



IN THE MATTER OF an appeal pursuant to subsection 3-53(1) and 3-54(1) with respect to the decision of an Occupational Health and Safety Officer pursuant to *The Saskatchewan Employment Act*.

TM

APPLICANT

-and-

Prince Albert Parkland Health Region

RESPONDENT

-and-

Director of Occupational Health and Safety  
Ministry of Labour Relations and Workplace Safety

RESPONDENT

-and-

Canadian Union of Public Employees, Local 4777

BARGAINING AGENT

### Introduction

1. TM has appealed a decision of the Occupational Health Officers dated April 20, 2015 in relation to a harassment complaint made against her manager.
2. The Labour Relations Board provided notice to the Canadian Union of Public Employees, Local 4777 ("CUPE") of the appointment of an Adjudicator to hear the appeal on or about June 11, 2015.
3. A preliminary issue has arisen. After being provided with notice of the appointment of an Adjudicator, CUPE has requested the Adjudicator grant CUPE watching brief status in this matter. Specifically, CUPE has requested that it be provided with:
  - (a) notice of the time and location of any hearing dates;
  - (b) the opportunity to observe the hearing;
  - (c) copies of any submissions made by the parties;
  - (d) notice of any decisions made; and
  - (e) copies of any reasons.

4. The Prince Albert Parkland Health Region (the "PAPHR") objects to the granting of any standing to CUPE on the basis that the union is not a party "directly affected" by these proceedings as set out in s. 3-53(2) of *The Saskatchewan Employment Act*.
5. CUPE argues that it is one of the parties "directly affected" by this action. As such, it argues there is a statutory obligation for it to be provided with notice of a hearing (s. 4-4(1)(b)(ii)(B)) of *The Saskatchewan Employment Act*.
6. CUPE claims it is directly affected for the following reasons:
  - (a) It is the exclusive representative of health service providers at Prince Albert Parkland Health Region with respect to negotiations or dealing with the employer concerning matters covered by a collective agreement;
  - (b) It has a statutory duty of fair representation with respect to both the Applicant and any other CUPE Local 4777 members regarding any matter covered by the collective agreement;
  - (c) The matters and issues raised are covered by a number of terms in the collective agreement;
  - (d) The adjudicator's findings could have an impact on the interpretation of the terms of the collective agreement;
  - (e) It has a clear interest in ensuring that no findings are made against any member that could result in discipline, without due regard for protection afforded by the collective agreement; and
  - (f) It has a direct interest in monitoring the matters to ensure that no findings of fact are made which are adverse to the interest of the Union.
7. CUPE asks that it be given "watching brief status" but also indicates an intention to intervene when and if necessary.
8. The request for CUPE to be given "watching brief" status was not made at the request of the Applicant. The Applicant however, does not object to CUPE's request for watching brief status.
9. PAPHR takes the position that CUPE is not a party "directly affected" by these proceedings, and as a result, it should not be given standing. Furthermore, PAPHR argues that CUPE would be unable to represent the interests of the employee as there is a potential conflict of interest between the two parties because the union failed to grieve the issues raised by the employee. PAPHR provided the following two cases in support of their position: *Saskatchewan Government Employees' Union (S.G.E.U.) v Saskatchewan*, [1999] 7 WWR 318 and *Canada Union of Public Employees, Local 30 v Alberta (Public Health Advisory Appeal Board)* (1996), 178 AR 297 (ABCA).

10. In *Saskatchewan Government Employees' Union (S.G.E.U.) v Saskatchewan*, [1999] 7 WWR 318, the Court of Appeal found that SGEU lacked standing in a dispute between a group of employees and their employer. The Court pointed to the following factors when making their decision:

[9] It must be noted it is the appellant, Campbell, and not SGEU who is identified in the claim as the person representing the interests of herself and other members of the class of non-permanent employees. Further: no relief is sought by SGEU against the respondent; there is no allegation the Union took any action on behalf of the appellant, Campbell, or any other members of the class she proposes to represent; no contractual right of SGEU against the respondent is sought to be enforced; and, SGEU is not seeking to enforce any of its rights pursuant to *The Trade Union Act*.

11. The Court found that SGEU failed to establish that it had the “legal persona capable of enforcing interests of its members in its own name outside the scope of *The Trade Union Act* [Act] or outside any contractual rights” (para 18). The Court found that the Act gives employees the right of collective action and assembly through a union,” but does not “purport to give the union the same or overlapping interests as its members” (para 18). The Court went on to say:

[20] In my view, the appellant's central argument that s. 29 of The Trade Union Act allows a union to be a party to an action alongside its members with respect to all employment-related matters, even when the claim does not disclose any cause of action by the union, is not supported by the case law and places an interpretation on s. 29 of The Trade Union Act not intended by the Legislature.

12. In *Canadian Union of Public Employees, Local 30 v Alberta (Public Health Advisory Appeal Board)*, the Alberta Court of Appeal discussed how to interpret the term “directly affected” with regard to a party seeking standing to make an appeal. The Court had the following to say at paras 18-19:

[18] ...This court has previously held that it is necessary to interpret reasonably the term “affected” to make an Act having a right of appeal workable: *Re Pension Fund Properties and Development Appeal Board of City of Calgary* (1981), 127 DLR (3d) 477. The phrase “directly affected” must mean something more than “affected”. However, it cannot be given an expanded meaning simply by virtue of expanding social consciousness: *Canada (A.G.) v. Mossop* (1993), 100 DLR (4th) 658 (SCC).

[19] In our view, the inclusion of the work “directly” signals a legislative intent to further circumscribe a right of appeal. When considered in the context of the regulatory scheme, it is apparent that the right of appeal is confined to persons having a personal rather than a community interest in the matter.

13. In *Carpenters and Allied Workers Local 27 (United Brotherhood of Carpenters and Joiners of America, Local 27) v Napa Valley Trim Inc. and Jam Finish Carpentry Inc.*, 2011 CanLII 1838 (ON LRB) the Labourers' International Union of North America (“Local 183”) sought intervenor status in an action between United Brotherhood of Carpenters and Joiners of America (“Local 27”) and Napa Valley Trim Inc. and Jam Finish Carpentry Inc.. They requested participation on a “watching brief” basis, “to ensure no actions taken by Local 27 in [the] proceeding [were] inconsistent” with related contractual obligations to Local 183 (para 4).

14. The Board agreed with the position of the Local 27 and Jam Finish Carpentry that, “a desire to proactively ensure compliance with an agreement [Local 183] entered into with Local 27 is not a sufficient basis to be granted intervenor status” (para 5). The Board concluded by stating that while it would not grant intervenor status to Local 183:

Board hearings are public in nature and nothing in the present circumstances of this case precludes Local 183 from attending the hearing and conducting itself in the manner it anticipates, namely a non-active basis on a “watching brief”/public observer basis.

### **Analysis and Directions**

15. Section 4-4(1) of *The Saskatchewan Employment Act* provides as follows:

4-4(1) After selecting an adjudicator pursuant to section 4-3, the board shall:

(a) in consultation with the adjudicator and the parties, set a time, day and place for the hearing of the appeal or the hearing; and

(b) give written notice of the time, day and place for the hearing of the appeal or the hearing to:

...

(ii) in the case of an appeal or hearing pursuant to Part III:

(A) the director of occupational health and safety; and

(B) all persons who are directly affected by the decision being appealed.

(2) An adjudicator may determine the procedures by which the appeal or hearing is to be conducted.

16. Section 3-52(2) provides in part as follows:

3-52(2) In this Division and in Part IV, “**person who is directly affected by a decision**” means any of the following persons to whom a decision of an occupational health officer is directed and who is directly affected by that decision:

(a) a worker;

(b) an employer;

(c) a self-employed person;

(d) a contractor;

(e) a prime contractor;

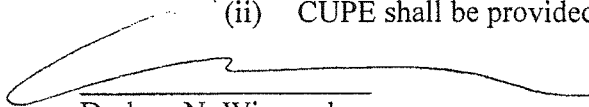
(f) an owner;

(g) a supplier;

(h) any other prescribed person or member of a category of prescribed persons;

but does not include any prescribed person or category of prescribed persons.

17. My jurisdiction over this request is governed by section 4-4(2) of *The Saskatchewan Employment Act*.
18. In this case, I accept the submissions of PAPH that CUPE does not have standing on the basis that it is a party "directly affected" by the proceedings. CUPE does not fall within any of the enumerated persons in the definition of party "directly affected by a decision" in section 3-52(2) of the Act. CUPE's status as certified bargaining agent does not have any bearing on this issue. CUPE does have a duty of fair representation of an employee but that applies to the employee's rights pursuant to the collective agreement. While there may be provisions in the collective agreement protecting the employee's health and safety in the work environment the rights and obligations of the employee and employer that are relevant in this proceeding are those provided for in Part III, the Occupational Health and Safety provisions of *The Saskatchewan Employment Act*.
19. However, I do not see anything in *The Saskatchewan Employment Act* that would preclude CUPE from being able to conduct a watching brief on a public observance basis which would enable them to make an application to intervene should circumstances arise that might justify such an application to be made during the proceedings.
20. Accordingly, while I am not prepared to accede that CUPE has status as a party to this proceeding, I am prepared to allow CUPE limited watching brief status. CUPE shall be provided with notice of the time and location of any hearing dates and the opportunity to observe the hearing. I will not be providing CUPE with notice of any pre-hearing case conferences or mediation or other meetings being held or facilitated by me with a view to encouraging a settlement of the matter as contemplated in section 4-5(2) of *The Saskatchewan Employment Act*. In regards to any written submissions made by the parties during the formal hearing process CUPE may request copies of such submissions directly from the parties and it will be up to the parties to extend the courtesy of providing a copy to CUPE or not, but I do not see that as my role.
21. In addition, my written decision will be forwarded to the parties, the Director of Occupational Health and Safety and the Labour Relations Board as I am required to do under the *Act*. Decisions are posted on the website of the Labour Relations Board and CUPE can make a request for a copy of the decision from the Labour Relations Board.
22. In the result, I order as follows:
  - (a) CUPE shall be granted watching brief status as follows:
    - (i) CUPE shall be provided with notice of the time and location of any hearing dates; and
    - (ii) CUPE shall be provided with the opportunity to observe the hearing.

  
Darlene N. Wingerak  
Special Adjudicator  
October 22, 2015