The Labour Relations Board
Saskatchewan

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant v. 303567 SASKATCHEWAN LTD. (c.o.b. as HANDY SPECIAL EVENTS CENTRE), Respondent

LRB File Nos. 064-12, 075-12 & 081-12; February 28, 2013
Vice-Chairperson, Steven Schiefner; Members: John McCormick and Don Ewart

For the Applicant Union: Mr. Drew Plaxton
For the Respondent Employer: Ms. Shannon G. Whyley

Bargaining unit – Appropriate Bargaining Unit – Trade union seeks certification of under-inclusive bargaining unit – Employer argues unit proposed by trade union is doubly under-inclusive - Trade union seeks to represent only portion of employees in one division of employer's overall operations – Board reviews criteria for appropriateness determination - Board not satisfied that bargaining unit proposed by trade union is appropriate – Board finds that groups of employees that trade union seeks to exclude from unit would make it inappropriate – Board determines that unit comprised of all employees of one division is appropriate unit for collective bargaining – Board satisfied that trade union filed sufficient evidence of support for larger unit - Board directs tabulation of ballots from pre-hearing vote.

Vote – Eligibility – Certification - Board reviews criteria for management/confidentiality exclusions - Board also reviews eligibility criteria for casual employees to participate in representational vote – Board determines that casual employees who worked at least 30 hours in the two month period preceding trade union's certification application were eligible to participate in representational question – Board admits that criteria is somewhat arbitrary but satisfied that threshold ought to ensure that those employees with sufficiently tangible relationship with workplace were eligible to participate in representational vote.

Vote – Objection to Conduct – Employer objects to Board agent's decision to let two employees vote at a time and at a place other than that set forth in Notice of Vote – Two employees sent out of city on day of vote by employer and were unable to return in time for vote due to circumstances beyond their control – Board agent permits employees to vote at another location - Board satisfied that agent had right to modify voting procedures but erred in not communicating change in voting procedures prior to allowing employees to vote at different time and at a different polling place than that set forth in Notice of Vote – Board not satisfied that irregularity required the conduct of new representational vote – Board directs that ballots of two employees should not be counted in representational vote unless their inclusion could affect the result.

Unfair Labour Practice – Anti-union Animus – Trade union alleges that employer violated The Trade Union Act when it terminated the employment

of an employee around the time of trade union's organizing drive – Board notes employee was not involved in organizing drive – Employee's only involvement in campaign was to participate in representational vote – Employee missing scheduled shifts without explanation - Board finds that employer demonstrated good and sufficient reason for termination of employee to satisfy onus set forth in s. 11(1)(e) of The Trade Union Act - Board also satisfied that no anti-union animus was present in employer's decision to terminated employee - Board dismisses trade union's application alleging unfair labour practice.

***The Trade Union Act*, ss. 2(a) and (b), 3, 5(a), (b) and (c), 11(1)(e).**

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson**: On March 23, 2012, the United Food and Commercial Workers, Local 1400 (the "Union") applied to the Saskatchewan Labour Relations Board (the "Board") to be designated as the certified bargaining agent for a group of employees employed by 303567 Saskatchewan Ltd., who carry on business in Saskatoon under the name of "*Handy Special Events Centre*" (the "Employer"). In its Reply, the Employer took the position that the bargaining unit proposed by the Union was not an appropriate bargaining unit. Although a number of issues arose between the parties during these proceedings, the primary issue in dispute and the topic which was the primary focus of the hearing was whether or not the unit sought to be certified was appropriate for collective bargaining.

[2] These proceedings involved a number of collateral issues for which determinations by the Board were required. For example, on April 12, 2012, the Employer filed an application[1] with the Board, in which the Employer objected to the conduct of the representation vote. On April 30, 2012, the Union filed an application[2] with the Board in which the Union alleged that the Employer violated *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "*Act*") when an employee was terminated around the time of the representation vote. Because of the commonality of evidence, these two (2) additional applications were heard concurrently with the Union's certification application[3].

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1 An Application bearing LRB File No. 075-12.
2 An Application bearing LRB File No. 081-12.
3 An Application bearing LRB File No. 064-12.

[3] The applications were heard in Saskatoon, Saskatchewan commencing on July 16, 2012. The Union called Mr. Chris Andrew Dennis, the Union's National Service Representative; and Mr. Darren Kurmey, the Union's Secretary/Treasurer; The Union also called Mr. Allen Bolley and Mr. Christopher Sparling. The Employer called Marion Ghiglione, one (1) of the owners and a principal of 303567 Saskatchewan Ltd.; Ms. Diana Pereira, the Employer's Chief Operator Officer; Ms. Denise Kendrick, the Vice-President of the Employer's Handy Special Event division; Mr. Brenna Nickolson, the Employer's Human Resource Officer; Ms. Eileen Bunko, the Employer's Sales Manager for the Handy Special Event division; Mr. Matthew Stockford, the Outside Assistant Operations Manager for the Handy Special Event division; and Ms. Seena Begalke, an employee of the Employer.

[4] The evidentiary portion of the hearing concluded on January 14, 2013. Oral submissions were heard by the Board on January 21, 2013, with the parties granted leave to file written briefs with the Board on or before February 15, 1013 (which date shall be deemed to be the last day of hearing for purposes of s. 21.1 of the *Act*).

Facts:

[5] The Employer is 303567 Saskatchewan Ltd. and this company is the corporate vehicle through which Mr. Barry Ghiglione and Ms. Marion Ghiglione operate the "*Handy Group of Companies*". The Handy Group of Companies is a collection of business interests or enterprises that commonly are all involved in the rental of things. While these enterprises are all operated through one (1) corporate entity and out of one (1) physical location, the Employer's operations are nominally divided into divisions that focus on particular sectors of the rental business, including construction, industrial, equipment, portable and special events. Collectively, the Employer's various divisions cover most aspects of the rental business and operate to ensure that their customers' rental needs are served, whether those needs be for the rental of a singular item or the design, creation and operation of an entire venue for a public and private event. All of the various divisions of the Handy Group of Companies operate out of facilities located in Saskatoon, Saskatchewan. One of these divisions is the Handy Special Event division and it was this division that was the subject matter of the Union's certification application. The various other divisions of the Employer's operations include the Handy (Equipment) Rental division, the Handy Portables division, the Handy Dry Air (and Heating) division, the Handy Industrial Sales division, and the Handy Self-Storage division.

[6] In total, the Employer has approximately seventy (70) employees, excluding management. In its application, the Union is not seeking to represent all employees of the Employer. The Union is only seeking to represent the "*operational*" employees working within one (1) of the Employer's divisions; namely, the Handy Special Events division. Depending on the definition of operational employees, the unit which the Union seeks to certify includes as few as twenty-one (21) employees or as many as twenty-six (26) employees. Our review would indicate that, at that time of the Union's application, there were approximately thirty-two (32) employees working in the Handy Special Event division.

[7] The Handy Special Event division (the "Division") focuses on the rental of things and provision of services relating to the creation of venues for trade shows and special events, such as weddings, receptions and other public and private gatherings. To service this sector, the Employer owns, stores and maintains a broad spectrum of rental inventory, including tents, tables, chairs, linens, plates, cutlery, draperies, decorative items and centre pieces. While this Division will rent these pieces directly to customers, the primary focus of the Division is on the creation and operation of venues for trade shows and special events, including a number of large functions where the entire venue is constructed from materials and things owned by the Employer; venues that are designed and constructed to the particular needs of the customer for a particular function. Some of these venues are for annually occurring functions or well known community events, such as the Festival of Trees and the Sports & Leisure show.

[8] The Front Counter staff of the Division work most directly with the customer and produce the work requisitions defining the equipment, material or things required by the customer, together with any ancillary services that the customer may require. These ancillary services generally involve the delivery of equipment, material and things to the site of a venue, as well as the construction, operation, and tear down of the venue. Front Counter staff work with the customer to understand the function or special event the customer wishes to stage; to design a venue to meet the customer's needs, together with necessary and appropriate furnishings (i.e.: tables, chairs, drapery, linens, centre pieces, etc); to determine any additional logistical needs (transportation, heating, washroom and toiletry facilities, fencing, etc.); and then reserves all of the materials and things necessary from within the Employer's inventory, utilizing the Employer's rental management software. The Employer's rental management software then produces work requisitions for all divisions and departments indicating the work requirements for that area for each particular function or special event. Front Counter staff routinely work at the site of a

special event when a venue is being constructed to both direct the staff and liaison with customers to ensure that both the venues and its furnishings meets the customer's needs. In addition, Front Counter staff also assist with setting ups and tearing down venues.

[9] The Delivery staff, as the name would imply, are primarily responsible for the delivery of the equipment, material and things from the Employer's warehouse to the venue of trade shows and special events, or any other delivery requirement of the Employer. Delivery staff also assist in setting-up and tearing-down venues. The Tent and Trade Show staff are primarily responsible for the management of the Division's tents and related equipment and for the construction of the shelter portion of a desired venue (i.e.: the tents). The Warehouse staff are primarily responsible for the management of the Division's inventory of rental items and things, excluding tents and fine linens. Although not exclusively so, the Tent and Trade show staff tend to manage their own inventory of tent equipment. The Ware-washing staff are primarily responsible for the management of the Divisions inventory of linens and draperies. The ware-washing staff (the "warewashers") both maintain (i.e.: sorting, cleaning, pressing, etc.) the Employer's inventory of linens and draperies but they also assist in the delivery of these materials to a venue and help in the set-up and removal process.

[10] All of the above are functions and activities of the Handy Special Event division (which division was the target of the Union's organizing drive). As indicated, the Employer also has a number of other divisions involved in the rental industry.

[11] The Handy (Equipment) Rental division focuses on the rental of construction and industrial equipment for job sites. To service this sector, this division owns, stores and maintains a broad spectrum of construction and industrial equipment for rental. From time to time, this equipment may also be needed at a special event venue but its primary rental market is to contractors working at construction and industrial sites. If necessary or desired, the equipment will be transported to the customer's job or work site or the special event. The Handy Self-Storage division focuses on the rental of secure storage units. The Handy Industrial Sales division focuses on the purchase and sale of new or used industrial and construction equipment. These three (3) divisions are all operated out of the Handy Rental Centre. Collectively, there are approximately twelve (12) employees that work in these three (3) areas.

[12] The Handy Portables division focuses on the rental of portable washrooms, fencing and containers used at job sites and special event venues. To service this sector, this division owns and maintains an inventory of portable washrooms, fencing materials and storage containers. There are approximately six (6) or seven (7) employees that work in this division.

[13] The Handy Dry Air (and Heating) division focuses on the rental of portable heating equipment for construction and industrial sites, as well as for venues at special events. To service this sector, the division owns and maintains an inventory of portable heating equipment. There are approximately four (4) or five (5) employees that work in this division.

[14] All of these divisions report through either a manager or vice-president to the Employer's Chief Executive Officer, Ms. Dianna Pereira. In addition to these various rental divisions, the Employer also has approximately seven (7) or eight (8) staff that work in administration and support functions, including individuals responsible for accounting, human resources, and information technology.

[15] As indicated, the Employer's *raison d'etre* is the rental of a broad range of different things to a variety of customers. Over a period of some fourty (40) years, the Handy Group of Companies has grown from modest beginnings into a well-established business, recognized as having expertise in the rental industry not just in Saskatoon but around the province. The Employer has organized its operations partially around the rental of certain types of things, such as industrial and construction equipment, heating equipment, portable equipment, and self-storage units and partially around the provision of certain types of services to the Employer's customers, such as the design, construction, decoration and operation of venues for trade shows and special events. In most cases, the distinguishing factor between employees in one division and another is not the kind of work they are doing but rather the kind of thing they tend to work with. Simply put, each division focuses on a specific sector of the rental business and, as a result, the employees in each division tend to develop expertise and knowledge in that particular area of the rental industry. However, the entry level qualifications for employees across all divisions are similar; employees are expected to have basic communication skills, have a full range of motion and the ability to meet certain lifting requirements. Most, but not all, employees are expected to have a valid drivers' licence. It would appear that there are sufficient commonalities between the different areas in the rental business that the expertise and knowledge gained in one area is transferable to another. Employees are able to and routinely

make lateral or promotional moves from one division to another. Some employees avail themselves of these employment opportunities and other do not.

[16] There are regular and routine interactions between employees in all the Employer's divisions, including participating in safety toolbox meetings, the use of a common lunch room, and attendance at common social functions sponsored by the Employer. Similarly, it should be noted that all employees of the Employer, irrespective of the division within which they work, are bound by the same set of employment policies; are eligible for the same benefits program; are trained in accordance with the same safety program; and utilize a common computer system specific to the rental business.

[17] In addition to the formal transfer of staff from one division to another through promotions, it was also apparent that the Employer routinely deploys its staff from across its operations to supplement temporary labour shortages in one division, typically due to seasonal nature of the rental business. For example, staff nominally employed in the Dry Air (Heating) division would be used in the Special Events division during periods when the former division was not busy but the latter division was (i.e.: during the summer months).

[18] Ms. Pereira testified that, when an employee was hired, they were assigned to work in an area where it was anticipated they would spend the majority of their time. However, the Employer anticipated, and employees understood, that depending upon where resources were needed on any particular day, they could be assigned to or asked to work in another area. It was apparent that the Employer had successfully cultivated working arrangements that allowed for the easy movements of staff from one area to another. When employees were asked to temporarily work in another area, they were paid at the rate established for their home position. Simply put, irrespective of where an employee was asked to work, their wages were unaffected.

[19] The rate of pay for employees in the Handy Special Event division tended to follow a pattern based on where the employee worked. The following pattern of wages was observed by the Board:

Employees working in Ware-washing:	$10.00 to $13.50/hour
Employees working in the Warehouse:	$10.00 to $13.50/hour
Employees working in Delivery:	$10.00 to $16.00/hour

Employees working in Tents & Trade Shows:	$10.00 to $16.00/hour
Employees working at the Front Counter:	$11.00 to $20.00/hour
Supervisors and Assistant Managers:	$13.00 to $25.00/hour

[20] Representatives of the Union were approached by employees of the Employer in the first part of March, 2012 about the potential of joining a trade union. As a result of this contact, the Union decided to solicit support from, and attempt to organize, what the Union understood to be the "operational" employees of the Handy Special Events division. The Union understood that the primary function of these employees was to see that the materials necessary for trade shows and special events were transported to a customer's site, assembled on site prior to a particular event, then disassembled and returned to the Special Event Centre at the conclusion of the customer's event. A conscious decision was made on the part of the Union to limit its organizing drive to these particular employees on the belief that other employees would not have the same community of interest. Within days, the Union had gathered sufficient support and, on March 23, 2012, filed its certification application with the Board.

[21] The Union's certification application was processed by the Board in the ordinary course and, on April 4, 2012, the Board's Executive Officer issued a direction for vote that, *inter alia*, appointed the Board Registrar as agent of the Board for purposes of conducting the representational vote. Because of the dispute between the parties as to what constituted an appropriate bargaining unit in this workplace, the Board's agent decided to have all employees in the Handy Special Event division vote and to have all ballots double enveloped[4].

[22] Following consultation with the parties, the Board's agent determined that the representational vote would be conducted on April 9, 2012 at the Employer's workplace with one polling time in the morning (i.e.: between 11:30 am and 12:00 noon) and another polling time in the afternoon (i.e.: between 3:30 pm and 4:00 pm). In the ordinary course, the Board's agent caused the Employer to post a Notice of Vote containing this information at the workplace and to make all reasonable efforts to have the affected employees in the workplace on the day of the vote.

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[4] A procedure that maintains the confidentiality of individual ballots while at the same time permitting the Board to later determine who is and who is not eligible to participate in the representation question.

[23] The vote was held on the date and time specified in the Notice of Vote. Both the Employer and the Union had scrutineers present to monitor the conduct of the vote. However, on the day of the representational vote, two (2) employees, Mr. Christopher Sparling and Mr. Mathew Slater, were required to travel to Regina to deliver and assemble materials for a venue desired by a customer. When the decision was made to send these employees to Regina, the Employer was aware that it was the day of the representational vote. However, the Employer anticipated that the employees would be able to make their delivery in Regina and return in sufficient time to participate in the vote. Unfortunately, due to loading delays, problems with gas cards, and delays that occurred at the site of the delivery, it became apparent to the two (2) employees that they would not be able to complete their work and return to Saskatoon in time to vote. The employees phoned both the Employer and the Union and explained the problem and sought assistance and/or guidance. The employees also contacted the Board's agent and sought his assistance. Upon being informed of the problem facing the employees, the Board agent instructed the two (2) employees to attend to the Board's Office in Regina over the lunch hour, whereupon the two (2) employees were permitted to vote in the presence of the Board's agent. No scrutineers for either the Union or the Employer were present when these two (2) employees voted. It was not apparent from the evidence whether or not the Board's agent attempted to give advance notice to either the Union or the Employer of his decision to permit Mr. Sparling and Mr. Slater to vote in Regina. Both the Union and the Employer witnesses indicated that they first learned that Mr. Sparling and Mr. Slater were permitted to vote in Regina when the two (2) employees returned to work.

[24] The ballots from the representation vote have not been counted and remain sealed in the possession of the Board agent.

[25] There was also a dispute between the parties as to whether or not the termination of Mr. Alan Bolley was in violation of s. 11(1)(e). As a consequence, the Board heard considerable evidence regarding Mr. Bolley's employment history with the Employer; his status at the time of the Union's organizing drive and the representational vote; his involvement in both of these activities (or lack thereof); and the Employer's decision to terminate his employment.

[26] The evidence relevant to our determinations is that Mr. Bolley commenced full-time employment with the Employer in early 2011. In December of that year, Mr. Bolley was accepted as a student to Saskatchewan Institute of Applied Science and Technology ("SIAST")

and asked to continue his employment on a part-time basis while he attended SIAST. The Employer granted this request and Mr. Bolley began working on a part-time or casual basis when he became a full-time student. Because of the nature of his class load, Mr. Bolley was given work assignments that corresponded with his availability (i.e.: evenings and weekends). It was understood between Mr. Bolley and his supervisor (Mr. Matt Stockford) that, while he was taking his classes, he might not be able to make all his shifts. On the other hand, Mr. Stockford attempted to schedule Mr. Bolley for shifts that would have the least conflict with his classes.

[27] There was a difference of opinion between Mr. Bolley and his supervisor as to what Mr. Bolley was supposed to do in the event that he was unable to make a scheduled shift. Mr. Bolley was under the impression that he did not need to notify his supervisor if he was not going to be able to make a scheduled shift. While Mr. Bolley understood that it was important to the efficient operation of the division for staff to indicate when they could not make a scheduled shift, he nonetheless was under the impression that he was exempt from this requirement. Mr. Bolley believed that he had a special arrangement with his supervisors wherein he was not required to notify the Employer if he could not make a schedule shift. Unfortunately, Mr. Bolley's belief regarding his exempt status was not shared by his supervisor, who testified that he specifically told Mr. Bolley to notify the Employer if he could not make a scheduled shift. It is also noted that Mr. Bolley's understanding was wholly inconsistent with the Employer's policy on absenteeism.

[28] Mr. Bolley was scheduled to work a series of evening and weekend shifts in March of 2012. Mr. Bolley did not work his scheduled shifts nor did he give the Employer advance notice of his inability to do so. Compounding the problem, he was observed working for another employer at about this same time by his supervisor. Mr. Bolley was asked to perform certain duties (check some tents) on or about March 26, 2012, which he did. Thereafter, Mr. Bolley was scheduled to work another series of shifts concluding on April 1, 2012. Mr. Bolley again did not work his scheduled shifts nor did he properly notify the Employer that he couldn't make his shifts. By the end of March, Mr. Bolley's repeated absences from scheduled shifts were becoming problematic for his supervisor, who sought direction from Ms. Pereira, the Employer's COO. Mr. Stockford was advised to wait to see if Mr. Bolley showed for any of his remaining scheduled shifts. When he did not, Ms. Pereira instructed Ms. Nickolson, the Employer's Human Resource Officer, to write to Mr. Bolley and inform him that his employment with the Employer had been terminated. Ms. Nickolson prepared a job abandonment letter,

consulted with Ms. Pereira and Mr. Stockford in doing so, and, once the letter was complete, placed it in the Employer's outgoing mail on the morning of April 9, 2012, the same day as the representational vote was conducted. While this letter was signed and placed in the Employer's outgoing mail prior to the first voting period, Mr. Bolley did not receive this letter until April 11, 2012.

[29] Mr. Stockford testified that Mr. Bolley had been a good employee and that he was disappointed when he began missing his shifts. In cross-examination, Mr. Stockford admitted that, other than sending him text messages asking where he was, he did not phone Mr. Bolley and ask him why he was missing his shifts nor did he call Mr. Bolley to ensure that he was aware of the shifts he was missing. Mr. Stockford indicated that the practice of the Employer was to post all employee shifts on the Employer's intranet (a website used by all staff); that all employees, including Mr. Bolley, were expected to periodically check the Employer's intranet to determine when they were scheduled to work; and that all employees, including Mr. Bolley, understood and followed this practice. Mr. Stockford indicated that this was not the first time that an otherwise good employee, like Mr. Bolley, had found other interests and stopped showing up for work.

[30] There was no evidence that Mr. Bolley had any involvement in the Union's organizing drive. He was not an organizer for the Union and was not involved in the gathering of support from other employees. The extent of Mr. Bolley's involvement in any protected activities or proceedings under the *Act* was that he voted on April 9, 2012.

[31] Finally, there were also various disputes between the parties respecting the eligibility of certain individuals to participate in the representational vote. On the other hand, it should be noted that the parties agreed that, although the following persons were on the voter's list, they were ineligible to participate in the representational question for the following reasons:

	Reason for Ineligibility:
Ms. Denise Kendrick,	
V-P of Handy Special Events division:	Management Exclusion
Ms. Ashley Musich	Not Employed at time of Vote
Mr. Tod Emel	Not Employed at time of Vote
Mr. Devon Anger	Not Employed at time of Vote

[32] The parties were in dispute as to whether or not Mr. Bolley, Ms. Donna-Mae Hounjet, Mr. Kevin McCaslin, Ms. Katie Riley, Mr. Tony Schaan and Mr. Matthew Stockford were eligible to participate in the representational question.

[33] Ms. Donna-Mae Hounjet was a long term employee of the Employer, who was the Employer's Operations Manager in the Handy Special Events division. In September of 2011, Ms. Hounjet decided to pursue other interests and resigned from her position. However, Ms. Hounjet wanted to maintain a connection with the Employer and asked to go on the Employer's casual list. In the period immediately prior to the Union's certification application, Ms. Hounjet worked approximately 22.5 hours in December of 2011, 4.5 hours in January of 2012, and approximately 6.5 hours on April 9, 2012. When Ms. Hounjet worked as a casual employee, she was paid at the same rate of pay as she enjoyed as Operations Manager (approximately $17.90/hour). When Ms. Hounjet was called in to work as a casual employee, she generally worked in the warehouse or Handy Rental Centre. Ms. Hounjet had a detailed knowledge of the Employer's inventory and was able to assist other employees in recording and cataloging these items. Although the Employer's organizational chart has changed since Ms. Hounjet resigned, the position she previously occupied reported directly to the Vice-President of the Handy Special Events division (Ms. Denise Kendrick) and would now be responsible for supervising the Inside Assistant Operations Manager (Ms. Taren Wiebe) and the Outside Assistant Operations Manager (Mr. Matthew Stockford). While the Employer indicated that it would gladly rehire Ms. Hounjet should she wish to return to full time employment, it was not clear whether or not she would return to her former position as Operations Manager.

[34] Mr. Kevin McCaslin was a long-term employee of the Employer, who was a subject matter expert in the field of tent safety. Although no longer an employee, because of his extensive experience with tents, Mr. McCaslin would be called in by the Employer to teach tent inspections to other employees from time to time. The Employer had someone on staff who could teach tent inspections but, when this person was on holidays and training was required, Mr. McCaslin would be called in. Relevant to these proceedings, Mr. McCaslin worked for the Employer approximately 3.5 hours in March of 2012 and another three (3) hours in August of 2012. When Mr. McCaslin worked, he was paid at the rate $75.00/hour.

[35] Ms. Katie Riley was a front counter employee until she quit in January of 2012 when she obtained other employment. Not unlike other employees, Ms. Riley indicated to the

Employer when she left that she would continue to help with “set ups” (the construction and decoration of venues), if the Employer needed her. As such, she was considered by the Employer to be a casual employee after January of 2012. Ms. Riley worked for approximately 3 hours doing a set up on May 6, 2012. When Ms. Riley worked, she was paid at the rate of $15.00/hour (her previous rate of pay).

[36] Mr. Tony Schaan was another long-term employee of the Employer, who worked with several of the Employer’s divisions, including the Handy Special Event division. Mr. Schaan was an experienced truck driver and, among other things, taught driver safety to new employees, as well as how to operate the Employer’s forklift (for those who required such skills). Mr. Schaan was described as having a broad range of knowledge and useful experience that could be utilized by almost all of the Employer’s divisions. In January, February and March of 2012 (the months leading up to the Union’s organizing drive and the representational vote), Mr. Schaan worked for four (4) different divisions. Mr. Schaan worked for approximately 95 hours for the Handy Rental division; 43 hours for Handy Equipment division; 22 hours for Handy Special Events division; and 8 hours for Handy Dry Air (and Heating) division.

[37] Mr. Matthew Stockford was the Outside Assistant Operations Manager in the Handy Special Events Division. This position was identified as reporting to the Operations Manager. However, at the time of the hearing, the position of Operations Manager was vacant and, as a consequence, Mr. Stockford was reporting directly to the Vice-President of the Handy Special Event division. The primary function of Mr. Stockford’s position was to plan and priorize the delivery, pickup and return of rental inventory from the Handy Special Events division. As such, Mr. Stockford’s position was responsible for supervising the employees who have been deployed in the field delivering materials to a customer’s site, or constructing or decorating a venue, or tearing it down and returning the inventory to the Employer’s warehouse. In this position, Mr. Stockford did not have any authority to hire or fire employees and had limited authority with respect to discipline (verbal and written warnings). His primary responsibilities were coordination and supervision; ranging from the coordination of materials to the scheduling of employees. Among other things, Mr. Stockford was also responsible for ensuring compliance with applicable safety standards when employees were working in the field. Unlike other employees in the division, Mr. Stockford was paid a monthly salary rather than an hourly wage.

[38] In these proceedings, the Employer produced payroll records, information from personnel files, employee schedules, job descriptions, organizational charts and various other documents, many of which contained confidential information. Many of these documents were produced voluntarily, while others were produced in response to production Orders of this Board. The Board found these documents to be helpful in understanding the Employer's operations and in making our determinations. There were allegations that certain of the Employer's documents had been altered and that the Employer had acted inappropriately in the selection of the documents it produced. With all due respect to legitimate concerns of the Union, we were not persuaded that the Employer's conduct during these proceedings was in any way inappropriate. To the contrary, the Employer's cooperation in the production of what turned out to be a very high volume of documents was noted by the Board. Similarly, the Board found all witnesses, including the Employer's witnesses, to be thoughtful, candid, forthright and helpful.

Argument of the Parties:

[39] In its certification application, the Union sought to represent all "*operational*" employees of the Employer working within the Employer's Handy Special Events division. The Union argued that the nature of the work performed by these individuals was sufficient to differentiate them from the Employer's other employees. It was the Union's position that the so-called "*operational*" employees included those employees that worked in Tent and Trade Show, in Delivery, and in the Warehouse. The Union argued that these operational employees did not include employees that worked at the Front Counter or in Ware-washing. In the alternative, the Union argued that warewashers could be considered operational. However, it was the Union's position that Front Counter employees were clearly distinct from operational employees, with the former dealing more directly with the customer, conceptualizing a customer's event, to sell the Employer's services, and to ensure that the customer's event was properly executed. In contrast, the Union argued that operational employees tended to be those staff that "*got the job done*"; those employees that worked on the ground or in the field to meet the requirements established by the Front Counter staff.

[40] With respect to the disputed positions, the Union argued that Mr. Bolley was eligible to participate in the representational question but that Ms. Donna-Mae Hounjet, Mr. Kevin McCashlin, Ms. Katie Riley, Mr. Tony Schaan and Mr. Matthew Stockford were all ineligible.

[41] Finally, the Union took the position that the Employer had committed an unfair labour practice in terminating Mr. Bolley's employment and argued that, since he was exercising a protected right under the *Act* (i.e.: participation in a representational vote) when he was terminated, the reverse onus established by s. 11(1)(e) was applicable. The Union further argued that the Employer's explanation for Mr. Bolley's termination was neither reasonable nor sufficient to displace the presumption set forth in s. 11(1)(e) of the *Act* and thus a violation of the *Act* had occurred.

[42] On the other hand, the Employer argued that neither of the Union's proposed bargaining unit was appropriate for collective bargaining and thus the Union's certification application ought to be dismissed. In the alternative, if the Board were to find that one of the Union's proposed bargaining units (or some other unit) was appropriate, the Employer argued that Ms. Donna-Mae Hounjet, Mr. Kevin McCashlin, Ms. Katie Riley, Mr. Tony Schaan and Mr. Matthew Stockford all ought to be eligible to participate in the representational question.

[43] The Employer also argued that the Board's agent erred in allowing two (2) employees to vote at a time and at a location other than that set forth in the Notice of Vote posted in the workplace. The Employer argued that either the entire vote should be considered tainted because of this error and a new vote conducted or, in the alternative, the ballots of the affected employees (being, Mr. Slater and Mr. Sparling) should not be counted.

[44] Finally, the Employer argued that it had committed no violation of *The Trade Union Act* in its decision to terminate Mr. Bolley. The Employer argued that Mr. Bolley abandoned his position and that it had good and sufficient reasons for his termination. Furthermore, the Employer argued that, because Mr. Bolley abandoned his position prior to the date of the representational vote, he was ineligible to participate and that his vote should not be counted.

Relevant Statutory Authority:

[45] Relevant provisions of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "*Act*") are as follows:

> *2. In this Act:*
>
> *(a) "**appropriate unit**" means a unit of employees appropriate for the*

purpose of bargaining collectively;

*(b) "**bargaining collectively**" means negotiating in good faith with a view to the conclusion of a collective bargaining agreement, or a renewal or revision of a bargaining agreement, the embodiment in writing or writings of the terms of agreement arrived at in negotiations or required to be inserted in a collective agreement by this Act, the execution by or on behalf of the parties of such agreement, and negotiating from time to time for the settlement of disputes and grievances of employees covered by the agreement or represented by a trade union representing the majority of employees in an appropriate unit;*

. . .

3. Employees have the right to organize in and to form, join or assist trade unions and to bargain collectively through a trade union of their own choosing; and the trade union designated or selected for the purpose of bargaining collectively by the majority of the employees in a unit appropriate for that purpose shall be the exclusive representative of all employees in that unit for the purpose of bargaining collectively.

. . .

5. The board may make orders:

(a) determining whether the appropriate unit of employees for the purpose of bargaining collectively shall be an employer unit, craft unit, plant unit or a subdivision thereof or some other unit;

(b) determining what trade union, if any, represents a majority of employees in an appropriate unit of employees, but no order under this clause shall be made in respect of an application made within a period of six months from the date of the dismissal of an application for certification by the same trade union in respect of the same or a substantially similar unit of employees, unless the board, on the application of that trade union, considers it advisable to abridge that period;

(c) requiring an employer or a trade union representing the majority of employees in an appropriate unit to bargain collectively;

. . .

11(1) It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer:

(e) to discriminate in regard to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including discharge or suspension or threat of discharge or suspension of an employee, with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in a proceeding under this Act, and if an employer or an employer's agent discharges or suspends an employee from his employment and it is shown to the satisfaction of the board that employees of the employer or any of them had exercised or were exercising or attempting to exercise a right under this Act, there shall be a presumption in favour of the employee that he was discharged or suspended contrary to

> *this Act, and the burden of proof that the employee was discharged or suspended for good and sufficient reason shall be upon the employer; but nothing in this Act precludes an employer from making an agreement with a trade union to require as a condition of employment membership in or maintenance of membership in the trade union or the selection of employees by or with the advice of a trade union or any other condition in regard to employment, if the trade union has been designated or selected by a majority of employees in any such unit as their representative for the purpose of bargaining collectively;*

Analysis and Decision:

[46] If nothing else, these proceedings illustrate the point that sometimes in life, things get complicated. To address the many issues that arose in these proceedings, we have organized our analysis around the following questions:

1. Are either of the Bargaining Units proposed by the Union appropriate for Collective Bargaining?
2. What is the Appropriate Bargaining Unit?
3. Did the Union file sufficient evidence of support for the Bargaining Unit which has been determined to be Appropriate?
4. Which Employees are eligible to participate in the Representational Question?
5. Did the Board's Agent commit reviewable error in allowing two (2) employees to vote at a time and at a place other than that set forth in the Notice of Vote?
6. Did the Employer violate *The Trade Union Act* when it terminated the employment of Mr. Alan Bolley?
7. Is Mr. Bolley eligible to participate in the Representational Question?

[47] We will deal with each of these issues in turn.

<u>Are either of the Bargaining Units proposed by the Union appropriate for Collective Bargaining?</u>

[48] All parties agreed that the central issue for the Board to determine was whether or not the bargaining unit proposed by the Union is an appropriate unit for the purpose of bargaining collectively in this particular workplace. In its amended application, the Union sought to represent the following unit of employees:

> *All operational employees of 303567 Saskatchewan Ltd. carrying on business as the Handy Special Events Centre in Saskatoon, Saskatchewan, except office staff, the manager and anyone above the rank of manager.*

[49] Unfortunately, the term "*operational*" is not a term consistently used in this particular workplace. Several employees used the term during the proceedings before the Board but seldom did anyone ascribe the same meaning to the term. In argument, the Union acknowledged a certain imprecision associated with who is and who is not an operational employee in this particular workplace.

[50] The Union argued that operational employees, the employees that it sought to represent, were those individuals in the Handy Special Event division working in the Tents and Trade Show area, in Delivery, and in the Warehouse. The Union argued that this unit would not include managers (and those above the rank of managers), Front Counter staff and the employees working in the Ware-washing area ("warewashers"). In the alternative, the Union noted that there was an arguable case that warewashers were operational and, if such was the case, they too should be included within the bargaining unit description. In effect, the Union proposed two (2) bargaining unit, each representing a portion of the employees working in the Handy Special Event division. Neither of the units proposed by the Union included Front Counter staff or any staff from any other division.

[51] The Union argued that the various divisions of the Handy Group of Companies did not form a cohesive enterprise so as to be viewed from the outside as one (1) singular business venture. Rather, the Union argued that the Employer was a collection of business interests and the Union had the right to organize only a portion of its staff if that was the wishes of those employees. Furthermore, the Union noted that in a first certification application it need not propose the most appropriate or the best unit.

[52] The Union argued that the operational employees had distinct skill sets. The Union argued that these individuals tended to be involved in the transportation, assembly and tear-down of the heavy materials. Thus, their jobs tended to be more physically intense. The Union argued that the Front Counter staff were more involved in sales and planning and, when they attended to a venue, it was to supervise the operational staff and to ensure that the customer was happy. The Union also noted that the Front Counter staff tended to have different terms and conditions of employment, including generally higher wages, larger year-end bonuses,

and, at least, one (1) of these employees worked on a commission basis. The Union argued that the warewashers tended to be women and the materials they worked with were linens, draperies, plates and cutlery. The Union argued that, while undoubted valuable employees, the warewashers did not do the "*heavy*" lifting.

[53] The Union disputed that the level of intermingling of employees between divisions or even within the Divisions was sufficient to make the proposed bargaining unit inappropriate. The Union argued that, when non-operational staff performed operational duties, this was a situation of outside workers aiding the members of the bargaining unit rather than a true intermingling of job functions. To which end, the Union noted that, when outside employees are assisting in operational work, they kept the terms and conditions of their "home" job. The Union argued that this practice alleviated any issues caused by intermingling and, in any event, these were matters that could be resolved through collective bargaining between the parties.

[54] The Union acknowledged that, by excluding the Front Counter staff and the warewashers, the proposed bargaining unit was under-inclusive. However, the Union argued the unit it proposed satisfied all the factors set forth by the Board in *Graphic Communications International Union, Local 75M v. Sterling Newspaper Group, A Division of Hollinger Inc.* [1998] Sask. L.R.B.R. 770, LRB File No. 174-98, for determining whether or not an under-inclusive unit is appropriate for collective bargaining.

[55] The Employer, on the other hand, took the position that the unit proposed by the Union was wholly inappropriate for collective bargaining. The Employer argued that the unit proposed by the Union was inconsistent with this Board's long standing preference for certifying larger, more inclusive bargaining units and unnecessarily fragmented the Employer's divisions. To which end, the Employer noted that both of the units proposed by the Union were doubly under-inclusive; firstly, they only involved the employees from one of its divisions; and secondly, the proposed units did not even include all of the employees in the division it sought to organize. To which end, the Employer cautioned that a trade union must "*take the workplace as it finds it*" and should not be permitted to merely carve out and seek to certify a group of employees that happens to conform to the extent of its organizing efforts or the limits of its support.

[56] The Employer argued that, save for managers and the Employer's administrative staff, the Employer's entire workforce consisted of unskilled labourers engaged in a common

enterprise. The Employer argued that the evidence pointed to a significant degree of intermingling of employees across all of the Employer's divisions. Furthermore, the Employer noted that there was an even higher degree of intermingling within the Special Event division. Specifically, the Employer pointed to evidence of intermingling between employees in the Union's proposed bargaining unit (Tents and Trade Show staff, warehouse employees and the Delivery staff) with other employees in the Handy Special Event division; employees whom the Union was not seeking to represent (i.e.: the front counter staff and the warewashers). The Employer took the position that the only appropriate bargaining unit for this particular workplace would be all employees across all of its divisions. In the alternative, the Employer argued that the only unit even close to that which the Union was seeking to represent would be all employees of the Handy Special Event division (i.e.: including the front counter staff and the warewashers).

[57] The Employer argued that there was no evidence before the Board that organizing either of these larger, more inclusive bargaining units was beyond the Union's capacity. The Employer took the position that requiring the Union to organize a more inclusive unit could not reasonably be seen as inhibiting the right of employees of this particular workplace to be represented by a trade union if they wished to do so and would avoid problems associated with fragmentation of its workplace.

[58] The Employer relied upon this Board's decisions in *Hotel Employees and Restaurant Employees Union, Local 41 v. Cavalier Enterprises Ltd. (c.o.b as the Sheraton Cavalier)*, [2002] Sask. L.R.B.R. 447, 2002 CanLII 52909 (SK LRB), LRB File No. 123-02, (wherein the Board refused to certify a unit comprised of 36 employees in 2 divisions with an employer having 248 employees across 18 divisions); and in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Saskatchewan Centre of the Arts,* [1995] 4th Quarter Sask. Labour Rep. 52, LRB File No. 175-95, (wherein the Board refused to certify a unit consisting only 4 of 7 operational departments of that employer) as examples of where the Board refused to certify under-inclusive bargaining units comprising only a portion of an employer's overall operations.

[59] We note that, while *The Trade Union Act* directs this Board to determine what is and what is not an appropriate unit for collective bargaining, it provides little guidance in making that determination. The unit determination is of immediate concern to the parties because it will

determine the group of employees within which the Union must demonstrate that it has sufficient support for its certification application and the jurisdictional limits defining which employees will be entitled to exercise their democratic rights on the representational question. At the same time, the unit determination will also establish the future framework within which collective bargaining between the parties will occur and the constituency from which the trade union must ultimately cultivate its strength and influence as a bargaining agent. For these reasons, the significance of this decision can hardly be understated.

[60] In making the unit determination, the Board is balancing two (2) separate (and arguably conflicting) objectives; firstly, to facilitate the right of employees to join a trade union, a right protected and enshrined by s. 3 of the *Act*; and secondly, the desire to establish viable and stable collective bargaining structures and to avoid the unnecessary fragmentation of the workplace into a multiplicity of bargaining units. In balancing these two (2) considerations, the Board is also mindful that the test in applications involving an initial certification of a workplace is not whether the unit sought by an applicant trade union is the "*most appropriate*" unit, but only whether or not it is "*an appropriate*" one. The critical importance of delineating appropriate bargaining units, while at the same time balancing these interests, was well articulated by the Board in *Health Sciences Association of Saskatchewan v. St. Paul's Hospital*, [1994] 1st Quarter Sask. Labour Rep. 269, LRB File No. 292-91:

> *This Board has, from its earliest days, been mindful both of the importance of its responsibility to define appropriate bargaining units, and of the complexity of this question. A range of more or less common factors may be considered in cases where the bargaining unit is to be determined, but these factors may have a different resonance or weight in different circumstances. The primary obligation of the Board is not to devise a set of principles or a formula to which it will adhere in a dogmatic way, but to make a pragmatic assessment of each case which is brought before it, and to determine what definition will best serve the overall objectives of promoting collective bargaining and allowing employees access to such bargaining.*
>
> *The Board has long held the belief that collective bargaining is most effective if the participants are defined on the basis of the most inclusive possible bargaining unit, and has favoured larger bargaining units as the model which represents the appropriate bargaining unit. As we have often pointed out, however, the Board does not adhere to this preference with such obstinacy as to blind us to the fact that we should be ready to allow employees the benefits of collective bargaining if it can be conducted in a bargaining unit which is viable, and therefore appropriate, even if it is not comprehensive enough to match an ideal.*

[61] Both of the units proposed by the Union are less than ideal in that they represent only a portion of the Employer's total complement of employees. The Employer correctly points out that both of these units are in fact doubly under-inclusive; firstly, they only involve the employees from one (1) of the Employer's divisions; and secondly, both units only include a portion of the employees in that division. It is trite to say that the Board prefers larger, more inclusive bargaining units. However, as noted, this preference alone does not lead to the automatic conclusion that either of the units sought by the Union are inappropriate in the circumstances of this case. As indicated, the question is not whether one or the other of the Union's proposed bargaining units are optimal; but whether or not either of them are, at least, minimally appropriate. In our opinion, only if we find that the units proposed by the Union are "inappropriate", should the right of these employees to be represented by the trade union be displaced.

[62] In *Sterling Newspapers Group, supra,* after reviewing the Board's jurisprudence, the Board outlined a number of examples of circumstances where an under-inclusive bargaining unit would be considered inappropriate by the Board:

> *From this review of cases, it would appear to the Board that under-inclusive bargaining units will not be considered to be appropriate in the following circumstances: (1) there is no discrete skill or other boundary surrounding the unit that easily separates it from other employees; (2) there is intermingling between the proposed unit and other employees; (3) there is a lack of bargaining strength in the proposed unit; (4) there is a realistic ability on the part of the Union to organize a more inclusive unit; or (5) there exists a more inclusive choice of bargaining units.*

[63] While the above captioned list is neither exhaustive nor definitive, an examination of these factors provides a helpful lens through which an under-inclusive bargaining unit may be examined. In the present case, there are factors both weighing for and against a finding of appropriateness. However, after considering the evidence, we find that both of the units proposed by the Union are inappropriate for collective bargaining because, in our opinion, there is no rational basis for excluding either the warewashers or the Front Counter staff from the bargaining unit(s) the Union seeks to represent.

[64] Firstly, the distinction between warewashers and what the Union described as the "operational" employees (i.e.: the Delivery staff, the Tent and Trade Show staff and the Warehouse staff) in the Handy Special Event division is illusory. In fact, we find that attempting

to differentiate any group of employees in the Handy Special Event division by who is and who is not “operational” is confusing and not particularly helpful.

[65] In our opinion, warewashers do essentially the same work as other employees in the division, with the difference arising more out of the things for which they are responsible rather than the duties they perform or the skills they possess. The warewashers are responsible for linens, draperies, cutlery, and plates; while the Tents and Tradeshow staff are responsible for tents, tables and chairs. In both areas, the skills possessed by the respective staff are the corollary of working with the inventory contained in their department. The individuals in the Tents and Trade Show department do the “heavy” lifting because the things they lift are heavier. The things that the warewashers work with are lighter but it would be an unfair characterization to say they don’t carry their fair share of the load, so to speak. The type of work performed by warewashers and their conditions of their employment are indistinguishable from the type of work performed by the Tents and Trade Show staff and the conditions of their employment save for distinctions associated with the things they are each responsible for.

[66] In our opinion, the only reasonable conclusion is that warewashers are operational employees. Or put another way, the unit proposed by the Union would be inappropriate for collective bargaining if warewashers were excluded from that unit. Clearly, there was no evidence that these additional employees were beyond the organizational reach of the Union nor did we see any discernable reasons for their exclusion that would counterbalance the labour relations difficulties caused by carving these particular employees out of the unit.

[67] We are also satisfied that excluding the Front Counter staff from any bargaining unit involving other employees of the Handy Special Event division would also run afoul of the cautions set forth by this Board in *Sterling Newspaper, supra*. To start with, we were not persuaded that a rational and defensible line can be drawn around the employees in the Handy Special Event division that excludes the Front Counter staff. In our opinion, to do so would be to arbitrarily draw a line through the middle of the division without a defensible reason for doing so other than that was the extent of the Union’s organizing efforts. As indicated, we found little utility in attempting to distinguish those employees who were operational and those employees in this workplace who were not. Our observations from the evidence were that all employees in the Division were operational to varying degrees.

[68] We do not accept the Union's argument that the so-called "*operational*" staff (i.e.: the Tent and Trade Show staff, the Delivery Staff and the employees that work in the warehouse) have distinct skill sets or had a particular community of interest that would tend to exclude Front Counter staff. The evidence in these proceedings demonstrated that all employees within the Handy Special Evident division have a core of similar skills and abilities. While the Front Counter staff may have additional responsibilities, including sales and marketing, this Board heard sufficient evidence to be satisfied that Front Counter staff have a similar community of interest to "operational" staff in that they too are involved in the delivery of the services that have been sold to the customer. In our opinion, the differences in skills and work experiences between the different employees in the division is a matter of degree; not substance.

[69] The Union argued that the operational staff did the "*heavy lifting*" and that their work tended to be more physically intense. With all due respect, in this workplace, everyone works with the tools. The Union argued that the Front Counter staff were more involved in sales and planning and, when they attended to a venue, it was to supervise the operational staff and to ensure that the customer was happy. Again, we were not persuaded by this argument. We saw evidence that Front Counter staff routinely worked in the field; that they assisted in setting up and tearing down venues; and that they regularly operated service counters at venues. These are operational functions and sufficiently similar to the work performed by other staff in the division.

[70] Simply put, the Handy Special Event division has been organized around the delivery of particular rental services and each area or group of employees in that division tends to perform different aspects of an integrated operation to facilitate the delivery of those services. But there is also considerable overlap in the work they perform and it is difficult in our minds to rationally draw a line down the middle of the division. In this respect, the circumstances of this case are similar to the circumstances before this Board in *United Food and Commercial Workers, Local 1400 v. Ranch Ehrlo Society*, [2008] Sask. L.R.B.R. 836, 2008 CanLII 65787, LRB File No. 108-07, wherein the Board refused to exclude caseworkers from a unit of "*front line*" workers dealing with "*at risk youth*". In our opinion, the Handy Special Event division displays the same kind of functional integration of responsibilities that was present in the *Ranch Ehrlo* case. The Employer's organization of the Handy Special Event division is efficient and flexible but not easily divisible in the fashion suggested by the Union.

[71] The Union also noted that the Front Counter staff tended to have generally higher wages, larger year-end bonuses, and, at least, one (1) of these employees worked on a commission basis. In this respect, the Union argued that excluding the Front Counter staff in this workplace was analogous to the Board's decision to permit the exclusion of commissioned sales staff from a unit of yard staff, drivers and clerical staff in *United Steelworkers of America v. Wheat City Steel*, [1996] Sask. L.R.B.R. 532, LRB File No. 102-96. While differences in the quantum or method of remuneration can be indicative of a lack of community of interest, in our opinion, the differences in this particular workplace were simply insufficient to justify the exclusion of the Front Counter staff. In our opinion, the wages weren't that much higher and the year-end bonuses weren't that much greater. More importantly, we saw no real potential for any significant conflict of interest that would require or justify the exclusion of the Front Counter staff from the bargaining unit.

[72] Even if we were satisfied that it was possible to define a sufficiently clear boundary around a unit of employees that excluded the Front Counter staff, the next problem; arguably an even greater problem, would be an unacceptable degree of intermingling between the proposed bargaining unit and the Front Counter staff. While the Employer organized its employees into identifiable areas, all of these areas were functionally integrated in the delivery of a coordinated service and there was a not-insignificant degree of interchangeability of personnel in the performance of these functions.

[73] Furthermore, excluding Front Counter staff from the bargaining unit would unduly fragment the workplace and logically create a "tag-end" group out of the Front Counter staff. The evidence before the Board was that the Union chose not to include these employees within its organizing drive. Simply put, the Union did not attempt to organize these employees because it believed that the Front Counter staff would not have a similar community of interest with those whom it saw as the *operational* employees. The Union saw this workplace as analogous to the kind of unit found to be appropriate in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Prairie Micro-Tech Inc.*, [1994] 3rd Quarter Sask. Labour Rep. 87, LRB File No. 088-94. In this case, commissioned salespersons were excluded from a bargaining unit comprised mostly of "*production*" employees in an industrial setting.

[74] However, having heard the detailed evidence regarding the operations of the Employer, we were not persuaded that this workplace is comparable to the kind of workplace observed by the Board in *Prairie Micro-Tech, supra*. In the *Prairie Micro-Tech* case, the production employees were involved in the manufacture of feed products for the agricultural industry. Unlike the present case, there was no evidence in the *Prairie Micro-Tech* case that the excluded sales staff spent any of their time in the "back end" or on the production side of the Employer's operations. Rather, the evidence in *Prairie Micro-Tech, supra*, established that there were two (2) very distinct groups of employees (production and non-production) in that workplace. In our opinion, this is not the case in the Handy Special Event division. To the contrary, we found that the circumstances of the Front Counter staff was more analogous to the inside sales staff observed by this Board in *International Union of Operating Engineers, Hoisting & Portable & Stationary, Local 870 v. Linde Canada Limited*, [2010] 175 C.L.R.B.R. (2nd) 185, 2010 CanLII 1715 (Sk LRB), LRB File No. 056-09.

[75] Finally, there was no evidence in these proceedings that the Front Counter staff were beyond the organizational reach of the Union nor did we see a sufficient reason to justify their exclusion that would counterbalance the labour relations difficulties caused by carving these particular employees out of the unit.

What is the Appropriate Bargaining Unit?

[76] Having concluded that it would be inappropriate to exclude either the warewashers or the Front Counter staff from the Union's proposed bargaining unit, we are left with the issue of whether or not a unit containing only employees of the Handy Special Event division is an appropriate unit. We note that the Employer argued that even this unit would be inappropriately under-inclusive and did so for essentially the same reasons that it argued the unit containing only a portion of the employees in the Handy Special Event division was inappropriate; lack of definable boundaries; lack of community of interest; and a high degree of intermingling of employees, including promotions, transfers and common work. Essentially, the Employer argued that the only appropriate unit at this workplace would be all employees of all divisions of the Handy Group of Companies.

[77] Simply put, we were not persuaded by this aspect of the Employer's argument. While all divisions of the Handy Group of Companies have many common features (i.e.: senior management, administrative support, human resources, software and IT support, etc.), these

divisions nonetheless operate as discrete business units within the Employer's larger operations. The employees of each division report to senior managers, who in turn report to the Employer's Chief Operating Officer. Each division conducts its own budgeting; each division has its own core employees; each division has its own distinguishable base of operations; and each division has its own sector within the rental market to which it caters. While the Employer argued that all of its employees function as a cooperative team, we did not observe anything close to the kind of functional integration between divisions that we saw among employees within the Handy Special Event division. For these reasons, the concerns expressed by this Board in the *Sheraton Cavalier* and the *Centre of the Arts* cases regarding under-inclusive bargaining units, while applicable to the analysis of the departments within the Handy Special Event division, are not as persuasive when examining the divisions within the Handy Group of Companies.

[78] Furthermore, we note that this is the first certification in an industry that is largely uncertified (at least in Saskatchewan). As a consequence, there is no historic or accepted pattern of organization upon which the Board may benchmark an appropriate bargaining unit. In our opinion, a flexible approach to the establishment of bargaining units is necessary in industries that do not have a history pattern of collective bargaining. See: *Canadian Union of Public Employees, Local 5004 v. Saskatoon Housing Authority*, [2010] 184 C.L.R.B.R. (2) 93, 2010 CanLII 42667 (SK LRB), LRB File No. 048-10.

[79] In our opinion, a unit comprised of all employees of the Handy Special Event division (excluding management) would be an appropriate unit for purposes of collective bargaining. Furthermore, in our opinion, it is the only unit appropriate for collective bargaining that is close to that which the Union seeks to represent in its certification application. In examining the factors set forth by the Board in *Sterling Newspaper Group, supra*, we were not persuaded that the degree of intermingling, or concerns about the relative bargaining strength and viability of the proposed bargaining unit in the long run, are sufficient to displace the right of these employees to be represented by a trade union if that is their desire.

[80] The Employer questioned the potential for fragmentation of industrial relations in the workplace associated with a bargaining unit comprised of merely one of its divisions and expressed concern about potential difficulties in labour relations. With all due respect, the Board is unable to accept that these potential difficulties are unavoidable or insurmountable and thus sufficient to undermine the stated desire of this particular group of employees to be represented

by the Union for the purposes of bargaining collectively with their employer. Certainly, any application to certify an under-inclusive bargaining unit involves the potential for fragmentation of collective bargaining in a workplace. However, as we indicated at the outset, the Board's critical examination of the appropriateness of a bargaining unit must be tempered by respect for the right of employees to organize in and join a trade union of their choosing, a right protected by s. 3 of the *Act*. While it is possible to speculate that the formation of the proposed unit could lead to an artificial disparity in wages, benefits and terms and conditions of employment (between employees who are included in the proposed unit and employees who are excluded), such speculation alone does not reasonably lead to a presumption that the unit will not be viable in the long run or that it will unavoidably create instability in the workplace. Certainly, this Board has found smaller, more vulnerable units to be appropriate for collective bargaining in the past. See: *Saskatoon Housing Authority, supra*.

[81] As a consequence, and for the foregoing reasons, we are satisfied that the bargaining unit comprised of all employees of the Employer in the Handy Special Event division (excluding management) is appropriate for purposes of collective bargaining. It may not be the optimal or the best unit; but it is an appropriate one.

Did the Union file sufficient evidence of support for the Bargaining Unit which has been determined to be Appropriate?

[82] A review of the Board's records indicate that the Union filed sufficient evidence of support for the bargaining unit that we have determined to be appropriate to satisfy the requirements set forth in s. 6 of the *Act*. Furthermore, we are satisfied that the pre-hearing representational vote that was conducted by the Board agent on April 9, 2012 encompassed the members of the bargaining unit we have determined to be appropriate. As a consequence and subject to our determinations with respect to eligibility and the Employer's objection to the conduct of the vote, the ballots from the representational vote ought to be tabulated to determine whether or not the Union enjoys the support of the majority of employees in the bargaining unit.

Which Employees are eligible to participate in the Representational Question?

[83] The eligibility of the following employees was in dispute; Ms. Donna-Mae Hounjet, Mr. Kevin McCashlin, Ms. Katie Riley, Mr. Tony Schaan, Mr. Matthew Stockford, Mr. Alan Bolley, Mr. Matthew Slater and Mr. Christopher Sparling. In addition, because of our determination with

respect to the description of the bargaining unit, the eligibility of Ms. Eileen Bunko and Ms. Elin Shearer are an issue.

[84] One of the disputes between the parties was which positions ought to be excluded from the bargaining unit on the basis that the functions they performed were of either a managerial or confidential nature. This Board recently reviewed these issues in *Saskatchewan Institute of Applied Science and Technology v. Saskatchewan Government and General Employees' Union*, [2009] 173 C.L.R.B.R. (2d) 1, 2009 CanLII 72366 (SK LRB), LRB File No. 079-06 and made the following comments:

> ***[54]*** *In the present case, the Board is called upon to determine whether or not the positions in question ought to be excluded from the bargaining units either because the primary responsibilities of that position involve the actual exercise of authority, and the actual performance of functions, that are of a managerial character (i.e.: the managerial exclusion) or because that position regularly acts in a confidential capacity with respect to the industrial relations of the workplace (i.e.: the confidential exclusion) or some sufficient combination of both.*
>
> ***[55]*** *The Board has on many occasions articulated helpful criterion for the making of such determinations but has also concluded that there is no definitive test for determining which side of the line a position falls (i.e.: within or outside the scope of the bargaining unit). Simply put, the Board's practice has been to be sensitive to both the factual context in which the determination arises and the purpose for which the exclusion have been prescribed in the Act. The Board tends to look beyond titles and position descriptions in an effort to ascertain the true role which a position plays in the organization. See: Grain Service Union (ILWU Canadian Area) v. AgPro Grain Inc., [1995] 1st Quarter Sask. Labour Rep. 243, LRB File No. 257-94; Saskatchewan Joint Board, Retail, Wholesale an Department Store Union v. Remai Investments Corporation, [1997] Sask. L.R.B.R. 335, LRB File Nos. 014-97 & 019-97; and University of Saskatchewan vs. Administrative and Supervisory Personnel Association [2008] Sask. L.R.B.R. 154, LRB File No. 057-05.*
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> ***[56]*** *The purpose of the statutory exclusion from the bargaining unit for positions whose primary responsibilities are to exercise authority and perform functions that are of a managerial character is to promote labour relations in the workplace by preserving clear identities for the parties to collective bargaining (and to avoid muddying or blurring the lines between management and the bargaining unit). See: Hillcrest Farms Ltd. v. Grain Services Union (ILWU – Canadian Area), [1997] Sask. L.R.B.R. 591, LRB File No. 145-97.*
>
> ***[57]*** *The purpose of the statutory exclusion for positions that regularly act in a confidential capacity with respect to industrial relations is to assist the collective bargaining process by ensuring that the employer has sufficient internal resources (including administrative and clerical resources) to permit it to make informed and rational decisions regarding labour relations and, in particular, with respect to collective bargaining in the work place, and to permit it to do so in an atmosphere of candour and confidence. See: Canadian Union of Public*

> *Employees, Local 21 v. City of Regina and Regina Civic Middle Management Association, [2005] Sask. L.R.B.R. 274, LRB Files Nos. 103-04 & 222-04.*
>
> ***[58]*** *The Board has noted that, unlike the managerial exclusion, the duties performed in a confidential capacity need not be the primary focus of the position, provided they are regularly performed and genuine. In either case, the question for the Board to decide is whether or not the authority attached to a position and the duties performed by the incumbent are of a kind (and extent) which would create an insoluble conflict between the responsibilities which that person owes to his/her employer and the interests of that person and his/her colleagues as members of the bargaining unit. However, in doing so, the Board must be alert to the concern that exclusion from the bargaining unit of persons who do not genuinely meet the criteria prescribed in the Act may deny them access to the benefits of collective bargaining and may potentially weaken the bargaining unit. As a consequence, exclusions are generally made on as narrow a basis as possible, particularly so for exclusions made because of managerial responsibilities. See: City of Regina, supra.*
>
> ***[59]*** *Finally, the Board recognizes that employers and trade unions often negotiate scope issues and come to resolutions that may not be immediately apparent to the Board. In accepting these determinations, the Board acknowledges that the parties are in a better position to determine the nature of their relationship. The determinations that have been made by the parties can be of great assistance to the Board in understanding the maturity of the collective bargaining relationship and kinds of lines that the parties have drawn between management and its staff. However, in the Board's opinion, when it is called upon to make determinations as to scope, the benchmark for our determinations must be s. 2(f)(i) of the Act (the definition of an "employee") and our understanding of the purposes for which the statutory exemptions were included. While we are mindful of the agreements of the parties as to the scope, the genesis for our determinations must be The Trade Union Act and the jurisprudence of the Board in interpreting that statute.*

[85] The other dispute between the parties was whether or not certain casual employees were eligible to participate in the representational questions. This Board's jurisprudence has demonstrated that casual employees working within the scope of the bargaining unit may be eligible to participate it the representational question if it can be established that they had a sufficient and tangible connection with the Employer at the time the Union's certification application was filed with the Board (which in this case was March 23, 2012). The appropriate test to be applied to determine inclusion of persons nominally identified as "*casual*" employees was reiterated by the Board in *Service Employees International Union, Local 333 v. Bethany Pioneer Village Inc.* [2007] Sask. L.R.B.R. 611, 2007 CanLII 68759 (SK LRB), LRB File No. 036-06:

> *[52] The test, and basis for the test, as to whether a person nominally identified as a "casual" worker has a sufficiently substantial employment relationship to be considered an "employee" for the purposes of determining the*

issue of the level of support for an application for certification was outlined by the Board in Lakeland Regional Library Board, supra, as follows, at 74:

> *It has long been established that larger bargaining units are preferred over smaller ones, and that in an industrial setting all employee units are usually considered ideal. As a general rule the Board has not excluded casual, temporary or part-time employees from the bargaining unit.*
>
> *However, the Board has also applied the principle that before anyone will be considered to be an "employee", that person must have a reasonably tangible employment relationship with the employer. If it were otherwise, regular full-time employees would have their legitimate aspirations with respect to collective bargaining unfairly affected by persons with little real connection to the employer and little, if any, monetary interest in the matter.*

[53] Accordingly, the Board has looked particularly at two aspects: real employment connection and monetary interest in the outcome. This dictum has been applied since by the Board in numerous decisions including, to name a few, Retail, Wholesale Canada, A Division of the United Steelworkers of America v. United Cabs Ltd., [1996] Sask. L.R.B.R. 337, LRB File No. 115-96, Vision Security and Investigation Inc., March 2000, supra, and Aramark Canada Ltd., supra, where the standard was referred to as a "sufficiently tangible employment relationship."

[54] In Aramark Canada Ltd. and Vision Security and Investigation Inc., March 2000, both supra, as in many other cases of this kind, the Board engaged in an analysis of the number of hours worked by the persons in dispute over a particular – but not necessarily the same in every case – period of time, as a significant measure of connection with the workplace in order to determine the tangibility of the employment relationship. In each case the Board determined what it deemed to be a reasonable ratio of hours worked over the period of time as evidence that a sufficiently tangible employment relationship existed and that the particular individual had a sufficiently reasonable monetary interest in the matter but recognized that, while this might be the best way to determine the issue, it may appear to be somewhat arbitrary. In Service Employees International Union, Local 299 v. Vision Security and Investigation Inc., [2000] Sask. L.R.B.R. 121, LRB File No. 228-99 (February 21, 2000), the Board stated as follows at 125:

> *In Retail, Wholesale Canada, A Division of the United Steelworkers of America v. United Cabs Ltd., [1996] Sask. L.R.B.R. 337, LRB File No. 115-96, the Board acknowledged that the process for determining "employee" status for casual or on-call staff may be decided by criteria that appear somewhat arbitrary. Nevertheless, the Board is required to make the decision using some criteria that captures the majority of persons who have a tangible employment relationship with the employer.*

[55] In Vision Security and Investigation Inc., March 2000, supra, at 155, the Board observed that different criteria may pertain in different cases depending on the facts, as follows:

> *The criteria adopted by the Board in each case must be responsive to the facts of each situation and the Board is not bound to adopt identical criteria in every case dealing with casual employees. Because of this uncertainty regarding employee status, parties are encouraged to seek a determination of employment criteria early in the process of a certification through a request for a preliminary determination.*

[86] Given the nature of the work of the Handy Special Event division, in our opinion, the appropriate test would be to include any casual employee who, although not necessarily working on March 23, 2012, worked a minimum of thirty (30) hours as a casual employee in the Handy Special Event division in the preceding two (2) month period (i.e.: January 22 to March 22, 2012). As this Board has previously stated, such thresholds are "admittedly arbitrary". However, in our opinion, the aforementioned test ought to be reasonably inclusive of the employees in the casual pool who have a sufficiently tangible relationship and monetary connection with the Handy Special Event division to justify their participation in the representational question. In our opinion, if a casual employee has not worked in excess of this minimum threshold of hours, which is less than ten percent (10%) of full-time hours, their connection to the workplace is too tenuous to justify their participation in the vote.

[87] With respect to Ms. Donna-Mae Hounjet, we find that she did not work sufficient hours during the months preceding the Union's application to demonstrate a sufficient tangible connection to the workplace. In this regard, we note that Ms. Hounjet only worked 4.5 hours as a casual employee in the period immediately preceding the Union's certification application. In addition, we find that Ms. Hounjet's connection with the workplace was in a managerial function. When she left full-time employment, she was the Operations Manager; a position that would appear to qualify for the management exclusion. Should Ms. Hounjet return to full-time employment with the Employer, it is more reasonable to assume that she would return to a similar managerial role. In our opinion, it is unlikely that she would return to a position within the scope of the bargaining unit. For these reasons, we find that Ms. Hounjet is ineligible to participate in the representational question.

[88] With respect to Ms. Katie Riley, we note that she worked approximately 48 hours in January of 2012 but all of these hours were worked before she resigned her full-time position. Ms. Riley did not work any hours as a causal employee prior to the date when the Union filed its certification application. The first occasion when Ms. Riley worked as a casual employee was in May of 2012. In light of this evidence, we find that she did not work enough hours as a casual employee to demonstrate a sufficient tangible connection to the workplace. As a consequence, we find that Ms. Riley was not eligible to participate in the representational question.

[89] With respect to Mr. Kevin McCashlin, we find that he did not have a sufficient tangible connection to the workplace to be eligible to participate in the representational question.

In the first place, we were not satisfied that Mr. McCashlin was an employee. The evidence tended to indicate that he was an independent contractor providing subject matter expertise when required. In this regard, we note that on the occasions when Mr. McCashlin was retained, he was paid at the rate of $75.00/hour. This rate is well in excess of the rate of any employees of the Employer and would tend to indicate that his role was more of a consultant; not a casual employee. Even if Mr. McCashlin were to be considered a casual employee, he did not work sufficient hours during the months preceding the Union's application to meet the threshold established by this Board.

[90] With respect to Mr. Tony Schaan, we were not satisfied that Mr. Schaan's primary employment relation with the Employer is found within the scope of the bargaining unit. Firstly, it should be noted that Mr. Schaan was not a casual employee; rather he was a full-time employee who worked for more than one of the Employer's divisions. Our review of the evidence tended to indicate that Mr. Schaan's primary relationship was with the Handy Rental division and the Handy Equipment division. In our opinion, while Mr. Schaan clearly had a relationship with the Handy Special Event division, it is a stretch to argue that his primary employment relationship was rooted in <u>that</u> division. For example, we note that Mr. Schaan worked the majority of his time outside of the Handy Special Event division in the months leading up to the Union's certification application. Given the numbers, it is reasonable to assume that the remuneration he received for working in the Handy Special Event division would have been dwarfed by the remuneration he received from working for other divisions. For these reasons, we find that Mr. Schaan is not eligible to participate in the representational question.

[91] With respect to Mr. Matthew Stockford, we find that his position falls within the scope of the bargaining unit. The Union argued that Mr. Stockford's position was responsible for the performance of functions of a managerial character. With all due respect, we were not persuaded by this argument. While undoubtedly performing a valuable function for the Employer as the Outside Assistance Operations Manager, Mr. Stockford's position bore few of the hallmarks necessary to justify a managerial exclusion. In coming to this conclusion, we note that Mr. Stockford's independent authority was rather limited; particularly in areas that would tend to affect the terms and conditions of employment for those whom he supervised, including hiring, firing, discipline and promotions. In our opinion, Mr. Stockford's position was that of a supervisor or lead hand and, as such, his position would not qualify for the management exclusion. In this regard, we note that Ms. Taran Wiebe occupied the position of Inside Assistance Operations

Manager and there was no dispute that her position ought to fall within the scope of the Union's proposed bargaining unit. In our opinion, there would be little rationale for excluding Mr. Stockford's position while, at the same time, including Ms Wiebe's position. For the foregoing reasons, we find that Mr. Stockford is eligible to participate in the representational question.

[92] With respect to Ms. Elin Shearer, we find that this position falls within the scope of the bargaining unit we have determined to be appropriate. Ms. Shearer was the supervisor of the Front Counter staff. While it was not clear whether or not this position was in dispute, for purposes of clarity we wish to indicate our finding that Ms. Shearer is eligible to participate in the representational question. This Board saw no evidence that Ms. Shearer exercised the kind of managerial authority or had a sufficient degree of independence in the authority she had to significantly affect the economic lives of other employees. Furthermore, it was not apparent to the Board that Ms. Shearer was involved in or could otherwise influence labour relations in the workplace. While Ms. Shearer's remuneration had a commission component, this factor alone would not justify her exclusion from the unit as an individual employee.

[93] With respect to Ms. Eileen Bunko, we find that this position also falls within the scope of the bargaining unit we have determined to be appropriate. Ms. Bunko's position was listed as the "Sales Manager" or "Outside Rental and Sales Consultant". The Union argued that Ms. Bunko's position was responsible for the performance of functions of a character sufficient to justify its exclusion from the bargaining unit. However, we were not persuaded by this argument. This Board saw no evidence that Ms. Bunko exercised any actual managerial authority or otherwise had sufficient independent authority to significantly affect the economic lives of other employees. It was not apparent to the Board that Ms. Bunko was involved in or could otherwise influence labour relations in the workplace. For the foregoing reason, we find that Ms. Bunko is eligible to participate in the representational question.

[94] It may well be that the positions held by Ms. Shearer and/or Ms. Bunko are outliers; the kind of positions that the parties might later agree ought to be excluded notwithstanding that they do not qualify for either the managerial or confidentiality exclusion at the present time. In *Saskatchewan Institute of Applied Science and Technology, supra*, this Board noted that, while the parties may negotiate scope issues to draw their own lines between management and staff, when we are called upon to make scope determinations, the benchmark for our analysis must be s. 2(f)(i) of the *Act*. In the present case, we were satisfied that both Ms.

Shearer and Ms. Bunko are employees of the Handy Special Event division; that they are part of the Front Counter group of employees; and that they do not quality for either the managerial or confidentiality exemptions based on the duties and functions performed by those positions at the present time.

[95] The eligibility of Mr. Bolley, Mr. Slater and Mr. Sparling are considered later in these Reasons for Decision.

Did the Board's Agent commit reviewable error in allowing two (2) employees to vote at a time and at a place other than that set forth in the Notice of Vote?

[96] The Employer took the position that the Board's agent erred in the conduct of the vote because he permitted two (2) employees, Mr. Chris Sparling and Mr. Mathew Slater, to vote at a time and at a place other than that specified in the Notice of Vote. The Employer argued that these two (2) employees should not have been permitted to vote in Regina because they voted outside of the parameters established for the representational vote. The Employer acknowledged that it was unfortunate that their trip to Regina on the day of the vote got delayed. However, the Employer argued that permitting them to vote had the effect of arbitrarily privileging these two (2) employees.

[97] The Employer noted that the sole location for the vote that was communicated to the workplace through the Notice of Vote was Saskatoon; at the Employer's place of business. The Employer noted that no other place was authorized in the Notice of Vote and that employees were not informed that alternate arrangements could be made by contacting the Board's agent. In this regard, the Employer noted that at least one (1) other employee, Ms. Seena Begalke, was also unable to make it back to Saskatoon on the day of the vote and yet no special arrangements were made for her to vote. Furthermore, the Employer argued that permitting these two (2) employees to vote in Regina at a time and at a location other than that specified in the Notice of Vote deprived it of the right to have scrutineers present during the voting process.

[98] The Employer took the position that these errors tainted the vote and argued that a new representational vote should be conducted to "*clear the air*". In the alternative, the Employer asked that the ballots of Mr. Sparling and Mr. Slater not be considered by the Board for purposes of the representational question and that their ballots be destroyed.

[99] The Union argued that the actions of the Board's agent were reasonable and appropriate because they prevented two (2) employees, who were entitled to vote, from inadvertently being disenfranchised by circumstances beyond their control. The Union took the position that discarding the first representational vote and conducting another one would unnecessarily cause confusion in the workplace and would subject employees to the potential for a representational campaign, coercion and/or undue influence. The Union also strenuously objected to the Employer's argument that the ballots of Mr. Slater and Mr. Stockford should not be counted, particularly in light of the fact it was the Employer that sent these two (2) employees to Regina on the day of the vote. The Union asked that the Employer's objection to the conduct of the vote be dismissed.

[100] In 2008, *The Trade Union* Act was amended to require mandatory votes by secret ballot whenever this Board is required to decide the representational question. Generally speaking, for a representational vote to be considered valid, there are three (3) fundamental requirements:

1. The voting process must be secret and conducted by a neutral third party.
2. All those eligible to vote must be given the opportunity to do so.
3. Eligible voters must be free from coercion, intimidation, threats, and other undue influences.

[101] Representational votes in Saskatchewan are conducted by agents appointed by either the Board or the Board's Executive Officer. The Board agents function as returning officers and are granted the authority, and charged with the responsibility, for the conduct of our representational votes. For example, the Board's agent is responsible for determining the list of eligible voters; for determining the form of the ballot; for determining the date or dates and hours for taking of the vote; for determining the number and location of polling places; and for preparing notices to communicate this information to eligible voters. See: s. 26 of *The Regulations and forms, Labour Relations Board,* being Sask. Reg. 163/72. Generally speaking, the agents appointed by the Board are given considerable latitude in determining how, when and where representational votes should be conducted.

[102] The Board's agents are directly charged with the responsibility for ensuring the first two (2) of the requirements for a valid representational vote are maintained (franchise

eligibility & secrecy/neutrality). However, the Board is well aware that the third requirement for a valid representational vote (freedom from undue influences) is not wholly within the control of the agents we appoint (other than during the actual voting process). For example, the Board's agents have no control over events that occur prior to or outside of the conduct of the representational vote. As a consequence and to minimize the potential for employees to be subject to coercion, intimidation, threats, promises or other undue influence during a prolonged representational campaign in the workplace, this Board has adopted a policy of requiring the conduct of representational votes as soon as possible upon the receipt of any application wherein the representational question arises. The stated objective of this Board is that representational votes should be conducted within days of receipt of such applications. See: *Colin Lesyk v. Barrich Farms (1994) Ltd. et. al. and United Food and Commercial Workers, Local 1400*, 2009 CanLII 44853 (SK LRB), LRB File Nos. 094-09 & 111-09.

[103] Therefore, while the agents appointed by the Board (or Executive Officer) have the authority to determine the place and time of a representational vote, he/she must do so while pursuing two (2) conflicting objectives; firstly, the agent must make reasonable efforts to ensure that all those employees eligible to vote are able to do so; and secondly, he must determine the voters list and conduct the representational vote with a few days of being asked to do so. While the Board agent will consult with the affected parties on how best to achieve these objectives, the time constraints imposed by the Board's policy dictates a rapid pace for the entire voting process.

[104] It should be noted that we found no significant fault in the decision to send Mr. Slater and Mr. Sparling to Regina on the day of the vote. There was a valid operational reason for doing so and everyone relevant anticipated that these employees could attend to their duties in Regina and return in sufficient time to exercise their rights under the *Act*. It was only through an unfortunate series of circumstances that the two (2) employees found themselves unable to return to Saskatoon in time for the vote. Confronted with this dilemma, the employees first contacted the Employer, then the Union, and then the Board's agent.

[105] As indicated, the representational vote was conducted on April 9, 2012 in Saskatoon. The Board's agent assigned Mr. Swarbrick to be the returning officer for this particular vote and it was he who was supervising the polling place in Saskatoon. The Board's agent was in Regina on the date of the vote and, just before lunch, he received a call from Mr.

Slater and/or Mr. Sparling. The employees explained that they were employees of the Employer and indicated their inability to participate in the representation vote because of work responsibilities that brought them to Regina and the circumstances that prevented them from returning to Saskatoon in time for the vote. Faced with this information, the Board agent advised the two (2) employees to attend to the Board's office in Regina and indicated to them that he would permit them to vote while they were still in Regina. It was unclear from the evidence whether or not the Board's agent attempted to contact the Employer (or the Union) before he permitted the two (2) employees to vote in Regina. The two (2) employees attended to the Board's Office in Regina during their lunch hour and they were permitted to vote in the presence of the Board's agent. No scrutineers were present for either the Union or the Employer. These two (2) ballots were double-enveloped and added to the ballot box containing the other ballots from the representational vote.

[106] The Employer argued that the Board's agent erred in permitting the two (2) employees to vote in Regina. With all due respect, we are not persuaded by this argument. It was within our agent's discretion to determine how, when and where the representational vote was to be conducted, including the location and number of polling places. It was he who set the original parameters for the representational vote in the first place and he had the discretion to modify those parameters if circumstances so dictated. In our opinion, the mere fact that the parameters for the representational vote changed is not indicative of error. Particularly, so when the purpose of the change was to prevent two (2) eligible voters from being disenfranchised for reasons beyond their control. Unlike Ms. Begalke, who was away from the workplace for personal reasons (i.e.: she was on holidays), Mr. Sparling and Mr. Slater were working on the day of the vote and it was the Employer who sent them to Regina. Furthermore, there was no evidence that Ms. Begalke or any other employee eligible to participate in the representational question was in Regina on the day of the vote or could otherwise have taken advantage of the additional poll established by the Board's agent. Simply put, we are not satisfied that the decision made by the Board's agent to establish an addition poll in Regina, and to accept the ballots of Mr. Slater and Mr. Sparling, under the circumstances was an error or that doing so tainted the representational vote in the manner suggested by the Employer. It was apparent that the goal of the Board's agent was to prevent two (2) eligible voters from being disenfranchised by circumstances beyond their control.

[107] The Employer also complained that it did not receive advance notice of the change to the voting process and that it was not permitted to have scrutineers present for the portion of the vote that occurred in Regina. In our opinion, these are valid criticism. While the time constraints imposed by our policy on representational votes may limit the capacity of the Board agent to consult with the affected parties on voting proceedings, in our opinion, communication with the parties is an essential ingredient of the voting process. It helps demonstrate independence and impartiality and instills confidence in our voting procedures. In our opinion, the Board agent should have contacted the parties and advised them of his intention to permitted two (2) employees to vote in Regina. As indicated, it is unclear from the evidence whether or not the Board agent attempted to do so. However, the evidence in these proceedings indicated that the Employer did not receive advance notice of the change in voting procedures prior to opening the poll in Regina and allowing the two (2) stranded employees to vote.

[108] The Employer took the position that even this was a substantial irregularity and tainted the vote sufficient that a new vote is still required to "*clear the air*". In our opinion, such is not the case and conducting a new representational vote would be inappropriate under the circumstances. While the conduct of a new representational vote could cure the irregularity, it would also change the list of eligible voters; would cause confusion among affected employees who have already voted; could potentially result in a representational campaign occurring in the workplace; and it may expose employees to the very undue influences that we seek to avoid through timely representational votes. In our opinion, the Employer's concern about not receiving advance notice of the change in polling procedures is valid but not sufficient to taint the entire process as suggested. The presence of scrutineers is not an immutable requirement. For example, we note that scrutineers are not present during voting (only during tabulation of the ballots) when a mail-in ballot procedure is used for a representational vote.

[109] In our opinion, there is no reasonable basis to conclude that the decision to permit Mr. Sparling and Mr. Slater to vote in Regina could interfere in the outcome of the representational vote. They were both eligible to vote. Our Board agents are called upon to make difficult decisions and often must do so within time constraints. In this particular case, the Board's agent was advised of the inability of two (2) eligible voters to participate in the representational question and was called upon to make a decision in a very short period of time. The Board agent's decision prevented these two (2) individuals from being disenfranchised by circumstances beyond their control.

[110] On the other hand, the parties should have been notified by the Board agent of the change in voting procedures before the change was implemented and the parties should have been given an opportunity to have scrutineers present to observe the voting process if possible within the limited time that was available. Because this does not appear to have occurred in this case, we direct that the ballots of Mr. Sparling and Mr. Slater shall remain sealed and not counted in the representation vote unless these two (2) ballots could potentially affect the result. If, after tabulation of the ballots from other eligible voters, it is determined that these two (2) ballots could affect the result of the representational vote, they ought to be unsealed and counted with the rest. In our opinion, doing so will help promote confidence in our representational votes, while at the same time respect the right of eligible employees to participate in the representational question.

Did the Employer violate The Trade Union Act when it terminated the employment of Mr. Bolley?

[111] In its application, the Union alleged that the Employer violated several provisions of the *Act* when it terminated Mr. Alan Bolley's employment. However, the primary focus of the Union's argument during the hearing was that the Employer violated s. 11(1)(e). The Union took the position that Mr. Bolley was participating in a protected activity under the *Act* (i.e.: voting in a representational vote) when his employment was terminated by the Employer and, thus, the onus shifted to the Employer to demonstrate that Mr. Bolley was terminated for a just and sufficient reason. The Union argued that the Employer's reasons for terminating Mr. Bolley's employment were deficient because no one from management contacted Mr. Bolley to confirm that he was aware of the shifts he was alleged to have missed nor did anyone contact him to find out why he missed his shift. The Union took the position that the Employer's justification for Mr. Bolley's termination was insufficient and, thus, this Board should draw the adverse inference that Mr. Bolley was terminated because of his participation in a protected activity. The Union argued that the Employer's actions represented a violation of s. 11(1)(e) of the *Act*. The Union was not seeking re-instatement for Mr. Bolley; merely that a declaration of a violation of the *Act* by made by the Board and that Mr. Bolley's ballot be included during tabulation of the result of the representational vote.

[112] The Employer denied that it violated s. 11(1)(e) or any other provision of the *Act* in its dealings with Mr. Bolley. The Employer argued that the Union's allegations were without merit and ought to be dismissed.

[113] Section 11(1)(e) is somewhat of a unique provision in the *Act*. Not only does this provision prohibit an employer from discriminating against or coercing its employees (in hiring or in the terms or conditions of employment) with a view to influencing membership in or activities associated with a trade union, but s. 11(1)(e) also imposes a reverse onus on employers if an employee is discharged or suspended during an organizing drive or at a time when employees are exercising their rights under the *Act*. The reverse onus operates by creating a statutory presumption in favour of the subject employee(s) that he/she was discharged or suspended contrary to the *Act* unless the employer can demonstrate that it took the actions it did for good and sufficient reason.

[114] In an application before the Board, if it can be demonstrated that an employee was discharged or suspended from his/her employment at a time when the employees of that workplace were exercising or attempting to exercise a right under the *Act*, the Board is then called upon to examine the impugned actions of the Employer through two (2) lenses. Firstly, the Board considers whether or not the Employer had "*coherent"* and *"credible*" reasons for the impugned discipline or termination. Although an employer need not demonstrate the kind of reasons that an arbitrator would expect (i.e.: "*just cause*"), the onus is on the employer to demonstrate at least "*coherent*" and "*credible*" or "*plausible*" and "*believable*" reasons for the actions it took to rebut the statutory presumption. See: *Patrick Monaghan v. Delta Catalytic Industrial Services Ltd..et. al.*, [1996] Sask. L.R.B.R. 429, LRB File No. 187-95. In the absence of good and sufficient reasons, a violation can be found. See: *Canadian Union of Public Employees, Local 4279 v. Regina Friendship Centre, et. al.*, [2000] Sask. L.R.B.R. 481, LRB File Nos. 112-99, 113-99, 117-99, 119-99, 120-99, 123-99, 144-99 to 161-99, 166-99, 182-99, 241-99 and 242-99. See also: *Canadian Union of Public Employees, Local 342 v. City of Yorkton*, [2001] Sask. L.R.B.R. 19, LRB File No. 279-99, 280-99 & 281-99. Secondly, even if the Board is satisfied that there were good and sufficient reasons for the actions that the employer took, the Board may nonetheless still find a violation has occurred if the Board is satisfied that the employer's actions were motivated, even in part, by an anti-union animus. See: *The Newspaper Guild v. The Leader-Post*, [1994] 1st Quarter Sask. Labour Rep. 242, LRB File Nos. 251-93 & 253-93.

[115] It is noted that this Board has commented in a number of decisions on the purpose of s. 11(1)(e) of the *Act* and the tests to be applied in determining whether or not a

violation thereof has occurred. For example, a helpful description of the purpose or policy objective that underlies the provision was provided by the Board in *Service Employees' International Union, Local 299 v. LifeLine Ambulance Services Ltd.* [1993] 4th Quarter Sask. Labour Rep. 171, LRB File Nos. 227-93, 228-93 & 229-93:

> *Section 11(1)(e) of The Trade Union Act is meant to ensure that distinctions are not drawn between employees on the basis of their involvement in trade union activity, and that employees are allowed full scope to pursue their rights under the statute without being penalized for it. It is clear from the wording of the section that the legislature was particularly concerned about the exposure of employees to possible suspension or discharge by an employer who wished to demonstrate the dangers to employees of pursuing their rights under the Act. In the case of these penalties, if it can be shown that an employee was attempting to pursue rights under the statute, there is a presumption that the suspension or discharge was imposed for that reason, and the onus lies on the employer in these circumstances to show that the suspension or discharge was not animated by anti-union sentiment, and that it occurred solely for legitimate reasons.*

[116] By way of further example, this Board summarized the principles and rationale underlying the application of s. 11(1)(e) in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Moose Jaw Exhibition Co. Ltd.,* [1996] Sask. L.R.B.R. 575, LRB File Nos. 131-96, 132-96 & 133-96 as follows:

> *The Board has always attached critical importance to any allegation that the suspension or dismissal of an employee may have been affected by considerations relating to the exercise by that employee or other employees of rights under the Act. In a decision in Saskatchewan Government Employees' Union v. Regina Native Youth and Community Services Inc., [1995] 1st Quarter Sask. Labour Rep. 118, LRB Files No. 144-94, 159-94 and 160-94, the Board commented on this matter as follows, at 123:*
>
> > *It is clear from the terms of Section 11(1)(e) of the Act that any decision to dismiss or suspend an employee which is influenced by the presence of trade union activity must be regarded as a very serious matter. If an employer is inclined to discourage activity in support of a trade union, there are few signals which can be sent to employees more powerful than those which suggest that their employment may be in jeopardy. The seriousness with which the legislature regards conduct of this kind is indicated by the fact that the onus rests on the employer to show that trade union activity played no part in the decision to discharge or suspend an employee.*
>
> *The Board made further comment on the significance of the reverse onus under Section 11(1)(e) of the Act in The Newspaper Guild v. The Leader-Post, [1994] 1st Quarter Sask. Labour Rep. 242, LRB Files No. 251-93, 252-93 and 254-93, at 244:*
>
> > *The rationale for the shifting to an employer of the burden of proof under Section 11(1)(e) of the Act to show that a decision to terminate or suspend an employee was completely unaffected by any hint of anti-union animus has, in our view, two aspects. The first is that the knowledge of how the decision was made, and any*

> *particular information regarding the employment relationship involving that employee, is often a matter available exclusively to that employer. The trade union knows of the termination or suspension, knows of the union activity, and asserts that there is a link between them of anti-union animus. A decision that this link does in fact exist can often only be established on the basis of information provided by the employer. Whether this is described as a legal onus of proof, which is the basis of the challenge made by the Employer to the courts, or whether it is seen as an evidentiary burden, an employer must generally be able to provide some explanation of the coincidence of trade union activity and the suspension or termination in question.*
>
> *The second aspect of the rationale, which is particularly important in a case, such as this one, where union activity with an employer is in its infancy, addresses the relative power of an employer and a trade union. An employer enjoys certain natural advantages over a trade union in terms of the influence it enjoys with employees, and the power it can wield over them, particularly where the power to terminate or discipline is not subject to the constraints of a collective agreement or to scrutiny through the grievance procedure. In these circumstances, the vulnerability of employees, and their anxieties, even if exaggerated, about the position in which they may be put by communicating what they know of the circumstances surrounding the dismissal to trade union representatives, and possibly to this Board, makes it difficult for the trade union to compile a comprehensive evidentiary base from which they may put their application in its fairest light.*

As the Board has pointed out, it is not sufficient to meet the onus of proof under Section 11(1)(e) of the Act for an employer to demonstrate the existence of a defensible business reason for the decision to suspend or terminate an employee. In United Steelworkers of America v. Eisbrenner Pontiac Asüna Buick Cadillac GMC Ltd., [1992] 3rd Quarter Sask. Labour Rep. 135, LRB Files No. 161-92, 162-92 and 163-92, the Board made the following observation in this connection, at 139:

> *When it is alleged that what purports to be a lay-off or dismissal of an employee is tainted by anti-union sentiment on the part of an employer, this Board has consistently held, as have tribunals in other jurisdictions, that it is not sufficient for that employer to show that there is a plausible reason for the decision. Even if the employer is able to establish a coherent and credible reason for dismissing or laying off the employee - and we are not persuaded that the reasons put forward by Eisbrenner are entirely convincing -those reasons will only be acceptable as a defence to an unfair labour practice charge under s. 11(1)(e) of the Act if it can be shown that they are not accompanied by anything which indicates that anti-union feeling was a factor in the decision.*

An important element of the task of this Board in assessing a decision which is the subject of an allegation made pursuant to s. 11(1)(e) of the Act is the evaluation of the explanation which is offered by an employer in defence of the decision to dismiss. In this respect, the Board has emphasized that our objective is somewhat different than that of an arbitrator determining whether there is "just cause" for dismissal. In The Leader-Post decision, supra, the Board made this comment, at 248:

> *For our purposes, however, the motivation of the Employer is the central issue, and in this connection the credibility and coherence of the explanation for the dismissal put forward by the Employer is, of course, a relevant consideration. We are not required, as an arbitrator is, to decide whether a particular cause for dismissal has been established. Nor, like a court, are we asked to assess the sufficiency of a cause or of a notice period in the context of common law principles. Our task is to consider whether the explanation given by an employer holds up when the dismissal of an employee and some steps taken in exercise of*

> *rights under the Act coincide. The strength or weakness of the case an employer offers in defence of the termination is one indicator of whether union activity may also have entered the mind of the Employer.*
>
> *As the Board has pointed out on a number of occasions, the fact that trade union activity is taking place does not mean that an employer is prevented altogether from taking serious disciplinary steps against an employee. The onus imposed on an employer by s. 11(1)(e) of the Act is not impossible to satisfy. There is no question, however, that it is difficult to meet. In order to satisfy ourselves that the grounds stated for a decision to dismiss an employee do not disguise sentiments on the part of an employer which run counter to the purposes of the Act, it is necessary for us to evaluate the strength or weakness of the explanation which is given for a dismissal, in the light of other factors, including the kind of trade union activity which is going on, the stage and nature of the collective bargaining relationship, and the possible impact a particular disciplinary action may have on the disciplined employee and other employees.*

[117] A more recent but similar enunciation of the Board's approach to an alleged violation of s. 11(1)(e) was provided in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Sakundiak Equipment, a Division of WGI Westman Group*, [2005] C. L.R.B.R. (2d) 139, 2011 CanLII 72774 (Sk LRB), LRB File Nos. 107-11 to 109-11 & 129-11 to 133-11.

[118] Having considered the evidence in these proceedings, we were not satisfied that the Employer violated s. 11(1)(e) in its decision to terminate Mr. Bolley. To start with, it is not entirely clear that the reverse onus in this provision is applicable to Mr. Bolley's termination. Unlike previous occasion when this Board has been called upon to decide whether or not an employer's decision to discipline or terminate an employee or group of employees constituted a violation of s. 11(1)(e), we note that Mr. Bolley was not involved in any way with the Union's organizing drive. The Union does not rely upon such evidence in making its application. Rather, the Union took the position that the mere occurrence of an organizing drive in the workplace and Mr. Bolley's participation in the representational vote was sufficient to shift the onus to the Employer to demonstrate that his termination was for good and sufficient reason. While the language of s. 11(1)(e) could certainly support such an interpretation, in our opinion, doing so would also represent an expansion of the circumstances where this provision has been applied by this Board. However, for purposes of our analysis, we need not decide this point as we have determined that the Employer had good and sufficient reasons for terminating Mr. Bolley to satisfy the onus imposed by s. 11(1)(e).

[119] In our opinion, the Employer's conclusion that Mr. Bolley had abandoned his position with the company was both plausible and credible. As Mr. Stockford noted, Mr. Bolley was not the first good employee in the Handy Special Event division who just quit showing up for work. In determining this application, we are not called upon to decide whether or not the Employer had "*just cause*" for its actions or whether the Employer's actions were "*ill-advised*" or even whether the Employer's actions were "*unfair*" to Mr. Bolley. Rather, we need only be satisfied that the Employer's actions were reasonable and adequate, which we find they were. Furthermore, in light of Mr. Bolley's lack of involvement with the Union's organizing drive and the fact that no members of the bargaining unit, including Mr. Bolley, even knew that he was terminated until after the representational vote was complete, we are not persuaded that the Employer's actions were motivated by an anti-union animus nor that we should infer such motivation.

[120] In our opinion, the Employer has satisfied the burden of demonstrating a good and sufficient reason for the actions it took and we saw no evidence of an anti-union animus, nor any evidence from which we could infer such motivation, on the part of the Employer. For the foregoing reasons, we have determined that the Union's application alleging that the Employer violated the *Act* in terminating Mr. Bolley's employment ought to be dismissed.

Is Mr. Bolley eligible to participate in the Representational Question?

[121] The Employer argued that Mr. Bolley abandoned his employment prior to the conduct of the representational vote. With all due respect, we were not persuaded by this argument. Clearly, Mr. Bolley did not believe that he had abandoned his position as he returned to the workplace on April 9, 2012 to vote. In our opinion, Mr. Bolley's employment was terminated on April 11, 2012; after the conduct of the representational vote. Furthermore, the Union disputed his termination and, until that dispute was resolved, he would continue to be an employee for most purposes of the *Act*. On the other hand, at the time of the representational vote, Mr. Bolley was a casual employee and thus his eligibility to participate in the vote ought to be determined by the same threshold as other casual employees.

[122] The evidence indicated that Mr. Bolley only worked a limited number of hours in the two (2) month period preceding the Union's certification application. We noted that he worked approximately 8.5 hours in February and performed four (4) tent checks in March of 2012. Although the evidence was a little vague in this area, we were not satisfied that the

evidence demonstrated that Mr. Bolley worked enough hours as a casual employee to satisfy the threshold for eligibility that we have determined necessary to permit casual employees to participate in the representational question. As a consequence, we find that Mr. Bolley was not eligible to participate in the representational question.

Conclusion:

[123] On the evidence presented, the Board finds that the appropriate unit of employees shall be as follows:

> *All employees of 303567 Saskatchewan Ltd., carrying on business as the Handy Special Event Centre in Saskatoon, Saskatchewan except the Vice-President and Operations Manager of the Handy Special Event division.*

[124] The Board is satisfied that the representational vote of employees conducted on April 9, 2012 encompassed those employees eligible to participate in the representational questions. However, it also included certain individuals who we have determined are ineligible to participate in the vote and the envelopes containing these ballots shall be removed from the ballot box and destroyed unopened. These individuals include Mr. Alan Bolley, Ms. Donna-Mae Hounjet, Mr. Kevin McCashlin, Ms. Katie Riley, and Mr. Tony Schaan.

[125] The Agent of the Board is hereby directed to proceed with the counting and tabulation of the ballots in accordance with the above captioned determination and to report the results therefrom to the Board and the parties in the ordinary course. For purposes of clarity, the ballots of Ms. Eileen Bunko, Ms. Elin Shearer and Mr. Matthew Stockford shall be counted in the said tabulation of votes.

[126] We further direct that the ballots of Mr. Chris Slater and Mr. Mathew Sparling shall remain sealed and only counted if it is determined that these two (2) ballots could affect the result of the representational vote. If, after tabulation of the ballots of other eligible voters, the Agent of the Board determines that these two (2) ballots could affect the result of the vote, the ballots shall be unsealed and counted with the rest. If, on the other hand, the Agent of the Board is satisfied that these two (2) ballots would not affect the result of the representational vote, they shall be destroyed unopened.

[127] The Union's unfair labour application is dismissed.

[128] Finally, during these proceedings the Board accepted as evidence a detailed print out of the Employer's payroll records. This document, which was identified as A-23, was very helpful in the Board's determinations. However, it also contains a great deal of personal and confidential information. In ordering the production of this document, the Board directed that it be held in confidence by the Union with only the Union's counsel and instructing parties having access thereto; that the information contained therein should not be used for any purpose other than the within proceedings; and that all copies of the document provided to the Union during these proceedings would be returned to the Employer forthwith upon conclusion of these proceedings. We also direct that the Registrar seal our copy of exhibit A-23 and direct that access to this document be limited to representatives of the Employer and/or the production requirements of any court of competent jurisdiction.

[129] While Board Member Ewart concurs with these Reasons for Decision, it is noted that Board Member McCormick dissents in part.

DATED at Regina, Saskatchewan, this **28th** day of **February, 2013.**

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson

Dissent:

[130] **Dissent of John McCormick, Board Member**: I have had an opportunity to consider the Reasons for Decision of the majority in the within proceedings and, while I agree with most of the determinations that have been made by the majority, I dissent on two (2) issues for which we were required to make determinations.

[131] The two (2) issues from which I dissent and my brief Reasons for doing so are set forth below.

Are either of the Bargaining Units proposed by the Union appropriate for Collective Bargainining?

[132] In my opinion, the bargaining unit proposed by the Union that included the warewashers but excluded the Front Counter staff would have been appropriate for collective bargaining. Having considered the evidence in these proceedings, I found that there was a sufficient basis upon which to distinguish the Front Counter staff from the other employees in the Handy Special Events division. I was also not satisfied that the level of intermingling between the Front Counter staff and the other employees in the division was sufficient to make this proposed unit inappropriate for collective bargaining. Finally, in my opinion, this proposed unit would have had a reasonable chance of being a viable bargaining unit in the long run.

Is Mr. Bolley eligible to participate in the Representational Question?

[133] In my opinion, Mr. Alan Bolley should be permitted to participate in the representational question. Mr. Bolley was scheduled to work more than a sufficient number of hours during the months preceding the date when the Union's certification application was filed with the Board to establish a tangible connection to the workplace sufficient to justify his participation in the representational question.

John McCormick, Board Member