



## Reasons for decision

Sonja Paulina Farrell,

*applicant,*

*and*

Canadian Union of Postal Workers,

*certified bargaining agent,*

*and*

Canada Post Corporation,

*employer.*

Board File: 30444-C

Neutral Citation: 2015 CIRB **794**

October 15, 2015

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The Canada Industrial Relations Board (Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. André Lecavalier and Gaétan Ménard, Members. A hearing was held in Calgary on September 22, 2015.

### **Appearances**

Ms. Sonja Paulina Farrell, on her own behalf;

Mr. Gordon Fischer, for the Canadian Union of Postal Workers.

These reasons for decision were written by Mr. Graham J. Clarke.

### **I. Nature of the Application**

[1] In her May 4, 2014 application, Ms. Sonja Paulina Farrell asked the Board, pursuant to section 70(2) of the *Canada Labour Code (Part I—Labour Relations) (Code)*, to grant her an exemption from both a collective agreement requirement to join the Canadian Union of Postal Workers (CUPW) and from continuing to pay union dues:

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70. (2) Where the Board is satisfied that an employee, because of their religious conviction or beliefs, objects to joining a trade union or to paying regular union dues to a trade union, the Board may order that the provision in a collective agreement requiring, as a condition of employment, membership in a trade union or requiring the payment of regular union dues to a trade union does not apply to that employee so long as an amount equal to the amount of the regular union dues is paid by the employee, either directly or by way of deduction from their wages, to a registered charity mutually agreed on by the employee and the trade union.

[2] CUPW contested Ms. Farrell's application. Ms. Farrell's employer, Canada Post Corporation (CPC), took no active role on the application.

[3] The Board initially put this matter on hold while it waited for a decision from the Federal Court of Appeal (FCA) on another case involving the section 70(2) religious exemption. In April, 2015, following the release of *Bradford v. National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-CANADA)*, 2015 FCA 84 (*Bradford FCA*), the Board provided the parties with an opportunity to comment on that case. The Board then scheduled an oral hearing for September 22–23, 2015 in Calgary, Alberta. The matter only required one day of hearing.

[4] After considering the parties' oral evidence and legal arguments, the Board has decided to dismiss Ms. Farrell's application, for the reasons which follow.

## **II. Facts**

### **A. Chronology**

[5] CPC first hired Ms. Farrell in or about September, 2005 as a Rural and Suburban Mail Carrier. In or about September, 2008, CPC hired Ms. Farrell as a casual postal clerk. She now works for CPC as a part time employee in Three Hills, Alberta.

[6] CUPW has represented both bargaining units in which Ms. Farrell worked.

[7] Article 4.01(a) in the CUPW-CPC collective agreement requires CPC to deduct union dues:

#### **4.01 Compulsory Check-Off**

(a) The Corporation shall, as a condition of employment, deduct from the monthly earnings of all the employees in the bargaining unit, the ordinary membership dues of the Union, the amount of which may vary according to different locations.

[8] Articles 4.07(a) and (b) of the CUPW-CPC collective agreement makes CUPW membership mandatory:

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#### **4.07 Compulsory Membership**

**(a)** Any regular employee hired after the signing of this agreement shall, as a condition of employment, become a member of the Union at the time of hiring, or as soon as possible, in accordance with clause 6.03.

**(b)** The Corporation will not be obliged to terminate any employee whose membership rights have been revoked by the Union.

[9] Ms. Farrell testified that CUPW asked her in 2011 to sign a card confirming she would strike, if necessary. Ms. Farrell added the word “not” to the card and signed to indicate she would not strike. Ultimately, CPC imposed a lockout during that round of collective bargaining, so CUPW never went out on strike.

[10] Ms. Farrell testified that CUPW never informed her about, or asked her to sign, a membership card from the time of her initial hiring in September, 2005 until the summer of 2012. The membership card request in 2012 came from Ms. Trish Flynn, a local CUPW steward who had transferred, in or about March, 2011, from Calgary to work at the Three Hills, Alberta post office.

[11] Between June and December, 2012, Ms. Flynn asked Ms. Farrell on three separate occasions to sign a CUPW membership card. Ms. Farrell declined to sign each time she was asked. Ms. Flynn also asked other new or recently promoted employees in the small workplace to sign a CUPW membership card.

[12] Other than on those three occasions in 2012 when Ms. Flynn asked Ms. Farrell to sign a membership card, CUPW has never requested that Ms. Farrell sign a card. Neither has CUPW taken any steps, such as through the filing of a grievance, to seek to apply article 4.07 to Ms. Farrell.

[13] Ms. Farrell filed her section 70(2) application for a religious exemption on or about May 4, 2014, approximately 16 months after Ms. Flynn’s final request to sign a membership card. Ms. Farrell had learned from a Board representative, just prior to filing her application, that the *Code* contained a provision allowing an employee to raise a religious objection to the paying of dues or to a requirement to join a trade union.

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## **B. Ms. Farrell's Reasons for Requesting an Exemption**

[14] In section 70(2) cases, the Board's long-standing analysis requires it to examine the reasons motivating an applicant's request. That is why the Board often holds an oral hearing in religious objection cases.

[15] Ms. Farrell was self-represented. She had filed detailed pleadings, but the Board found the oral evidence she gave somewhat limited.

[16] It is always a delicate matter when an administrative tribunal holds a hearing involving a self-represented applicant. The Board cannot become counsel in the case, since it has the overriding obligation to be fair to all parties. But that obligation may also oblige it to request comment about matters an applicant had put in the written pleadings.

[17] Since Ms. Farrell did not testify in detail about certain matters, the Board asked her at the end of her evidence-in-chief if she could provide further detail about the religious reasons supporting her application.

[18] Ms. Farrell has been a devout Christian for over 20 years. It is not a tenet of her church that members cannot belong to a trade union; indeed, a nurse in her congregation is also a union member. Ms. Farrell testified that her reading of Scripture made union membership incompatible with her faith.

[19] One of the specific reasons motivating her application was the oath which CUPW's constitution obliged her to take. In her view, that oath would take away her religious freedom. The only oath she could swear would be to God.

[20] Ms. Farrell also took issue with specific items contained in CUPW's constitution. For example, she felt the "us vs. them" approach in the constitution went against her obligation in the Bible to submit and be loyal to her employer.

[21] In addition, Ms. Farrell strongly objected to abortion and the pro-choice movement, a movement for which CUPW expressed support in its constitution. In Ms. Farrell's view, her union dues were used to support pro-choice.

[22] In cross-examination, Ms. Farrell agreed she did not know to what extent, if any, CUPW actually spent dues supporting pro-choice. She did note that CUPW in its constitution said it

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would lobby in favour of pro-choice and she inferred that lobbying must require financial support.

[23] Ms. Farrell also objected to the constitution's position on the decriminalization of marijuana. In her view, marijuana "derails" people and takes away their clarity of thought. She felt similarly with regard to alcohol, if consumed to the point of drunkenness.

[24] Ms. Farrell further noted in her cross-examination that the constitution's position on various international issues caused her additional difficulty. These issues included policy positions on Cuba, Palestine and Colombia.

[25] Ms. Farrell commented that she felt she had no choice but to pay union dues. She had been paying dues to CUPW ever since she started working for CPC in 2005. She did not know the *Code* contained an exemption which might allow her dues to go to a registered charity instead.

[26] In cross-examination, Ms. Farrell described union dues as a "kickback", but agreed that CUPW used dues to negotiate terms and conditions of employment for all members of the bargaining unit. She also agreed that her change at CPC from casual to part-time status resulted from the seniority she had accumulated under the collective agreement.

[27] Ms. Farrell further agreed in cross-examination that she would only have to quit her job if CUPW insisted that she sign a membership card. She did not consider her job in jeopardy if she continued to pay union dues. Even if CUPW had never tried to assert its rights under article 4.07 during her 10 years of employment at CPC, Ms. Farrell felt that an indeterminate threat existed to her employment.

[28] Ms. Farrell indicated that she does not go to CUPW to file grievances. In her view, she would speak with her supervisor or pray about any workplace issues which might arise.

### **III. Law**

[29] The *Code* has attempted to balance both the freedom of association and the freedom of religion, which are described as "fundamental freedoms" in section 2 of the *Canadian Charter of Rights and Freedoms*:

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

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(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

**(d) freedom of association.**

(emphasis added)

## **A. Freedom of Association**

[30] Section 68(a) of the *Code* permits an employer and a trade union to negotiate a collective agreement clause confirming that mandatory membership in the union is a valid and binding condition of employment:

**68.** Nothing in this Part prohibits the parties to a collective agreement from including in the collective agreement a provision

(a) requiring, as a condition of employment, membership in a specified trade union

[31] Section 70(1) of the *Code* grants a trade union the right, upon simple request, to have included in its collective agreement a provision obliging an employer to deduct union dues from all bargaining unit employees and to remit them to the union:

**70.** (1) Where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union forthwith.

[32] A trade union's entitlement in these two distinct areas differs slightly. An automatic dues deduction from bargaining unit employees, whether or not they have joined the union, must be added to the collective agreement upon simple request to the employer during bargaining.

[33] In contrast, a trade union must collectively bargain a "closed shop" provision into the collective agreement in order to make union membership mandatory.

[34] These provisions in the *Code* demonstrate Parliament's intention to promote and protect trade unions' freedom of association.

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## **B. Freedom of Religion**

[35] Section 70(2) recognizes that some individuals, due to their religious convictions or beliefs, may require an exemption from the *Code*-authorized obligation to pay dues to, or to join, a trade union:

70.(2) Where the Board is satisfied that an employee, because of their religious conviction or beliefs, objects to joining a trade union or to paying regular union dues to a trade union, the Board may order that the provision in a collective agreement requiring, as a condition of employment, membership in a trade union or requiring the payment of regular union dues to a trade union does not apply to that employee so long as an amount equal to the amount of the regular union dues is paid by the employee, either directly or by way of deduction from their wages, to a registered charity mutually agreed on by the employee and the trade union.

[36] If an applicant satisfies the Board that he/she qualifies for one or both exemptions, then the person may continue working without having to be a union member and/or pay mandatory dues. Dues will still be deducted, but paid instead to a registered charity. The *Code* obliges the applicant and the trade union to agree on the registered charity, failing which the Board will make the designation.

## **C. Board Practice in Religious Objection Cases**

[37] In 1984, Parliament added provisions to the *Code* giving trade unions a right to request a mandatory dues deduction (Rand Formula) clause and giving employees the opportunity to assert a religious objection, in what was then section 162:

162.(1) Where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union forthwith.

(2) Where the Board is satisfied that an employee, because of his religious conviction or beliefs, objects to joining a trade union, or to the paying of regular union dues to a trade union, the Board may order that the provision in a collective agreement

(a) requiring, as a condition of employment, membership in a trade union, or

(b) requiring the payment of regular union dues to a trade union,

does not apply to that employee so long as an amount equal to the amount of the regular union dues is paid by the employee, either directly or by way of deduction from his wages, to a registered charity, within the meaning of the Income Tax Act, mutually agreed on by the employee and the trade union.

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[38] In *Barker* (1986), 66 di 91; 13 CLRBR (NS) 28; and 86 CLLC 16,031 (CLRB no. 576), this Board's predecessor, the Canada Labour Relations Board (CLRB), noted that the *Code* had been amended in order to recognize that religious beliefs or convictions might conflict with the freedom of association:

**It was not until the 1984 amendments to the *Canada Labour Code*, and eventually until the passage of the Charter of Rights, that our jurisdiction enabled employees, who, because of some deeply held convictions, opposed trade union membership and would rather lose their jobs than belong to a union, to withdraw from their union.**

Before that, what was said about the Ontario situation was also applicable to ours. An Ontario Court of Appeal Judgment, issued before the introduction of the current section 47 of the Labour Relations Act of Ontario, stated that if an employee:

... is unwilling to work under the conditions as to wages, hours or otherwise, negotiated by the incumbent Union on behalf of all employees his course is clear; he may freely depart. But he cannot have his own way in the face of the law, which governs all employees and employers who are within its scope regardless of their personal religious and political convictions. ...

... Our society secures to every one the right to adhere to a religion of his choice and to hold to a self-determined political creed. It does not, however, give liberty to insist on religious conviction or political creed or both in contexts which the law does not regard as relevant to their free enjoyment and as a ground for thwarting agreements binding on all irrespective of religious or political persuasion. This is presently the case in labour relations.

(*Hoogendoorn v. Greening Metal Products and Screening Equipment Company et al.* (1967), 67 CLLC 14,017, pages 78-79; emphasis added)

**But the situation evolved and, in 1984, the legislator provided a way out for those employees whose beliefs may deeply come into conflict with union security requirements.** In enacting subsection 162(2), Parliament distinguished between religious and social or political beliefs. Only the former convictions can allow an employee to be exempted from joining a union or paying union dues. Be that as it may, this section must still be read and construed in light of the general purposes and principles of the *Code*.

(pages 97; 34-35; and 14,283; emphasis added)

[39] The CLRB noted that the *Code*'s religious objection aimed at situations where a deep conflict existed between an employee's religious beliefs and a collective agreement's union security provisions, a conflict which could put the employee's continued employment in jeopardy.

[40] The Board has been given the task of hearing cases which bring into conflict these two Charter-protected freedoms. The CLRB described its exercise of discretion in *Wiebe* (1987), 70 di 89; 18 CLRBR (NS) 241; and 87 CLLC 16,032 (CLRB no. 632) (*Wiebe*):



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... While the giving of a discretion to the Board results in some discomfort for any panel faced with an application, it obviously tells something about Parliament's intentions. There is no discretion in respect of a trade union being given automatically the right to have union dues collected on its behalf under subsection (1) of section 162, if it so requests. But there is a discretion given to the Board in respect of allowing certain employees to opt out of that requirement. **This means that the Board, however much it may dislike being involved in the difficult and highly subjective realm of "religious conviction or beliefs," is expected to play a judgmental role as between the particular circumstances of particular applicants for exemption and is not expected always to say yes.**

(pages 94; 246; and 14,258-14,259; emphasis added)

[41] The CLRB in its early cases reviewed various labour board practices in Canada in order to develop guidelines for these types of applications. The Board in *Bradford*, 2013 CIRB 696, (*Bradford 696*) summarized these longstanding guidelines:

[27] In interpreting this section of the *Code*, the Board has set out five criteria that should be applied. The first four criteria were established in *Barker* (1986), 66 di 91; 13 CLRBR (NS) 28; and 86 CLLC 16,031 (CLRB no. 576), while the fifth was subsequently added in *Wiebe* (1987), 70 di 89; and 18 CLRBR (NS) 241; and 87 CLLC 16,032 (CLRB no. 632). They are:

1. The applicant must object to all trade unions and not one particular union.
2. The applicant does not have to rely on a specific tenet of a particular religion or church.
3. The Board must make an objective inquiry into the nature of the applicant's beliefs to determine whether they relate to the Divine, or man's perceived relationship to the Divine, as opposed to man-made institutions.
4. The applicant must convince the Board that he is sincere and has not rationalized his objections to the union on religious grounds after he was made aware of the provisions of the *Code*.
5. The Board must assess the probable consequences to the applicant if the application is not granted, including whether the applicant would be placed in such a conflict position if the application was denied that he would no longer be able to continue in his employment.

[42] The parties in this case did not raise any Charter arguments or dispute the content of the Board's guidelines. Ms. Farrell in her written submissions did suggest that guideline #1, which talked about the need to object to all trade unions, was virtually impossible to meet, since no one could know the contents of all trade unions' constitutions. We will deal with the Board's interpretation and application of guideline #1, *infra*.

[43] Given that the parties did not raise a Charter argument or otherwise contest the Board's guidelines, an introductory contextual comment from the FCA in *Bradford FCA* applies equally to the instant case:

[2] Before turning to the factual background and the issues before us, it is important to keep in mind what is not in issue in this application. Indeed, although the sincerity of the

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applicant's religious beliefs was a factual issue to be assessed by the panel which initially heard his application regarding whether an exemption should be granted (the Original Panel of the Board), **the applicant did not argue that there was a violation of section 2(a) of the *Canadian Charter of Rights and Freedoms* (the *Charter*), which protects freedom of religion.** This was made very clear to us at the hearing. **Nor is this application about the validity of the test to be applied in determining whether to grant an exemption under subsection 70(2) of the *Code*.**

(emphasis added)

[44] The Board often receives diverse evidence about an applicant's reasons for requesting a religious exemption. As noted in *Gordon* (1988), 74 di 84; and 3 CLRBR (2d) 245 (CLRB no. 695), the applicant's reasons may be hybrid in nature, some of them may support an exemption, whereas others militate against the Board granting one:

These types of applications are always troublesome for the Board. Religion is such a personal matter and it is often difficult to gauge a person's sincerity. **Often, the line between religious beliefs and moral, social or political views is blurred.** Mr. George Adams, Q.C., ex-Chairman of the Ontario Labour Relations Board, accurately described the Board's dilemma when he said:

**... It is always a difficult question of fact whether the applicant's beliefs are truly 'religious' as opposed to being moral, social or political views. Indeed, these elements may often overlap, placing the adjudicating body in most difficult interpretative straits. ...**

(G.W. Adams, *Canadian Labour Law: A Comprehensive Text* (Aurora: Canada Law Book Inc., 1985), page 792; emphasis added)

(pages 90; and 251; emphasis added)

[45] With this legal framework in mind, the Board will consider how to apply its existing guidelines to Ms. Farrell's application.

#### **IV. Decision**

##### **1. Does Ms. Farrell object to all trade unions and not just one particular union?**

[46] This guideline does not require an applicant to investigate the constitutions of any and all trade unions. But it does require that the religious objection be universal and applicable to all trade unions who participate in the *Code's* collective bargaining model.

[47] If an applicant objects to only some unions, but not others, then it is unlikely he/she will satisfy this guideline. The evidence Ms. Farrell gave on this guideline was definitely hybrid in nature.

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[48] Both Ms. Farrell's pleadings and her oral evidence took specific issue with the contents of CUPW's constitution, not only about the requirement to swear an oath, but also for its support of the pro-choice movement, decriminalization of marijuana, and its positions on international issues involving Palestine, Cuba and Columbia. These union-specific objections could suggest her objection is specifically to CUPW, rather than to all trade unions. The content of her objections clearly raise religious grounds, but also moral, social and political views.

[49] The Board has refused to grant exemptions where the objection is to a specific union's policy on something like abortion, as illustrated in *Bradford* 696:

**[31] As indicated, for an application under section 70(2) to succeed, the objection must be to all trade unions and not one particular union. This means that the nature of the religious beliefs and the objection must be to trade unionism in general and the principles of collective bargaining, as opposed to the actions or activities of a particular trade union and/or its policies.** As such, an objection to a union's policy or public stance on the abortion issue has been found to be too remote from the purposes and activities of a trade union and the role of a bargaining agent in the workplace to ground an exemption from union membership and payment of dues (*Doyle* (1993), 91 di 26; and 93 CLLC 16,028 (CLRB no. 990); and *Carroll*, June 23, 1989 (LD 731)).

(emphasis added)

[50] In *Scholl*, 2012 CIRB 630, the Board also dismissed an application where someone who had participated in the trade union's activities later contested its specific actions, rather than trade unionism in general:

[9] In the case before the Board, the application clearly stems from the applicant's dissatisfaction with the way her particular union has conducted itself at her workplace. The applicant criticizes the union regarding its organizing tactics, its method of negotiating a first collective agreement, and its conduct at union meetings. This suggests to the Board that the application is based on the applicant's dissatisfaction with a particular union, rather than any fundamental religious objection to unions in general. The application therefore does not meet the first criterion set out in *Richard Barker*, *supra*.

**[10] The Board's conclusion that the applicant is not fundamentally opposed to trade unionism in general is also borne out by the fact that she attended union meetings and participated in union activities regarding the negotiation of the first collective agreement at her workplace. Such participation in union affairs is not consistent with the suggestion that involvement in unions is contrary to the applicant's religious beliefs.** This application appears to be simply another chapter in the applicant's ongoing battle against the union. Section 70(2) of the *Code* is clearly not intended to be used in this manner.

(emphasis added)

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[51] However, Ms. Farrell's hybrid evidence also suggested that she felt obliged to follow CPC's orders and that she could not accept a trade union inserting itself in between CPC and her. She had described this concept in her April 29, 2015 submission to the Board:

As I said above, this is in stark contrast to how I believe I am to treat my employer (or anyone else for that matter). If I'm to love (respect) my employer and treat them as I would want to be treated, then I need to be looking out for what's best for them as well.

**By becoming a Canada Post employee, I also agreed to follow the instructions of my boss. In fact, in accordance with the Bible (which I believe in), I believe it is my obligation to follow their instructions (although if they were to require me to go against my beliefs in some way, then I would still be free to quit rather than comply – I haven't sworn allegiance to them, only entered into an agreement that can be terminated at any time).**

**As for a religious objection to all trade unions, while I believe this would be a pretty common issue with trade unions and I expect it would apply to the vast majority of them, I can't categorically state that it applies to all trade unions.** In fact it would be an act of prejudice to not allow for the possibility of a trade union that takes a different approach.

(exhibit 1, letter April 29, 2015; emphasis added)

[52] The Ontario Labour Relations Board (OLRB) in *Allan v. International Brotherhood of Electrical Workers, Local 586*, 2005 CanLII 21432 (ON LRB) has described this concept of being obliged to follow an employer's orders as being one of "master and bondsman". The OLRB, under different legislation, has granted an exemption because of it:

6. The applicant believes devoutly that membership in a trade union violates his religious faith. He is part of a fellowship of believers in Jesus Christ, known by others as the Brethren. A central tenet of his faith is that the holy scripture permits only one assembly, that of believers in, as he says, the Lord Jesus Christ. Membership in a trade union would violate this tenet, known as the principle of separation, as would membership in any other association. Membership in Christ's fellowship requires separation from all other associations because all such associations are separate from God. This is the applicant's primary reason for seeking religious exemption from the obligation to belong to the Union.

7. The applicant has a second religious principle which conflicts with the obligation to belong to a trade union. **He believes in the principle of the master and bondsman: he owes a loyalty to his employer, Boldt, as its bondsman, which would, in his view, be disturbed if he were to be a member of the Union and the Union were to intercede on his behalf. The principle of the master and bondsman requires a direct relationship, with no trade union intermediary.**

(emphasis added)

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[53] Despite the Board asking Ms. Farrell at the oral hearing for further details about the religious underpinnings for her application, it was left with the distinct impression that Ms. Farrell's objections were often specific to CUPW, although certainly not exclusively.

[54] The Board does not need to come to a final conclusion on how to treat this hybrid evidence, since Ms. Farrell did not meet the requirements of another key guideline, *infra*.

**2. The applicant does not have to rely on a specific tenet of a particular religion or church.**

[55] Ms. Farrell's church did not have a tenet which forbids membership in a trade union. A fellow member of her congregation worked as a nurse in a unionized setting. In any event, such a tenet is not a mandatory condition for an exemption, as the CLRB noted in *Guertin* (1987), 69 di 1 (CLRB no. 614):

**The Board notes that Mrs. Guertin's beliefs are founded strictly on her interpretation of the Bible, and not on the particular doctrine of a given religion or church. An exemption cannot be denied her for this reason.** This, moreover, is what the Board stated in *Barker*, *supra*:

The applicant does not have to rely on some specific tenets of a religious sect to base his objection.

(pages 107; 45; and 14,288)

On reflection, it would have been better to use the words "religion" or "church" instead of "sect" because, to some people, the word "sect," which is narrower, merely means a dissenting group that is a minority within a religion. In order to better reflect our thinking, the following correction is necessary: The applicant does not have to rely on some specific tenets of a given religion or church to base his objection.

(page 5, emphasis added)

[56] Ms. Farrell testified that her interpretation of the Bible led to her beliefs. This is sufficient to satisfy the second guideline.

**3. Do Ms. Farrell's beliefs relate to the Divine, or man's perceived relationship to the Divine, as opposed to man-made institutions?**

[57] The evidence did not raise any doubts that Ms. Farrell's beliefs come from her reading and understanding of the Bible.

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**4. Is Ms. Farrell sincere or has she rationalized her objections to CUPW on religious grounds after she became aware of the provisions of the Code?**

[58] CUPW asked the Board to compare Ms. Farrell's original application with her later pleadings. In its view, her position changed as she learned more about section 70(2) and the guidelines found in the Board's case law.

[59] In *Bradford FCA*, the FCA cautioned that decision makers should not focus on past practices too rigorously when examining an applicant's sincerity:

[46] In *Amselem*, the Supreme Court of Canada reminded us, albeit in a different context, that the assessment of the sincerity of one's religious belief "is a question of fact that can be based on several non-exhaustive criteria, including the credibility of the claimant's testimony ..., as well as an analysis of whether the alleged belief is consistent with his or her other current religious practices" (*Amselem*, at paragraph 53). **I agree with the applicant that all decision-makers must be conscious of and abide by the Supreme Court of Canada's warning in *Amselem* (also at paragraph 53) that focusing too rigorously on past practices is inappropriate when determining whether current beliefs are sincerely held. This is because, by their very nature, beliefs are fluid and may well change and evolve over time.**

(emphasis added)

[60] In *Bradford 696*, the Board found that a change in the applicant's pleadings constituted a "rationalization". In that case, Mr. Bradford had been a longstanding union member. He initially filed an application for a religious exemption in Alberta, based solely on his objection to his union's position on abortion.

[61] When he learned that this Board had jurisdiction over his situation, he then filed a far more detailed application which focused on the long-established guidelines the Board examines in section 70(2) cases.

[62] The Board concluded that Mr. Bradford, given that he had had no trouble being a member of the union for many years, had rationalized his position:

[34] **It is undisputed that the genesis of the applicant's first application to the ALRB for a religious exemption to the payment of union dues was his discovery that the union was actively supporting the pro-choice side on the issue of abortion.** It is clear from the applicant's correspondence with the President of the union in June of 2012 that he has deeply-held views on this issue, and was very upset with the union for taking a position on the subject. **The correspondence with the union also demonstrated that the applicant did not have an issue at the time with the union acting on behalf of the employees regarding workplace issues; in fact, his suggested solution was merely to have his local separate from the CAW.**

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[35] After being advised that he had filed the application in the wrong jurisdiction, the applicant filed his application with this Board in August of 2012. The application to the Board was very different. The applicant now sought an exemption from union membership as well as payment of union dues, and now stated that he was opposed to membership in any trade union. He attributed this change in his position to a progression of his religious views, resulting from some research he had done on religious and legal issues. Although this was a key part of the applicant's case, the details of this research were sparse.

(emphasis added)

[63] In the instant case, the Board sees a difference between Mr. Bradford's situation and that of Ms. Farrell. Mr. Bradford had been a longstanding member of the union and only filed an application after learning about his union's position on abortion. Up until that point, he had had no concerns with his union representing employees vis à vis the employer.

[64] In contrast, Ms. Farrell never became a member of CUPW. In 2011, she refused to sign a card in support of a possible strike. Even when she was asked on several occasions in 2012 to sign a CUPW membership card, she acted consistently and refused. She testified about the religious reasons for taking these positions, even if she did not share them explicitly with those who had asked for her support. Ms. Farrell testified that she did not share her religious views at the workplace, though she acted in accordance with them.

[65] The instant case does not have the same abrupt change of position based on a single moral issue which the Board had before it in *Bradford 696*. The evidence in this case does not support a finding that Ms. Farrell accepted CUPW's role, but then rationalized her position once she had learned about section 70(2) of the *Code*. Her pleadings merely responded to the guidelines which the Board has indicated would govern applications of this type. As she testified at the hearing, "This provision exists for people like me".

[66] The Board concludes that Ms. Farrell's deeply held religious views and her refusals to involve herself in any CUPW matters have been consistent throughout her employment. Ms. Farrell was sincere in bringing her application and did not rationalize her objection for some ulterior motive.

**5. Would Ms. Farrell be placed in such a conflict position if the Board denied the application that she would likely no longer be able to continue in her employment?**

[67] Ms. Farrell did not satisfy the Board that she met this guideline. The Board will not exercise its discretion to grant her the two requested exemptions.

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[68] The Board mentioned earlier that the religious exemption deals with situations where the *Code's* union security provisions may place an employee with sincerely held religious beliefs and convictions in a fundamental conflict and put their employment in jeopardy. In *Wiebe*, the CLRB described the exemption as being akin to a compelling necessity:

While Mr. Wiebe meets these tests, the Board considers that there is more to be taken into account. We said earlier that we read section 162(2) as implying that the Board's discretion to grant an exemption requires it to be convinced that there are very good reasons for so doing. **We have to do more than simply conclude that an applicant has a religious conviction or belief that causes him to object to paying unions dues. We are obliged to assess the probable consequences for the applicant of his not being given the exemption. Without the latter would he suffer a personal crisis? Would he be placed in such conflict with his conscience that he would have to contemplate quitting his job regardless of the possible resultant economic suffering? Are his beliefs so deeply held, his convictions so compelling, as to make it likely that he could no longer continue in his employment?**

(pages 96; 248; and 14,259; emphasis added)

[69] Given that the *Code* contains two separate religious exemptions, the Board will deal with each one in turn.

#### **i. Exemption From Dues**

[70] The Board must weigh the likely consequences to an applicant if he/she does not receive an exemption.

[71] Ms. Farrell did not satisfy the Board that her obligation to pay union dues, something which she has been doing since CPC first hired her in 2005, would make it impossible for her to continue in her employment.

[72] Union dues are crucial to trade unions. Those dues allow the trade union to fulfill its obligations under the *Code*, which include representing all employees in the bargaining unit.

[73] Indeed, the *Code* imposes a specific duty on every trade union/bargaining agent to represent all employees in the bargaining unit with regard to their rights under the collective agreement:

**37.** A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.



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[74] Since all bargaining unit employees receive the benefits of their trade union's representation, it only makes sense that they all contribute towards the costs.

[75] Ms. Farrell did not dispute that she had benefitted from CUPW's efforts. For example, she was able to use her seniority in order to move from casual to part-time employment.

[76] Ms. Farrell described the payment of dues in her pleadings as a "kickback" and a "necessary evil", but she was candid with the Board that the payment of dues would not prevent her from continuing in her employment.

[77] On page 5 of Ms. Farrell's April 29, 2015 submission, she noted that she would not quit her employment if the Board required her to continue to pay dues:

5) ... **Failing to divert my union dues is not something that would cost me my job. This is fairly obvious since I've already been paying them for years, however, I was never given a choice and it has always bothered me.** While I do not like that some of my dues go towards supporting causes I have a religious objection to, I don't believe this would represent a significant portion of my dues. Nevertheless, I also object to how the union operates in general, and presumably much more of my dues would be going to the general operation. A large portion is set aside for strike pay – and since a strike is something I have a religious objection to, I will never participate in one, and therefore will never benefit from strike pay. Some of it supposedly goes to providing me with representation – however I also will never benefit from that as they will not represent non-member (not that I would want their representation anyway).

**Regardless, I don't see this as reason enough to quit – for one thing that just means they'd hire someone else, and then their union dues would be used for the same thing – so quitting my job would change nothing. And for another, it's not really any different from paying taxes, some of which also go to supporting things that I don't agree with.** The Bible tells me to "give back to Caesar what is Caesar's, and to God what is God's" (Matthew 22:21). So if paying union dues are a requirement of the job, then I can accept that.

(exhibit 1, April 29, 2015, submission; emphasis added)

[78] The Board is satisfied that Ms. Farrell's continuing obligation to pay dues will not place her in such a situation of conflict that she would not be able to continue in her employment. Ms. Farrell did not satisfy the requirements of this guideline.

## **ii. Exemption From Joining CUPW**

[79] Ms. Farrell has also not met this guideline, at least at this time. Assuming article 4.07 would allow CUPW to request CPC to terminate Ms. Farrell, the evidence did not disclose that CUPW has ever attempted to enforce this right.

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[80] The Board understands Ms. Farrell's concern that CUPW could change its mind and in the future ask CPC to terminate her employment. But CUPW has never attempted to invoke article 4.07 of the collective agreement, at least with regard to Ms. Farrell's employment. The Board must analyze the situation as it currently exists.

[81] The fifth guideline obliges the Board to consider whether the failure to grant an exemption may place the applicant in an untenable position and place her employment in jeopardy. In the instant case, that type of compelling necessity does not exist. There was no evidence that Ms. Farrell's continued employment would be in jeopardy if the Board did not grant her an exemption.

[82] Indeed, whether knowingly or not, it appears that CUPW may already be accommodating Ms. Farrell's religious views by not insisting on the signing of a membership card. This situation of peaceful co-existence is not the type of acute conflict to which section 70(2) was designed to apply.

[83] The Board, therefore, at this specific time and on these specific facts, is not prepared to exercise its discretion to grant Ms. Farrell an exemption from being a CUPW member. She has never had to join CUPW since being hired by CPC in 2005 and there was no evidence she would be compelled to do so in the future.

[84] Should the underlying facts ever change, then Ms. Farrell can file a new application with the Board.

[85] For the above reasons, the Board dismisses Ms. Farrell's application.

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

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Graham J. Clarke  
Vice-Chairperson

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André Lecavalier  
Member

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Gaétan Ménard  
Member