Labour Relations Board
Saskatchewan

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant v. THE NORTH WEST COMPANY and TORA REGINA (TOWER) LIMITED o/a GIANT TIGER, REGINA, Respondent

LRB File No. 010-10; May 11, 2010
Chairperson, Kenneth G. Love, Q.C.; Members: Kendra Cruson and John McCormick

For the Applicant: Mr. Drew Plaxton
For the Respondent: Ms. Susan Barber, Q.C. and Ms. Amanda Quayle

Practice and Procedure – Objection to Conduct of Vote. Union challenges vote conducted by Board as part of reconsideration of Board order certifying Employees.

***Regulations and Forms of the Labour Relations Board*, Sections 26 and 29.**

***The Trade Union Act*, ss. 6(1.1) & 18(v).**

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Chairperson:** The United Food and Commercial Workers, Local No. 1400 (the "Union") filed an application with the Saskatchewan Labour Relations Board (the "Board") on February 1, 2010 pursuant to Section 29 of the Regulations and Forms of the Saskatchewan Labour Relations Board, S.R. 163/72, as amended, objecting to the conduct of a vote among the employees of The North West Company LP formerly known as Tora Regina (Tower) Limited operating as Giant Tiger (the "Employer"), with stores in Regina, Saskatchewan. In its application, the Union challenged the conduct of the vote on the following grounds:

(a) ***Objection to the Voter's List***

The Order for a Vote is vague and uncertain, it does not set out the collective bargaining unit under consideration, nor does it set out the employer concerned. Giant Tiger is not a corporate entity.

Objection to each name on the Proposed Voter's List

Giant Tiger is only a trade or business name and has no employees.

The union believes all of the employees on the voters list are employees of The North West Company LP. They have no right to determine the fate of a Certification Order involving employees of Tora Regina (Tower) Ltd. The original Certification Order was made in relation to Tora Regina (Tower) Ltd. The application for reconsideration was made by Tora Regina (Tower) Ltd.

There has been no hearing of a successorship application. The union has requested same but the Board has declined to proceed with same. If the employees of North West Company are allowed to determine this issue, this constitutes a de facto successorship order, contrary to the rules of natural justice and procedural fairness. Further, this cannot be achieved by way of an amendment.

The voter's list has employees from both stores participating in the question. The union submits no vote is appropriate, but if a vote were held it should have been with employees of the new store.

The union was not allowed access to any employee information to be able to determine if the voter's list was accurate, contrary to the rules of natural justice.

Certain employees

The Union objects to employees hired contrary to the union security provisions being on the list.

If the employees of The North West Company LP can determine the fate of the Certification Order in relation to Tora Regina (Tower) Ltd. (which is objected to by the union), the union further objects to certain names either included or not included on the voter's list on the basis that many Persons on the list have been hired contrary to the union security provisions. denial of natural justice and a breach of the principles of procedural fairness.

The Board's original certification order was made on the 3rd day of July, 2007. The union delivered its union security demand on or about the 11th day of July, 2007. Evidence before the Board is already shown the employer has refused to honour its obligations pursuant to The Trade Union Act, the Certification Order and the union security clause. Since the union security demand was made, the employer has obtained union cards from no new hires.

In creating the voter's list the Labour Board has relied solely on information provided by the employer without allowing the union access to information to properly test same. The union says this constitutes a denial of natural justice and a breach of the principles of procedural fairness.

(b) Objections to the Vote

The union submits a vote is inappropriate in the circumstances at hand, for a number of reasons including the following:

> *The employer or employers have and continue to refuse to comply with their obligations pursuant to the union security*

> *provisions and other obligations under by The Trade Union Act. They have further interfered with and prevented the union from receiving proper information in relation to employees and further prevented the union from being able to communicate with and properly represent employees. This has created a poisoned work environment and further undermined the union's authority as exclusive bargaining agent for the employees in question.*
>
> *Particulars of this activity are set forth in the union's unfair labour practice application filed in April of 2008 (LRB File No. 041-08) and the union's reply to a rescission application filed by a Ms. Gail Doucette (LRB File No. 150-08). The union repeats these statements and adopts the same as part of its application within. The union says further these activities have continued to date.*
>
> *These activities have created a poisoned atmosphere in the workplace and has prevented employees from freely deciding the question set forth in the vote. It is impossible at this time to have a free and fair vote in the workplace.*
>
> *This situation has been further exacerbated by Orders of this Honourable Board effectively preventing the union from representing its members and fulfilling its obligations as exclusive bargaining agent.*
>
> *It is further submitted a vote in the workplace is inappropriate, in that there is no reasonable connection between the question posed in the vote and the grounds set forth by this Honourable Board in allowing a reconsideration application to be made. The results of a vote are not relevant to the issues before the Board.*
>
> ***(c) Objections to the Conduct of the Vote***
>
> *To the best of the union's knowledge, no Board Agent was appointed to conduct the vote, contrary to Regulation 26.*
>
> *The union reserves the right to rely upon such further and other irregularities as may be discovered.*
>
> *The union asks for an Order the vote be declared a nullity, set aside and voided.*
>
> *The union further asks for an Order the ballot boxes be and remained sealed until all issues raised in conne4ction with the vote have been determined by the Board and that no count be conducted until all matters have been finally determined, if at all.*

[2] The vote, which is the subject of this application, arose from a decision of the Board dated January 15, 2010, wherein the Board reconsidered an application for certification by the Union (LRB File No. 026-04) and ordered a vote to determine support for the certification application under s. 6 and 18(v) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*").

[3] The Board issued a Direction for Vote in conjunction with its written decision on January 15, 2010 (LRB File No. 026-04). That Direction for Vote was as follows:

DIRECTION FOR VOTE

THE LABOUR RELATIONS BOARD*, pursuant to Sections 6 and 18(v),* ***HEREBY ORDERS****;*

(a) That the Employer shall within twenty-four (24) hours of its receipt of the Board's Order and the Reasons for Decision;

1. post a copy of this Direction for Vote and the Reasons for Decision at both Giant Tiger workplaces in Regina, Saskatchewan, in a location where the documents are visible to, and may be read by, as many employees as possible.

2. the posting is to be maintained at the workplaces until the final determination of this matter following the vote of the employees;

(b) That the Agent of the Board conduct a secret ballot vote of employees of Giant Tiger who were employed on the date of this decision and who remain employed as of the date of the Vote;

(c) That the Employer is directed to provide to the Board Registrar and the Union a list of all employees, except the store managers, and office associates, employed at both of the Giant Tiger locations in Regina, Saskatchewan, as of January 15th, 2010.

1. the list of employees shall be provided to the Board Registrar on or before 5:00 P.M. C.S.T. on January 22, 2010;

i. Such list of employees shall be subject to verification or audit by the Board Agent who shall be entitled to view such employment records as may be reasonably necessary for that purpose.

ii. The list of employees shall be verified by statutory declaration of an officer or senior manager of the employer.

iii. No signatures of listed employees need be provided with the list of employees;

(d) A representative of the Union and of the Employer shall be entitled to meet with the Agent of the Board on January 25, 2010, for the purpose of determining and finalizing a list of those employees who shall be entitled to vote as set out above at paragraph (b). Where there is any dispute as to any employee's entitlement to vote, that person may vote, however, that person's ballot shall be "double enveloped" at the time the ballot is cast and not tabulated until any further direction as deemed appropriate by this Board;

(e) The form of the ballot shall be as follows:

SECRET BALLOT

	YES	☐
Do you wish to be represented by United Food and Commercial Workers, Local 1400 for the purpose of bargaining collectively with your Employer?	*NO*	☐

PLACE AN "X" IN ONE SQUARE ONLY

(f) The list of the employees eligible to vote, shall be posted in a conspicuous place or places where the employees eligible to vote are engaged about their duties, and shall be posted before the time fixed for the taking of the vote;

(g) That the vote shall be held as follows:

1. *at store 405, located at 2735 Avonhurst Drive, from 9:30 AM to 11:30 AM on Friday, January 29, 2010; and*

2. *at store 421, located at 2610 Victoria Avenue East, from 1:30 PM to 3:30 PM on Friday, January 29, 2010.*

(h) That immediately following the conclusion of the vote at Store 421, the Board Agent shall tabulate the ballots. The Union and the Employer are hereby invited to each have one scrutineer. The results of the tabulation will be reported to the Board;

(i) That pending the outcome of the secret ballot by the employees, the Union shall be restrained from enforcing any of its rights under the certification Order save and except as provided herein;

(j) That pending the outcome of the secret ballot by the employees, the Employer shall be restrained from communication with its employees with a view to encouraging or discouraging membership or representation by the Union; and

(k) That the Board shall remain seized of this matter for the purposes of determining any issues associated with the implementation of this Order or arising out of the vote as herein directed.

***DATED** at Regina, Saskatchewan, this **15th** day of **January , 2010**.*

LABOUR RELATIONS BOARD

[4] The vote, as ordered by the Board, was conducted by an Agent of the Board, Mr. Scott Wiggs, who was appointed as Deputy Returning Officer of the Board on

January 31, 2010. Mr. Wiggs, who was, at that time, an employee of the Board was appointed on the following terms:

> *APPOINTMENT OF DEPUTY RETURNING OFFICER*
>
> ***SCOTT WIGGS** is **HEREBY APPOINTED** Deputy Returning Officer of the **LABOUR RELATIONS BOARD** for the purpose of conducting the votes directed to be taken by the Board.*
>
> *This appointment expires March 31, 2010.*

[5] Following the completion of the Vote, Mr. Wiggs reported to the Board in the following terms:

> ***REPORT OF AGENT OF THE BOARD***
>
> ***THE LABOUR RELATIONS BOARD**, having on the 15th day of January, 2010, pursuant to The Trade Union Act, directed a vote be conducted by secret ballot among all employees, to determine if the employees wish to have the United Food and Commercial Workers, Local 1400, represent them for the purpose of bargaining collectively with their Employer.*
>
> *I, the undersigned, Agent of the Board appointed to conduct the said vote and to act as returning officer, report that:*
>
> 1. *The said vote was conducted by me in accordance with the direction of the Board at Regina on the 29th day of January 2010.*
> 2. *The "Notice of Vote", including Appendix I and II, which is attached hereto, was delivered to the eligible voters' on the date indicated thereon.*
> 3. *The employees who voted were, in all cases, properly identified as being eligible voters.*
> 4. *The ballots used were in the same form as the sample ballot shown in Appendix I to the "Notice of Vote" attached hereto.*
> 5. *The time and place(s) of voting, as shown in Appendix I to the "Notice of Vote" attached hereto, were adhered to.*
> 6. *The vote was conducted in a fair and proper manner.*
> 7. *The result of the vote was as follows:*
>
> | | |
> |---|---|
> | *No. of Eligible Voters* | *93* |
> | *No. of Votes for Union* | *5* |
> | *No. of Votes against Union* | *54* |
> | *No. of Spoiled Ballots* | *0* |
> | *No. of Ballots Cast* | *59* |
> | *No. of Employees Not Voting* | *34* |
>
> 8. *Additional comments:*

"Union Scrutineer has registered a general objection to the vote"

***IN WITNESS WHEREOF**, I have hereunto set my hand at Regina, Saskatchewan, this 29th day of January, 2010.*

"Scott Wiggs"
Agent of the Labour Relations Board

*We, the undersigned, hereby acknowledge that we have each received a copy of the foregoing "Report of Agent of the Board", and each of us agrees that, subject to such objections as may be filed with the Registrar of the Board by us or our principals not later than the **3rd Day of February, 2010**, the statements made in the said Report are true in all respects.*

***IN WITNESS WHEREOF**, we have hereunto set our hands at Regina, Saskatchewan, this 29th day of January, 2010.*

Darren Piper signature as Scrutineer for Applicant

Signature as Scrutineer for Employer *"Scott Wiggs"*
Board Agent

[6] Neither party presented any evidence at the hearing of this matter relying solely upon written and oral submissions.

Statutory Provisions:

[7] Relevant provisions of the *Regulations and Forms,* include the following:

26 Where, pursuant to the provisions of the Act, the board directs a vote to be taken by secret ballot, the chairman shall appoint an agent to conduct a vote, and such agent shall, subject to such conditions as may be prescribed in the direction and with reasonable dispatch:

(a) determine the list of employees eligible to vote;
(b) determine the form of the ballot;
(c) determine the date or dates and hours for taking the vote;
(d) determine the number and location of the polling places;
(e) prepare a notice or notices of the vote according to Form 13 and direct posting thereof;
(f) act as returning officer and appoint such deputy returning officer or officers and poll clerk or clerks as may be necessary;
(g) invite the employer affected and any trade union whose name appears on the ballot each to appoint one scrutineer for each polling place and permit each scrutineer to be present at the polling place during the hours for the taking of the vote and while the ballots are being counted;
(h) give special directions or instructions as he may deem necessary for the proper conduct of the vote.

. . .

> *29 (1) Any trade union or any person directly affected having any objection to the conduct of the vote or to the counting of the votes or to the report shall, within three days after the last date on which such voting took place, file with the secretary a written statement of objections in Form 15 and verified by statutory declaration together with two copies thereof, and no other objections may be argued before the board except by leave of the board.*
>
> *(2) The secretary shall cause all statements of objections and all copies thereof, when filed, to be stamped with the date on which they were received in the office of the board.*

Analysis and Decision:

[8] The Union brought an application, which was almost identical to the one under consideration here, which was dealt with by the Board in its decision dated May 22, 2009. The objections raised in that instance were in relation to an earlier vote conducted by the Board in respect of this matter. For reasons[1] outlined in the Board's decision dated May 22, 2009, that application was dismissed. The Board incorporates and accepts those reasons as determinative of those aspects of this matter which were dealt with in that application.

[9] The Union's application raised objections to the vote under three (3) broad categories. These were:

(a) objections to the Voter's List;

(b) objections to the Vote; and

(c) objections to the conduct of the Vote.

We will deal with each of the complaints raised by the Union under each of these categories in turn.

<u>Objections to the Voter's List</u>

[10] The Union's primary objection was that the Order for a Vote is "vague and uncertain." However, the Order for a Vote being the Direction for Vote issued by the Board is in its usual form. In their objection, the Union has overlooked the function of the

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Board Agent and Registrar who is directed, "subject to such conditions as may be prescribed in the direction and with reasonable dispatch" as referred to in s. 26(a), (b) and (h) of the *Regulations.*

[11] The Board, in its Direction for Vote specified a procedure by which the list of eligible employees was to be determined by the Board Registrar who was to be provided with a list of employees. Included within the Direction for Vote was the ability for the Board Registrar to verify the list of employees provided by the Employer. The Board Registrar did verify the list by personal visit to both of the Giant Tiger stores and a review of the payroll records at those locations. No signatures of the employees were necessary as the provisions of signatures of employees is now an antiquated procedure. Verification of signatures was required under the previous "card check" system utilized by the Board for certification prior to the amendments to the Act in May of 2008. Under that procedure, it was necessary to insure that the signatures of those persons who had signed support cards and the signatures of employees on the Statement of Employment provided by the Employer matched. In this case, since employees listed on the statement of employment were required to personally present themselves to vote, and be subject to challenge if they were not on the voter's list, there was no need for the Board to require signatures on the statement of employment. For that reason, the Board, in its order, did not require signatures to be obtained as a part of the Statement of Employment.

[12] The Direction for Vote went on to allow representatives of both the Employer and the Union to meet with the Registrar "for the purposes of determining and finalizing a list of those employees who shall be entitled to vote". That meeting was held and no objection to the entitlement of any of the listed employees was raised by either party. As a result, no employee's vote was "double enveloped".

[13] The vote was held as ordered in the Direction for Vote. Each party had a scrutineer present for the vote and the counting of the ballots. No specific objection was taken to any voter who cast a ballot nor to the manner in which the vote was conducted. The Union did make a general objection, as noted in the "Additional Comments section of the Agent's report: "Union scrutineer has registered a general objection to the vote." A note of that objection was also made opposite the signature of the Union scrutineer.

[14] The Union also argued in this application, as it had in its earlier application in 2009, that the bargaining unit and the Employer concerned are not specifically set out in the Order. They also argued that, who the proper Employer is has not as yet been determined by the Board, as the Union has brought a successorship application to determine successorship of the bargaining unit. Further, counsel for the Union submitted that there were no employees of Tora Regina (Tower) Ltd., who was the Employer at the time of application, and consequently there were no employees eligible to vote as directed by the Board.

[15] As the Board noted at paragraph [24] of the February 22, 2009 decision:

> *The Board is unable to accept the Union's arguments with respect to this "phantom Employer." To do so, would require the Board to ignore s. 3 of the Act which provides that the rights provided are granted not to Employers or trade unions, but to employees. Clearly, there are employees within the bargaining unit. It is their wishes that the Board seeks to determine. Who the Employer may ultimately be determined to be, and who will be required to bargain collectively with the Union is not, at this stage of particular moment or import, should the certification Order remain in effect following reconsideration by the Board.*

[16] As it did in its earlier application, the Union also argued that there were persons on the voter's list who had been hired contrary to the union security provisions contained in s. 36 of the *Act*. The Union delivered a security demand on or about the July 11, 2007, following the Board granting the Union's application for certification on July 3, 2007. However, the Employer challenged that Order by applying for judicial review before the Court of Queen's Bench. The judicial review application was successful and the certification Order quashed. The Union appealed that decision with the Court of Appeal, who ultimately restored the certification Order in its decision dated March 14, 2008.

[17] Following the restoral of the certification Order by the Court of Appeal, the Union reiterated its s. 36 maintenance of membership request. On that date, the Employer also applied to the Board for reconsideration of the certification Order made July 4, 2007. By its Reasons for Decision of June 2, 2008, the Board agreed to reconsider its decision and ordered that "pending the outcome of the secret ballot of

employees, the Union shall be restrained from enforcing any of its rights under the certification Order save and except as provided herein."

[18] As noted in the Board's May 22, 2009 decision, The most recent case dealing with this issue was the Board's decision in *Robert Flaman v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada and Western Automatic Sprinklers (1983) Ltd.*, [1989] Spring Sask. Labour Rep. 45, LRB File No. 045-88, to support their positions with respect to whether or not persons hired after July 4, 2007 should be eligible to participate in the vote.

[19] The decision in *Flaman, supra,* dealt with a rescission application filed by Mr. Flaman. One of the issues for the Board to determine in this case was:

> *[W]hether eligibility to participate in a representation vote depended upon the applicant, Flaman, and any or all of the other employees doing bargaining unit work to have been hired and retain in compliance with the union security provisions of the collective bargaining agreement.*

[20] In its Reasons, the Board reviewed other Board cases on point, as well as the leading cases in the area from Ontario, being *April Waterproofing Ltd.* [1980] O.L.R.B. Rep. November 1577 and *Schade and Culliton Brothers Limited et al* [1983] 2 CLRBR (N.S.) 258.

[21] In the *Flaman* case, *supra*, the Board ultimately concluded that it would not order a vote while discussing the eligibility issue, finding that s. 9 of the *Act* applied in respect of the application for decertification.

[22] Based on the evidence provided by the Employer, in the May 22, 2009, there were seven (7) employees who were hired after July 4, 2007 who were included upon the voters list who did not comply with s. 36 of the *Act* and who the Union says should therefore be ineligible to cast a ballot. However, in the instant case, no evidence was lead by the Union to suggest that any employees should be ineligible to vote, nor did they object to any of the eligible employees voting either at the meeting with the Board Registrar or at the conduct of the vote.

[23] In its decision of May 22, 2009, the Board considered the *Flaman* case, *supra*, and others, but in the final analysis the Board was of the view that these cases were not applicable to vote being reviewed in that case. Nor are those cases of any assistance in this situation. Firstly, the vote which was ordered was ordered by the Board under its authority contained in s. 6 and s. 18(v) to assist the Board to determine if there was support for the certification. As noted in its decision which ordered the vote to be conducted,[2] the Union failed to meet the threshold for a mandatory vote pursuant to s. 6(1.1) of the *Act*. Nevertheless, for the reasons given in that decision, the Board concluded that it would order a vote to insure that the wishes of the employees would be respected.

[24] The Board also adopts its reasoning in paragraphs [40] – [46] of its May 22, 2009 decision.

[25] The Union also argued that the vote should have only been conducted among the employees of the new location, presuming that the earlier support cards provided showed that the employees of the original location were in favour of the certification. For the reasons outlined in our decision of January 15, 2010, that was not the case. The certification sought by the Union was a municipality wide certification. The Union did not provide sufficient evidence of support for the employee group in the City of Regina to reach a majority of those employees, which evidence of support was less than the currently mandated support level of 45%. The Board exercised its authority under s. 18(v) of the Act to order a vote, notwithstanding these deficiencies to allow the employees who, pursuant to s. 3 were entitled to join, or not join, a Union of their choice and have that Union recognized as their collective bargaining agent.

[26] The Union's application on this ground must therefore fail.

Objections to the Vote

[27] The Union submits that there has been a failure of natural justice and a breach of the principles of procedural fairness insofar as it has been denied the ability to

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[2] *North West Company L.P. v. United Food and Commercial Workers, Local 1400*, 2010 CanLII 1128

communicate with employees and to receive proper information concerning the employees of the Employer.

[28] With respect, the Board finds no merit in the Union's arguments in this regard. As noted above, there was considerable uncertainty as to the certification Order until the decision of the Court of Appeal. The Union's renewed application for union security was sent the same day the application for reconsideration was received by the Board. It was the Board's conclusion that there should be a suspension of the Union's rights under s. 36 and it so ordered. Furthermore, the Board did provide opportunity for the Union to campaign with respect to the previous vote and fashioned an unusual Order to allow that to happen. The Employer offered access to its employees, which the Union did not take advantage of, and it was necessary for the Executive Officer of the Board to eventually specify dates on which the Union would be permitted to canvass employees on the Employer's premises due to an inability to obtain agreement from the Union as to what dates it would chose to engage employees on.

[29] The Union also failed to take advantage of information provided to it by the Employer as ordered by the Board, which was to be provided to enable it to contact employees to enlist their support for the Union. This failure was based upon its narrow view of the Board's Order, and without making any application for clarification of the Order, the Union chose not to utilize that information to contact employees.

[30] The Union's application on this ground also fails.

Objections to the Conduct of the Vote

[31] The Union alleged that there was no Board Agent appointed as required by s. 26 of the Regulations. That was not the case. The Board Registrar was appointed to conduct preliminary matters related to the vote by the Direction for Vote. He appointed Mr. Wiggs to act as his Deputy for the actual conduct of the vote. No objection was taken to Mr. Wiggs conducting the vote as he was known by the parties to be an employee of the Board.

[32] However, even if the Union was correct in this assertion, the outcome of the vote was not in any way affected, and the Union brought no evidence of any such

impact. Furthermore, s. 19(1) of the Act specifically provides that "[N]o proceeding before or by the Board shall be invalidated by reason of any irregularity or technical objection…" Furthermore, should clarification be required, with respect to the Board's Direction for Vote, the Board Registrar was, and is hereby declared to be the Agent of the Board for the conduct of the vote as ordered.

[33] The Union's application is hereby dismissed.

[34] Mr. John McCormick, Board Member, dissents for the Reasons which follow.

DATED at Regina, Saskatchewan, this **11th** day of **May, 2010**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson

DISSENT

I believe that the original panel was correct in certifying UFCW 1400 as the bargaining agents.

I do not agree that there should have been a vote, and would suggest that allowing the vote clearly slanted the process in favor of the Employer. The original certification would have been automatic had this Employer not interfered. The three year wait for the decision allowed the Employer to open a new store and reorganize to try and avoid the certification Order. This Employer has had three years to hire and dismiss employees that **may** have had a view against unionization. So the vote **may** have been tainted. The hearings at the Labour Relations Board, and the atmosphere in the workplace clearly poisoned the support for the Union.

I do not agree that the voting process in this case was handled any differently than any other vote that is handled by the Labour Relations Board.

The Reasons for Decision in LRB File No. 010-10 indicates at paragraph [15] the statement "*Clearly, there are employees in the bargaining unit"*, and if that is true then the Union should have been granted access to those Employees which they were not. Section 36 allows the Union to request the Employer provide information for maintenance of membership. (Paragraph [17]) The Board took those rights away from the Union at the request for reconsideration by the Employer.

The following is my original dissent:

On February 11, 2004, UFCW, Local 1400 applied for a certification Order of Tora Regina Limited operating as "Giant Tiger" in the City of Regina. On July 4, 2007 the certification was ordered by the panel that heard the matter. Although the excess time of three (3) years is abnormal, it still was based on the facts as known at the time of the hearing. There was a clear majority, and as was the case at that time, if there was a "fifty percent plus one" vote in favor of the Union, it was automatic certification. This would have been the case had it not been for the fact that the Employer encouraged employees to make application to withdraw their support for the Union.

The Board heard the concerns of the employees, for withdrawal of card support. However, the Board also discovered that the Employer had orchestrated the applications for withdrawal by telling employees where they could call for help to withdraw their support that they had previously signed.

During the three year delay in the decision, the Employer had every opportunity to bring forward anything that may have been missed or changed in regard to the structure of Giant Tiger. They never raised any concerns during that period.

The Union never had the opportunity to represent the Employees of Giant Tiger during that three year period. For the Union nothing had changed, they had applied for a regional certification which included all of the City of Regina. The Employer continued to try and have the certification Order quashed, by applying to the Court of Queens Bench. (October 25, 2007) This application was upheld and the certification was quashed.

This decision was overturned on March 14, 2008 in the Court of Appeal. The certification was restored for UFCW, Local 1400.

On March 31, 2008 the Employer "Giant Tiger" applied for reconsideration and proceeded to argue that there were many changes that had happened at "Giant Tiger". The Employer argued that there was a major turnover of Employees that had originally made application (only 12 remained) for certification, therefore the Board should reconsider its Order for certification.

Giant Tiger also opened another store in the east end of Regina, on or about June 23, 2007. The Employer (Giant Tiger) argued that this new store was never owned by the group called Tora Regina (Tower) Limited. This new store was transferred to a company called North West Company LP and was never owned by Tora Regina (Tower) Ltd., but both stores are called Giant Tiger.

The summary of events that should be considered:

- The Employer was guilty of assisting employees to withdraw their support for certification.

- The Employer made sure that the Union representatives were asked to leave the store any time they showed up to talk to its members.
- Had it not been for the interference by the Employer, the automatic certification rules would have applied.
- The Employer allowed employees to discuss decertification and its process at the workplace and even promoted decertification.
- The Employer opened a new store and attempted to argue that it was not owned by the same organization. (In my view this is just another attempt to avoid certification.)
- The Employer refused to share information on employees with the Union so the Union could represent its members.

This Employer Giant Tiger (Tora Regina) would have us believe that they no longer are the owners of the east Regina store, this store is now owned by North West Company and Tora Regina (Tower) Limited operating as Giant Tiger, Regina. I would suggest all employees of both stores believe they are employed by Giant Tiger. It is my view Giant Tiger has tried to avoid certification by changing company names. They stated changes were for tax purposes. They still remain as Giant Tiger located in the City of Regina which should have fallen under the certification Order dated July 4, 2007.

Reconsideration is a serious matter and the Employer has not met any of the thresholds to be allowed reconsideration. The criteria is as follows:

1. *If there was no hearing in the first instance and a party subsequently finds that the decision turns on a finding of fact which is in controversy and on which the party wishes to adduce evidence; or,*

2. *If a hearing was held, but certain crucial evidence was not adduced for good and sufficient reasons; or,*

3. *if the order made by the Board in the first instance has operated in an unanticipated way, that is, has had an unintended effect on its particular application; or,*

4. *if the original decision turned on a conclusion of law of [sic] general policy under the code which law or policy was not properly interpreted by the original panel; or,*

5. *if the original decision is tainted by a breach of natural justice; or,*

6. *if the original decision is precedential and amounts to a significant policy adjudication which the Council may wish to refine, expand upon, or otherwise change.*

The Employer has not met any of these six points. The original panel based its decisions on a clear majority of support and issued a city-wide certification. The Employer knew it was going to build a new store and would have been subject to the certification Order. The building of this new store was not just planned on June 23, 2007 and built that day, therefore it was planned. I believe the Employer had the opportunity to bring this information forward prior to the certification Order being signed. All parties knew what a city wide certification meant.

I disagree with paragraphs 43 and 45 of these Reasons for Decision, as there was clear majority support at the time of application. Majority support was the fact of this case from the outset, and this should not be ignored. A vote of any type right now is tainted by the Employer's consistent contempt for the employees' wishes to be certified with UFCW, Local 1400. This Employer has consistently led the drive to decertify from the very beginning of the certification application on February 11, 2004. If the employees wanted to decertify, they may do so under the *Act*. It is my view that the Union should be given an opportunity to represent its members (both stores), as difficult as it may be, given the actions taken by this Employer.

The Union and employees have been undermined by this Employer, and we should allow a proper period of time to the Union, to attempt a period of negotiations with the Employer. If the parties cannot agree to a first collective agreement, then a mediator should be appointed. This mediator should give a detailed report outlining the achievements in collective bargaining and the problems associated during bargaining.

I do not support a new vote as the Employer has had since February 11, 2004 to undermine the Union. The Employees that signed the majority of the cards have not been given their fair right to be certified. The Employer has had far too long to discourage new and old employees not to support the Union. There is nothing to be gained by allowing a new vote. There was a clear majority for certification and the original panel did not err in any manner, except for timeliness. In my view certification should be sustained.