Section 18(f) of the Act empowers the Board to determine the appropriate form of support on a rescission application. It states:

18 *The board has, for any matter before it, the power:*

(f) to determine the form in which evidence of membership in a trade union or communication from employees that they no longer wish to be represented by a trade union is to be filed with the board on an application for certification or for rescission, and to refuse to accept any evidence that is not filed in that form;

[56] Pursuant to s. 18(f) of the Act, we approve of and adopt the policy and longstanding practice of the Board with respect to the requirements for support evidence on a rescission application. In our view, the requirements mirror those for certification applications as prescribed in Beaver Lumber, supra,[5] and ensure, insofar as is possible, that the purported evidence of support represents an informed decision of the individual that he or she no longer wishes to have the Union -- which has been certified to act as the individual's exclusive bargaining agent with his or her employer to bargain terms and conditions of employment on his or her behalf -- at his or her workplace and that he or she supports the application for rescission made by the applicant. For ease of future reference, individual evidence of support filed with an application for rescission will be accepted at face value when the following requirements are met, subject, of course, to any challenge that the evidence was obtained in violation of the Act:

- (1) The statement must be signed by an employee within the appropriate unit;*
- (2) The statement must identify the name of the union and the name of the employer;*
- (3) The statement must indicate expressly, or by necessary implication, that the individual signing no longer wishes the union to represent him or her in dealing with the employer and that the individual signing supports the application for rescission; and*
- (4) The statement must bear a date not earlier than six months before the date upon which the application is filed.*

[12] Thus, the Board has taken a consistent approach to support evidence in relation to both certifications and rescissions that petition are not acceptable support evidence. The Board agrees with the analysis of the Board in *Janzen* and pursuant to s. 6-111(1)(f) confirms and adopts the policy of the Board as stated in the current policy. It is largely consistent with the policy of the Board in *Janzen* with the modifications that the Board now accepts electronic support evidence

and due to changes in statute, the support evidence must now be collected in 90 days rather than the six months in *Janzen*.

[13] Pursuant to s. 6-17 of the Act, an employee must establish that there is support evidence of 45% of the members in a bargaining unit for the Board to direct a vote. This application only contained a petition as support evidence. As outlined above, pursuant to the Board's policy and jurisprudence, this is not acceptable support evidence. As the application did not include acceptable support evidence, this application does not meet the statutory requirements for the Board to direct a vote. Without support evidence, the application is fatally flawed and can be dismissed without an oral hearing pursuant to s. 6-111(1)(q).

[14] It is for these reasons that the Board previously dismissed the application under s. 6-17 of the Act. This is a unanimous decision of the Board.

DATED at Regina, Saskatchewan, this **17th** day of **September, 2024**.

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson