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ORDER NO. 1676 **CORRECTED COPY**
Case No. 251/18/LRA

IN THE MATTER OF: ***THE LABOUR RELATIONS ACT***

- and -

IN THE MATTER OF: An Application by

United Food and Commercial Workers Union, Local No. 832,
Applicant/Union,

- and -

RED RIVER CO-OPERATIVE LTD.,
Respondent/Employer.

BEFORE: C.S. Robinson, Chairperson

This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.

SUBSTANTIVE ORDER

I. Introduction

1. The current collective agreement entered into between the parties recognizes the Applicant as the exclusive bargaining agent for all employees employed in stores owned and/or operated by the Respondent in the Province of Manitoba (with the exception of certain excluded managers and professionals). In June of 2018, the Respondent announced that it was acquiring three food stores from Federated Co-Operative Ltd. that are located in Lorette, Selkirk, and Stonewall, Manitoba. The Applicant has separate certificates and collective agreements covering the stores in Lorette and Selkirk. The employees of the store in Stonewall were not previously unionized.

2. During collective bargaining, the Applicant took the position that the employees of all three food stores acquired by the Respondent were covered by the Applicant's province-wide recognition and scope clause. The Respondent did not agree and refused to recognize the Applicant as the exclusive bargaining agent for employees working at the Stonewall store. Ultimately, the parties reached agreement that employees working at the Lorette and Selkirk stores would be deemed to be covered by the recognition clause of the collective agreement but would continue to be governed by the terms of their existing collective agreements. The parties did not reach agreement with respect to the Stonewall food store. During collective bargaining, the Applicant indicated that it would bring an application to the Manitoba Labour Board (the "Board") to address that disagreement.

3. The issue in this case is whether the Applicant is the exclusive bargaining agent for employees working at the previously non-unionized food store in Stonewall by virtue of the fact that there is a province-wide all employee recognition clause contained in the collective agreement between it and the Respondent.

4. The Board has determined that the Applicant is the exclusive bargaining agent for employees of the Respondent's food store in Stonewall, Manitoba in accordance with the recognition clause contained in the collective agreement entered into between the parties.

II. Procedural Background

5. On December 11, 2018, the Applicant filed an Application seeking a Board Determination pursuant to sections 56, 59 and subsection 142(5) of *The Labour Relations Act* (the "*Act*").

6. On December 20, 2018, the Respondent filed its Reply, submitting that the Application should be dismissed.

7. On January 11, 2019, the Applicant filed a Response to the Reply.

8. A hearing was scheduled for June 18, 2019; however the parties jointly requested that the hearing be adjourned. The hearing was subsequently rescheduled upon request of the parties.

9. Prior to the hearing, by letter dated February 3, 2020, counsel for the Applicant advised that it only intended upon seeking determinations under subsection 142(5) of the *Act*.

10. The Board conducted a hearing on February 10 and 11, 2020 at which time the parties, represented by counsel, presented evidence and argument.

III. Facts

11. The parties provided the Board with a comprehensive Agreed Statement of Facts and Documents which sets out much of the evidence. As such, the Board shall only set out the most salient facts in this Order.

12. The Applicant is a large union representing approximately 18,000 employees, including approximately 4,000 employees working in the grocery industry.

13. The Applicant was the certified bargaining unit for employees working at Canada Safeway Ltd. ("Safeway") for many years. Historically, it had five Certificates issued by this Board granting it the exclusive right to represent certain employees of Safeway in Winnipeg, Brandon, Dauphin, Selkirk, and Thompson. The Certificates were amended from time to time, most recently in 1992. Over time, the Applicant and Safeway agreed, during collective bargaining, to changes regarding how the bargaining unit(s) would be described. These changes were set forth in the collective agreements entered into between those parties. Ultimately, Safeway recognized the Applicant as the exclusive bargaining agent for all employees employed in stores owned and/or operated by Safeway in the Province of Manitoba, subject to some limited exclusions. As such, all Safeway stores in Manitoba were unionized with employees being represented by the Applicant.

14. In June of 2013, Safeway advised the Applicant that it had entered into an agreement to sell its net assets to Sobeys Inc. The sale was subject to approval of the federal Competition Bureau. In October of 2013, the Competition Bureau announced that Sobeys Inc. agreed to divest 23 stores in four provinces, including four stores in Manitoba.

15. In March of 2014, Sobeys West Inc. wrote to the Applicant to confirm that 33 Safeway stores in Manitoba had been sold to it and that it was a successor employer to Safeway for the purposes of the collective agreement.

16. The four Manitoba stores divested by Sobeys pursuant to the Competition Bureau process were purchased by the Respondent. The stores were all in Winnipeg, located on Main Street, Vermillion Road, Dakota Street, and Grant Avenue.

17. As reflected in the Agreed Statement of Facts and Documents, the Respondent has acknowledged that it is a successor employer, and that it inherited obligations including the 2014-2018 collective agreement between the Applicant and Sobeys West Inc., which applied to the four stores it purchased.

18. The Employer subsequently closed the Main Street store in 2016 and re-opened the pharmacy that had been contained therein at a separate location soon thereafter. The pharmacy continued to be covered by the collective agreement.

19. In November of 2017, the Applicant served the Employer with notice to bargain a renewed collective agreement. Bargaining commenced in December of 2017.

20. The 2014-18 collective agreement included a broad and comprehensive clause setting forth the nature of the bargaining unit. Article 1.01 of that agreement recognized the Applicant as the exclusive bargaining agent for all employees, whether full-time or part-time, coming under the provisions of the collective agreement, employed in the stores owned and/or operated by the company in the Province of Manitoba, save and except certain specifically excluded positions.

21. During negotiations for the renewal of that collective agreement, the Respondent proposed to amend Article 1.01 to delete the reference in the recognition clause to the "Province of Manitoba", and to replace it with a clause that specifically referred to the Vermillion Road, Dakota Street, and Grant Avenue store locations. The Employer also proposed the deletion of Article 1.08 of the collective agreement in its entirety. The Applicant did not agree to the Respondent's initial proposals and adamantly refused to agree to any sweeping changes to Article 1.01.

22. During collective bargaining on February 8, 2018, the Employer advised that it was interested in purchasing three grocery stores, two of which had collective agreements with the Applicant, and another store that was non-unionized. Notes from collective bargaining that day indicate that the Applicant's lead negotiator took the position that the newly purchased stores should be covered by the collective agreement. The Respondent disagreed, responding that two of the stores already had collective agreements with the Applicant and that the non-union store would have to be organized.

23. Collective bargaining between the parties continued. On June 18, 2018, the Respondent announced that it was acquiring the three stores, located in Lorette, Selkirk, and Stonewall, Manitoba, from Federated Co-operatives Limited ("FCL"). The buildings in which the stores operate are leased from FCL.

24. The Respondent acknowledges that it owns and operates the three stores, including the one located in Stonewall.

25. Employees of the three newly acquired stores were told that the Respondent currently operated under a "Marketplace" banner, which would be replaced with the Co-op shield and Red River Co-op signage. The transaction was expected to close on

July 18, 2018 and the Respondent would assume ownership of the stores later in July. All three stores were subsequently converted from the Marketplace banner into Red River Co-op stores following the sale (although some Marketplace signage remains).

26. The Respondent made offers of employment to employees and managers of the three stores. Employees received a document entitled “Transitioning to Red River Co-op Frequently Asked Questions” explaining matters related to the transition to new ownership.

27. As alluded to above, the Applicant was already the certified bargaining agent for the Lorette and Selkirk stores pursuant to Certificate No. MLB-7002 (Lorette) and Certificate No. MLB-6907 (Selkirk). The bargaining units for each of the stores are described as all employee units with limited specific exceptions. The Applicant had entered into separate collective agreements with the two stores. The collective agreement for the Lorette store is for a term running from 2017 to 2021. The Selkirk store collective agreement’s term commenced in 2016 and ends in 2020.

28. As noted above, the Stonewall store has never been unionized or subject to an Application for Certification by the Applicant. There are 43 non-management employees who work at the Respondent’s store located in Stonewall, Manitoba.

29. Following the announcement of the Respondent’s purchase of the stores, the parties had two further collective bargaining meetings on July 31 and August 1, 2018. In addition, prior to those collective bargaining sessions, the lead negotiators for the Applicant and Respondent had discussions on or about July 26, 2018.

30. The Applicant’s lead negotiator testified that the Applicant’s consistent position was that the Lorette, Selkirk, and Stonewall stores “need to be covered by this collective agreement”. The Applicant recognized that the Lorette and Selkirk stores had separate collective agreements in place and maintained that the Stonewall store should be covered by the collective agreement being negotiated. The Respondent disagreed and maintained its position that the three newly acquired stores should not be recognized under the collective agreement.

31. On July 31, 2018, the Applicant proposed that a new Appendix be added to the collective agreement to recognize that the employees working at the Lorette and Selkirk stores would be deemed to be covered under Article 1 of the collective agreement between the parties and, further, that the unionized employees of those stores would continue to be governed by the terms of their existing collective agreements. Ultimately, the parties agreed upon wording for such a provision. The Respondent’s Human Resources Manager testified that he believed that the Applicant’s proposal was “a reasonable way to limit the scope” of the bargaining unit.

He suggested that this proposal settled the disagreement with respect to the inclusion of the Stonewall store under the collective agreement. During direct examination, he testified that he believed that the Applicant's proposal suggested that it was not pursuing the inclusion of the Stonewall store under the collective agreement as that store was not specifically referred to in the proposal. However, during cross examination, he acknowledged that the Applicant took the position during collective bargaining that the parties would have to "agree to disagree" about the Stonewall store.

32. According to the Applicant's lead negotiator, the Applicant advised the Respondent during collective bargaining that it would be making an application to this Board to resolve the issue of whether the Stonewall store was covered by the collective agreement. At paragraph 13 of its Reply to the Application, the Respondent stated that "while there was disagreement on including Stonewall" in the collective agreement, there was "no consensus as to the forum to resolve the disagreement". At paragraph 14 of the Reply, the Respondent stated that the Applicant "threatened to go to the Board to resolve this matter", but that the Respondent remained uncertain as to whether the Applicant would actually do so. During her testimony, the Applicant's lead negotiator disagreed with the characterization of this approach as a threat. She maintained that the parties were nearing the end of collective bargaining and the Applicant believed that having the Board deal with the issue was a way to resolve the parties' disagreement about the Stonewall store.

33. On August 1, 2018, the parties reached a tentative agreement for a 2018-2020 collective agreement. The agreement was subsequently ratified on August 21, 2018.

34. Article 1 of the collective agreement states as follows (with bolded terms indicating changes):

> 1.01 The **Co-operative** recognizes the Union as the sole agency for the purpose of collective bargaining for all employees, whether full-time or part-time, coming under the provisions of this Agreement, employed in the stores owned and/or operated by the **Co-operative** in the Province of Manitoba, save and except one (1) Store Manager per store, one (1) **Front End Manager** per store, **one (1) Grocery Manager per store, one (1) Meat Manager per store, one (1) Produce Manager per store, one (1) Deli Manager per store, one (1) Bakery Manager per store, one (1) Health and Wellness Advisor per store, one** (1) Pharmacy Manager per store, Graduate and Undergraduate Pharmacists, **and** Registered Pharmacy Technicians if and when the Province of Manitoba enacts such a designation.

35. Article 1.07 of the 2018-2020 collective agreement (previously Article 1.08) was amended to state:

    1.07 In the event Red River Co-operative Ltd. decides to convert an existing store or open a new store under a new or existing banner, that store shall be covered by the terms and conditions of this Collective Agreement.

36. The parties agreed to delete language from Article 1.07 that addressed the conversion or opening of a new store as a "limited discount model". Given that the Respondent has indicated that it does not intend to operate limited discount model stores, this provision was deemed to be unnecessary.

37. The parties agreed to a new Article E-21 which states:

    E-21 Lorette and Selkirk Red River Cooperative Ltd. Locations

    The parties agree that employees working at the Lorette and Selkirk Red River Cooperative Ltd. locations shall be deemed to be covered under Article 1 of the agreement between the parties.

    The parties have agreed that the existing Red River Cooperative Ltd. locations in Lorette and Selkirk, formerly known as The Marketplace at Lorette and The Marketplace at Selkirk, will continue to be governed by the terms of their existing collective agreements. For greater clarity, the Lorette collective agreement between FCL Enterprises Co-operative, trading as The Marketplace at Lorette and United Food and Commercial Workers Local 832, which was last ratified on May 6, 2018; and the Selkirk collective agreement between the Marketplace at Selkirk and United Food and Commercial Workers Local 832, which was last ratified on August 14, 2016.

38. In addition, the parties agreed to delete Appendix F from the 2014-2018 collective agreement which set forth provisions that would apply in the event of a new store opening in a City, Town or Community where Sobeys West Inc. did not have a store. Notably, agreement to delete the Appendix was reached in January of 2018 prior to the Applicant being advised of the Respondent's planned acquisition of the Lorette, Selkirk, and Stonewall stores.

39. During the hearing, counsel for the Respondent stipulated that the Respondent does not dispute that a newly built store would be covered by the collective agreement. The Respondent's witness acknowledged during cross examination that this stipulation applied to new build stores in Winnipeg or other parts of the Province of Manitoba. However, the Respondent maintains its opposition to the automatic application of the collective agreement to stores acquired by it that do not have a collective agreement.

IV. Positions of the Parties

40. The Applicant maintains that Article 1.01 of the collective agreement clearly and unambiguously provides that the Applicant is the bargaining agent for all employees, whether full-time or part-time, employed in the stores owned and/or operated by the Respondent in the Province of Manitoba. During collective bargaining, the Respondent attempted to narrow the clause to three locations in Winnipeg, but the Applicant refused to agree to such a change and, as such, the province-wide scope of the bargaining unit remains intact.

41. The Applicant argues that there is no doubt that the Stonewall store is covered by the terms of the collective agreement given that it is a store owned and operated by the Respondent in Manitoba.

42. In light of the Respondent's acknowledgment that any future newly built store operated by it in Manitoba would be covered by the terms of the collective agreement, the Applicant contends that the Respondent has effectively changed its position, advanced in its Reply, that Article 1.01 only spoke to "the present tense not towards a future of including other workplaces". Moreover, the Applicant submits that it makes no difference how employees come to be employed by the Respondent, they are covered by the broad wording of Article 1.01. That Article applies to newly built stores, existing stores acquired by the Respondent from other companies, and newly hired employees in existing stores.

43. Further support for the Applicant's position is provided by Article 1.07 of the collective agreement in which the Respondent agreed that if it decides to convert an existing store or open a new store under a new or existing banner, that store shall be covered by the terms and conditions of the collective agreement. The Applicant argues that the Respondent acquired and converted all three new stores from the Marketplace banner to the Co-op banner and, as a result, Article 1.07 is relevant and supports the position that employees of the Stonewall store are covered by the terms of the collective agreement.

44. With respect to the inclusion of the new Article E-21, the Applicant contends that this provision was a practical solution to resolve bargaining. That provision establishes that the employees working at the Lorette and Selkirk stores are deemed to be covered under Article 1 of the collective agreement between the parties and that the employees of those stores would continue to be governed by the terms of their existing collective agreements. It is the Applicant's contention that the Respondent knew that this provision did not settle the dispute about the Stonewall store and that the Respondent acknowledged as much in its Reply to the Application.

45. The Applicant requests Board determinations pursuant to subsection 142(5) of the *Act* including a determination that the Applicant is the bargaining agent for the employees of the Respondent at the Stonewall location that fall within the scope clause of the collective agreement, and a further determination that those employees are party to and/or bound by the collective agreement entered into between the Applicant and the Respondent.

46. In support of its position, the Applicant referred to the following authorities: G. Adams, *Canadian Labour Law*; *Saskatchewan Government Employees' Union v. Wascana Rehabilitation Centre*, 1991 CaswellSask 545; *United Food and Commercial Workers, Local 1400 v. Westfair Foods Ltd.*, 2007 CaswellSask 783; *International Association of Machinists and Aerospace Workers v. Toledo Scale*, 1987 CarswellOnt 1391; *R.W.D.S.U v. Westfair Foods Ltd*, 1996 CarswellMan 755; *Energy and Chemical Workers' Union, Local 911 v. Microdata Consulting Services* (MCS) 1992 CarswellSask 768; and *Canadian Appliance Manufacturing Company Limited v. United Steelworkers of America Locals 3129 and 7921*, 1978 CarwellOnt 934.

47. The Respondent replied that the Applicant is seeking bargaining rights that it has never had in a manner that is contrary to the *Act* and the collective agreement. Noting that the Preamble of the *Act* contemplates that unions are the "freely designated representatives of employees", the Respondent takes issue with the Applicant seeking to represent previously unorganized employees without giving them the right to choose. In the Respondent's view, it is not appropriate for the Applicant to attempt to acquire bargaining rights for the employees of the Stonewall store by trying to sweep them into the existing collective agreement.

48. The Respondent submits that the *Act* provides successorship and common employer provisions in order to preserve the bargaining rights of unions, not to enhance them. The legislation is designed to preserve the status quo and prevent the erosion of bargaining rights. However, the Respondent argues that the Applicant is seeking to extend its bargaining rights through this Application, having failed to achieve that end through collective bargaining or by organizing the employees and filing an Application for Certification. Counsel for the Respondent highlighted the fact that the Applicant originally relied upon sections 56 and 59 of the *Act* in support of its remedial request, only to abandon those positions shortly prior to the hearing.

49. It is the position of the Respondent that Article 1.01 defines the bargaining unit but does not expand it. According to the Respondent, the Stonewall store is not covered by that provision of the collective agreement. Nor, in its view, does Article 1.07 support the Applicant's position. Rather, the Respondent contends that Article 1.07 does not have any application as the Stonewall store was not converted to another banner.

50. The Respondent further submitted that during the final stages of collective bargaining, the Applicant proposed a new provision under which only the Selkirk and Lorette stores were covered by Article 1 of the collective agreement. According to the Respondent, it is significant that those stores continue to exist as they have historically, with separate certifications and separate collective agreements setting forth the terms and conditions of employment for the employees.

51. Having never represented employees in the Stonewall store, the Applicant seeks declarations from the Board that it is the bargaining agent and that the collective agreement applies to the previously unrepresented employees. The Respondent argues that there is no labour relations purpose for such declarations. It further notes that the Applicant failed to provide any evidence that its bargaining rights have been eroded or otherwise impacted, or that its members have been negatively affected. Accordingly, it is the position of the Respondent that the Application be dismissed.

52. In support of its position, the Respondent referred to the following authorities: *Retail, Wholesale and Department Store Union v. Saskatoon Co-operative Association Ltd and United Food and Commercial Workers, Local 1400*, 2018 CarswellSask 348; *Peace Hills Emergency Medical Services Ltd and Canadian Union of Public Employees, Local 3197*, 2013 CarswellAlta 1378; *London & District Service Workers Union, Local 220 v. Caressant Care Nursing Home*, 1984 CarswellOnt 1067; *United Food and Commercial Workers, Locals 175 and 633 v. New Dominion Stores*, 1986 CarswellOnt 1293; and *Overwaitea Food Group and United Food and Commercial Workers Union Local 401 and Local 1118*, 2015 CarswellAlta 987.

V. Analysis

53. This is a relatively straightforward matter. In 2014, the Respondent purchased a number of grocery stores located in Winnipeg from Sobeys. It acknowledged that it was the successor employer and was bound by the 2014-18 collective agreement entered into between the Applicant and Sobeys. That collective agreement included a broad recognition and scope clause acknowledging that the Applicant was the exclusive bargaining agent for all employees (less some limited exceptions) employed by the employer in stores owned and/or operated by it within the geographic limits of Manitoba.

54. In late 2017, the parties commenced bargaining for a renewed collective agreement. Prior to the completion of collective bargaining, in 2018, the Respondent acquired three additional stores. The Applicant is the certified bargaining agent under separate Certificates issued by the Board for employees employed in two of the stores (located in Lorette and Selkirk) that were purchased. Terms and conditions of employment for employees of those stores are set forth in separate collective agreements. It is not

disputed that the Respondent is the successor employer and inherited obligations including the collective agreements relating to those two stores.

55. The issue in the present case relates to the other store purchased by the Respondent in 2018. It is located in Stonewall, Manitoba. That store has never been unionized or subject to a certification application by the Applicant. During collective bargaining, the Applicant took the position that all three of the stores purchased by the Respondent in 2018 should be covered by the collective agreement having regard to the recognition and scope clause of that agreement. The Respondent did not agree with that position. Ultimately, the parties agreed to include language in the collective agreement with respect to the Lorette and Selkirk stores, but not the store in Stonewall.

56. During collective bargaining, the Respondent proposed to amend the scope clause by narrowing the geographic area to three specific stores in Winnipeg. That proposal was not accepted by the Applicant and, consequently, Article 1.01 of the collective agreement setting forth the scope of the bargaining unit continues to reflect the fact that the Applicant is the exclusive bargaining agent for all employees, whether full-time or part-time, coming under the provisions of the collective agreement, employed in the stores owned and/or operated by the Respondent in the Province of Manitoba, with some narrow exceptions that are not material.

57. The Board is satisfied that during collective bargaining the parties agreed to disagree with respect to the question of whether employees in the Stonewall store fall within the scope clause of the collective agreement and are, therefore, covered by its terms. The Board accepts that the Applicant advised the Respondent during collective bargaining that it intended to pursue resolution of that dispute by bringing an application to this Board. Whether or not there was consensus on the forum to resolve the disagreement is not material.

58. Although the Application filed with the Board referred to sections 56 and 59 of the *Act*, prior to the hearing commencing counsel for the Applicant advised that it was only seeking declarations under subsection 142(5) of the *Act*. Counsel further advised that the Applicant intended to rely upon the entirety of Article 1 of the recognition clause in the collective agreement, including Article 1.07 (the content of which was outlined above).

59. Subsection 142(5) of the *Act* states, in part, the following:

> **Determination of questions by board**
> 142(5) In any proceeding before the board or on application in writing to the board by any person, union or employers' organization who or which, in the opinion of the board, would be affected by or have an interest in the

determination of the question, or on its own motion, the board may, at any time, decide any question for the purposes of this Act, including, without limiting the generality of the foregoing, any question as to whether

…

(d) an employee or group of employees is or are included in a unit for which a bargaining agent has been certified; or

(e) a collective agreement has been entered into, and the terms thereof, and the persons or organizations who or which are parties to or are bound by the collective agreement or on whose behalf the collective agreement was entered into; or

(f) a collective agreement is by its terms in full force and effect;

60. There are a limited number of ways that unions acquire bargaining rights. The most common approach is to commence an organizing drive and file an Application for Certification with the Board. It is also open to unions and employers to enter into voluntary recognition agreements whereby the union becomes the exclusive bargaining agent for a unit of employees. In the present case, the Applicant's acquisition of bargaining rights is effectively a hybrid of those methods. The Applicant was certified as the bargaining agent by the Board under a number of Certificates respecting Safeway stores. Those Certificates were amended from time to time, but the most significant evolution of the bargaining rights of the Applicant was effected by historical changes to the recognition clause in the collective agreement. When the Respondent purchased the four Winnipeg stores from Sobeys, it, as a successor employer, inherited the collective agreement including the all employee (subject to specific narrow exclusions) province-wide recognition and scope clause. The 2014-2018 collective agreement and the collective agreement subsequently negotiated by the Applicant and the Respondent is not in any way limited to the boundaries of the City of Winnipeg. It is a clearly a province-wide agreement as set forth in Article 1.01. To the extent that the Respondent is arguing that the collective agreement is limited to stores in Winnipeg, the Board rejects that position based upon the clear and unambiguous language of the recognition and scope clause. The Board also notes that the Respondent acknowledged at the hearing that if it builds new stores anywhere in Manitoba, employees of those stores will be covered by the collective agreement. This position reinforces the fact that the collective agreement is not limited to the boundaries of the City of Winnipeg.

61. It is open to parties to modify the union's bargaining rights during collective bargaining. Indeed, while the composition of a bargaining unit is not a matter which may be pushed to impasse during collective bargaining, it is not uncommon for parties to alter the contours of the bargaining unit in negotiations and have the revised scope of the unit

reflected in the terms of the collective agreement. When the parties do so, the bargaining rights delineated in the recognition clause of the collective agreement supplant those set out in any earlier Certificate(s) issued by the Board, see in this regard, *Toledo Scale, supra*.

62. It is well-established that bargaining units are not static as of the date that a Certificate is issued. As noted by Adams at para 7.800, bargaining units encompassing all employees followed by an enumeration of specific exclusions reflect “the living nature of a bargaining unit and its potential for growth”. Accretion to the bargaining unit occurs as the employer grows in areas not specifically excluded. Adams notes that the nature of such a universal bargaining unit description is that it is “not frozen” in time.

63. In the present case, the Respondent’s acquisition of a non-unionized store in Stonewall gives rise to an issue regarding whether the employees of that store are now covered by the terms of the collective agreement entered into between the Applicant and the Respondent which recognizes the Applicant as the exclusive bargaining of all employees working in stores owned and/or operated by the Respondent in Manitoba.

64. In *Canadian Appliance Manufacturing Co., supra*, a series of transactions occurred which resulted in the addition of employees to the company’s workforce who were previously non-unionized prior to the merger or amalgamation. At paragraph 3, Arbitrator Shime framed the issue as follows: “are employees of the company who were not previously covered by a collective agreement now covered by the scope clause of agreements which provides in one case that ‘The company recognizes the union as the sole collective bargaining agency for all of the employees in Metropolitan Toronto,…’, with certain exceptions that are material, and in the other case that ‘The company recognizes the union as the sole collective bargaining agency for all Office, Clerical and Technical employees in Metropolitan Toronto…’ with certain exceptions that are not material” As in the present case, prior to the various transactions that made them employees, those individuals were not covered by a collective agreement. Despite the company’s submissions that employees at geographic locations who were not originally covered by the collective agreement should not be covered by the scope clauses, and that employees should not be swept into the bargaining unit without giving them some say in the matter, Arbitrator Shime concluded as follows at paragraphs 15 to 18:

> 15….However, bargaining rights are generally considered to be coterminous with the descriptions contained in a collective agreement; *The Goodyear Service Stores*, *supra*. In short, the practice of describing the bargaining unit in a collective agreement and the general intent of the parties has generally

been considered to be consistent with the practises and understandings of the Ontario Labour Relations Board, with the parties having full freedom to modify such recognition clauses through collective bargaining. The onus is therefore on the party which seeks to depart from the generally understood practice to demonstrate that the collective agreement warrants such an interpretation.

16. Further, the recognition clause is not intended to define specific employees within a municipality. Parties in the collective bargaining process recognize that there will be additions and deletions from the bargaining unit. Thus, the company may expand its work force in a particular plant or operation for legitimate business or production reasons, or it may lay off employees in the work force for similar reasons. In those situations the union remains the bargaining agent for those employees in the work force despite the size of that work force. The reference to "all employees" in a particular geographic area is not referrable to specific individuals. Accretions as the result of new hires or deletions through lay offs affect the size of the bargaining unit but not the unions' representation rights for those in the work force. It is not contemplated that every time there is an increase or decrease in the work force that the parties will be required to make an application to the Labour Relations Board or amend their agreement.

17. In this case there is an accretion to the bargaining unit. If new employees had been hired because of increased production they would have been required to become members of the bargaining unit. Also, if the company through expansion had sought to utilize new premises in Metropolitan Toronto and hired new employees to do the work in their expanded facilities, those employees would have fallen within the ambit of the recognition clause. That the company added new or additional employees in Metropolitan Toronto as the result of a different type of expansion i.e., merger or amalgamation, does not alter the rights and obligations that exist under the collective agreement. The union becomes the bargaining agent for those new employees in the municipality and the company has a duty to recognize the union as the bargaining agent for those employees.

18. A similar decision was arrived at in *United Steelworkers of America and Inco Limited*, unreported, April 12, 1978 (J.D. O'Shea, Q.C.). In that case the union represented all employees of the company in the Sudbury District with certain exceptions that are not here material. When the company started a new rolling mill operation in the District of Sudbury, the union sought to represent those employees. The majority of the Board found that in the absence of a specific exclusion referring to the rolling mill operation the company was bound to recognize the union as the bargaining agent for

> employees at the rolling mill. I agree with the conclusion of the majority in the *Inco* case, and I am of the view that the decision in that case is relevant to the instant case.
> (emphasis added)

65. In the result, the arbitrator found that the unions held bargaining rights for the employees of the company within the geographic scope of the bargaining units recognized in the scope clauses of the collective agreement notwithstanding the fact that they were not formerly unionized. The Board finds Arbitrator Shime's analysis compelling and applicable to the present matter.

66. Similarly, in *Microdata Consulting Services, supra*, the Saskatchewan Labour Relations Board considered the effect of the transfer in ownership of a company, whose workforce was not unionized, to a unionized company. At paragraphs 22 to 24, that Board considered the three possibilities that arise in such cases as follows:

> 22. When the ownership or control of an uncertified business, like MSL, is transferred to a certified business, such as Westbridge, three basic possibilities arise. First, the uncertified business may continue on exactly as before. The sale or transfer may only result in a change of shareholders, but not in a change in employers, i.e. the entity which exercises fundamental industrial relations control. If, after the sale, the "new" non-union employees and the employees of the unionized purchaser retain their separate pre-sale employers, there is no labour relations reason to disturb the pre-sale status of any of the parties, regardless of whether they were certified or uncertified. If MSL remained a separate employer after the sale and continued to exercise the consequent control over industrial relations matters affecting the data entry employees, any union seeking representation rights has only one alternative: to organize the employees of MSL and apply for certification.
>
> 23. The second possibility is that the MSL employees became employees of Westbridge after the sale but were not employed within the classifications or geographic boundaries of the bargaining unit. Again, any union wishing to represent these employees would have to organize them and apply for certification.
>
> 24. The third possibility is that, after the sale, the MSL employees were employed by Westbridge in classifications that brought them within the bargaining unit for which the applicant union is certified. <u>In this situation, the principles are straightforward: if an employer brings non-unionized new employees into its unionized business and their functions include them within the scope of the bargaining unit, the employer must recognize the union as</u>

> their lawful representative. In such circumstances, it matters not how the new employees come to the employer: whether they are hired in one's and two's off the street; whether they come in large numbers because of a major expansion; or, because the employer purchased a large competitor, the result is the same.
> (emphasis added)

67. Clearly, the present case falls within the third category identified in *Microdata Consulting Services*, supra. The Respondent is a unionized employer which entered into a collective agreement with the Applicant which recognizes it as the exclusive bargaining agent for employees working at stores which it owns or operates in the Province of Manitoba. When the Respondent acquired the store in Stonewall, Manitoba, it was required to recognize the Applicant as the exclusive bargaining agent for the employees of that store as they fall within the scope of Article 1.01 of the collective agreement.

68. The Respondent submits that the Board should take into consideration the fact that the employees of the Stonewall store have not elected to have the Applicant represent them. This, it was argued, is a particularly important consideration in light to the purpose of the *Act* which contemplates that unions are the freely designated representatives of employees in collective bargaining. The Board has seriously considered this argument. However, the parties have defined the contours of the bargaining unit in Article 1.01 of the collective agreement. The employees in question are clearly employed at stores owned or operated by the Respondent within the geographic boundaries of Manitoba and fall within the recognition clause forged by the parties in collective bargaining. As the Saskatchewan Board noted at paragraph 35 of *Microdata Consulting Services, supra*, "[e]mployee support is not necessary from new employees that are hired into the bargaining unit and compelled to join the unit by virtue of the union security provisions".

69. The Board also considered the Respondent's position that the *Act* is remedial legislation designed to preserve, but not extend, bargaining rights in cases where the ownership of a business has changed. The Respondent submitted that the Applicant is attempting to inappropriately expand its bargaining rights through the present Application. Although it is true that this and other labour relations boards have commented that successor rights provisions should be applied to preserve rather than extend bargaining rights, the present case is an Application seeking a Board determination regarding whether employees at the Stonewall store are included in the bargaining unit for which the Applicant has been recognized in the collective agreement as the exclusive bargaining agent. The Applicant is not seeking declarations under either the successor rights or common employer provisions of the legislation. Those provisions are not applicable in this case. The jurisprudence

submitted by the Respondent focuses on legislative provisions respecting successor rights and common employer provisions of labour legislation. Those cases are all distinguishable from the present case.

70. In any event, in the present case, the Applicant does not seek to inappropriately extend its bargaining rights; it is merely attempting to preserve those rights by seeking a Board determination that recognizes that it is the exclusive bargaining agent for all employees (less certain specific exceptions) working in stores owned or operated by the Respondent within the geographic boundaries of the Province of Manitoba as set out in the collective agreement negotiated by the parties. When the Respondent purchased stores from Sobeys, it was a successor employer and inherited the all employee, province-wide recognition and scope clause in that collective agreement. During collective bargaining for the renewal of that collective agreement, the Respondent proposed a sweeping change to the recognition and scope clause in an attempt to limit the bargaining unit to three stores in Winnipeg. That proposal was not accepted. The Applicant remains recognized as the exclusive bargaining agent for employees working in stores owned or operated by the Respondent in Manitoba. Furthermore, the Board does not agree with the suggestion that Article 1.01 speaks only to "the present tense not towards a future of including other workplaces". In this regard, the Board notes that the Respondent conceded that the collective agreement would apply to any new stores that it might open in the future.

71. In addition, the Board does not agree with the suggestion that the parties' agreement to include a specific provision respecting the terms and conditions of employment applicable to the stores in Lorette and Selkirk is indicative of any understanding that the Applicant was not pursuing its rights under Article 1 of the collective agreement to represent employees at the Stonewall store. Similarly, the agreement to amend what is now Article 1.07 and to delete what was formerly Appendix F do not affect the Applicant's representation rights.

72. Finally, the Applicant submitted that Article 1.07 of the collective agreement also compelled the Respondent to recognize it as the bargaining agent of employees of the Stonewall store and have them covered by the terms of the collective agreement. Given the conclusions set out above, it is not necessary to review this aspect of the case in great detail. That said, the Board agrees with the position of the Applicant that this provision supports its argument that the collective agreement compels the Respondent to recognize it as the exclusive bargaining agent of the employees of the Stonewall store and that the terms of the collective agreement apply to them. The Respondent acquired and converted all three new stores from the Marketplace banner to the Co-op banner and, as a result, Article 1.07 supports the position that employees of the Stonewall store are covered by the terms of the collective agreement.

T H E R E F O R E

In accordance with subsection 142(5) of the *Act*, the Board has **DETERMINED** that:

a) the Applicant is the bargaining agent for the employees at the store owned and/or operated by the Respondent in Stonewall, Manitoba that fall within the recognition and scope clause of the collective agreement between the parties; and

b) the said employees of the Respondent's store in Stonewall, Manitoba are bound by the terms of the collective agreement effective the date of this Order.

DATED at **WINNIPEG**, **Manitoba** this 10th day of March, 2020, and signed on behalf of the Manitoba Labour Board by

"Original signed by"

C.S. Robinson, Chairperson

CSR/dh/lo/lo-s