Saskatchewan
Labour Relations Board

SEIU-WEST, Applicant v. SAMARITAN PLACE CORP., Respondent

LRB File No. 103-13; July 11, 2013
Chairperson, Kenneth G. Love, Q.C.; Members: Maurice Werezak and Brenda Cuthbert

For the Applicant: Ms. Shannon G. Whyley
For the Respondent: Ms. Heather M. Jensen

Objection to the Conduct of Vote – Section 26 of *The Regulations and forms, Labour Relations Board* – Board conducts pre-hearing vote of employees involved in Certification application by Union – Employer objects to the conduct of the Vote – Board upholds vote – Applies test of whether or not the alleged impropriety would have on the right of employees freedom of choice of a bargaining representative.

Objection to the Conduct of Vote – Employer's objections to the conduct of the Vote was predicated upon: (a) what Employer felt was undue haste in conducting the vote, which haste, it argued, did not give it sufficient time to consult with counsel; (b) that it did not have sufficient time to provide the Board Agent with a list of employees that resulted in the vote being conducted without a list of voters attached to the Notice of Vote, in violation of Section 26(a) of the *Regulations* and that the Notice of Vote was therefore not in compliance with Form 13 of the Regulations; (c) that hours and dates for the vote were chosen by the Board without regard to the schedule proposed by the Employer; and (d) that the Union offered transportation to employees to take them to the poll.

Objection to the Conduct of Vote – The Board considered the objections by the Employer, but found that none of them impacted on the freedom of choice by employees in choosing a bargaining representative. The Board ruled that technical breaches of the Regulations were cured by section 35 of the Regulations unless the Board should otherwise direct. Board declines to otherwise direct.

Objection to the Conduct of Vote – Board orders that vote be tallied.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Q.C., Chairperson:** SEIU-WEST, (the "Union") applied to the Board to certify employees of Samaritan Place Corp. (the "Employer") by application dated April

12, 2013.[1] A pre-hearing vote was conducted by a Board Agent among the employees of the Employer on April 17 & 18, 2013.

[2] The Employer filed an Objection to the Conduct of the Vote[2] pursuant to Section 29 of the *Regulations and Forms, Labour Relations Board*[3] on April 23, 2013. The Union then filed an application for summary dismissal of the Employer's s. 29 application. The Union's application for summary dismissal was dismissed by the Board by Order dated May 10, 2013.

[3] In this application, the Board is dealing with the Employer's objection to the conduct of the pre-hearing vote by the Board, which vote was conducted on Wednesday, April 17 and Thursday, April 18, 2013 on the Employer's premises. The vote was conducted at the following times on those dates:

Date	*Times Voting Allowed*
April 17, 2013	*4:00 p.m. to 5:00 p.m.*
	10:30 p.m. to 11:00 p.m.
April 18, 2013	*9:00 a.m. to 10:00 a.m.*

[4] For the reasons that follow, the objection to the conduct of the vote is dismissed. These are the reasons for that dismissal.

Facts:

[5] To assist the Board in its deliberations, counsel for the parties filed an Agreed Statement of Facts and Associated Documents. That Statement of Facts was as follows:

> *Agreed Statement of Facts re: Objection to the Conduct of Vote*
>
> *The employer and union do agree upon the following facts:*
>
> *1. The Union, SEIU-West filed a certification application in relation to certain employees of the employer, Samaritan Place Corp., with the Saskatchewan Labour Relations Board on Friday, 12 April 2013 (LRB File No. 092-13).*
>
> *2. The Registrar of the Labour Relations Board ("the Registrar") telephoned the Employer and told Executive Director Juanita Tremeer about the certification application after 4:00 p.m. on Friday, 12 April 2013. After this telephone conversation, the Board Registrar forwarded by email a copy of the certification*

---

[1] LRB File No. 092-13.
[2] LRB File No. 103-13.
[3] *Saskatchewan Regulations* 163/72 as amended.

application, the cover letter filed with the certification application, Form 11(reply), a direction for the Vote and a link to a document describing the certification process. A copy of the Board Registrar's email to Ms. Tremeer, dated 12 April 2013 at 4:52 p.m.,, with accompanying attachments and linked document, is attached as Exhibit "A".

3. In the email reproduced at Exhibit "A", the Board Registrar stated "I am contemplating utilizing my Agent on Wednesday, and Thursday of next week (April 17 and April 18, 2013), to conduct an onsite vote." In this email, the Board further requested that the employer provide a list of all employees at the workplace in Saskatoon as of April 12, 2013, including full-time and casual employees.

4. The Board Registrar wrote to Ms. Juanita Tremeer by email on Monday, 15 April 2013 at 11:34 a.m. requesting the list of employee names and occupations before the close of business on that day. A copy of this email is attached as Exhibit "B".

5. On Monday, 15 April 2013 at 2:31 p.m., Ms. Tremeer contacted the Registrar by email to request that he communicate directly with the Employer's legal counsel. The Registrar sent an email to the attention of Mr. Kevin Wilson, Q.C. of MacPherson Leslie & Tyerman LLP, confirming that the Board intended to conduct a vote on Wednesday and Thursday; that the Board would have an agent from Regina in the Saskatoon area for the purposes of capturing the vote; that the threshold had been achieved and the Direction of Vote was issued; that the Notice of Vote would be completed shortly; that the Board requested the employer advance the names of workers; and that all ballots would be double enveloped until further direction of the Board. A copy of this email is attached as Exhibit "C".

6. By email dated 15 April 2013, at 4:01 p.m., counsel for the union provided an email requesting that the employer provide the Board's intended timing for the vote as soon as they were able. The reason for the request was as follows: "The union is making arrangements to facilitate voting by employees without independent transportation, and therefore, as much notice as possible fo the Board's proposed times for the vote on Wednesday and Thursday would be appreciated." A copy of this email is attached as Exhibit "D".

7. On Monday, 15 April 2013, at 4:14 p.m., the Registrar sent by email a Notice of the vote. The Registrar noted that the names had yet to be clarified but anyone presenting themselves at the workplace would be asked to identify themselves and the ballot double enveloped. The Registrar asked the employer to print and post the notice as quickly as possible and confirm posting. A copy of that email and accompanying attachments is attached as Exhibit "E".

8. On Monday, 15 April 2013 at 6:54 p.m., counsel for the employer wrote by email to the Board Registrar objecting to the Notice and Direction of the Vote, the dates and the times of the vote and various issues in relation to the vote process. A copy of this correspondence is attached as Exhibit "F".

9. The Board Registrar replied to correspondence from counsel for the employer on Monday, 15 April 2013 at 7:35 p.m. A copy of this correspondence is attached as Exhibit "G".

10. The Notice of Vote was posted in the workplace on Tuesday, 16 April 2013.

11. On 16 April 2013, the Board Registrar informed the parties of their entitlement to have a scrutineer in attendance for the purpose of the conduct of the vote, and requested that the parties advise whether each intended to have a scrutineer present and who that person would be. A copy of this correspondence is attached as Exhibit "H".

12. The employer's human resources administrator, Dimpy Joshi, emailed a message from the Executive Director to all care partners and licensed practical nurses employed by the employer at 4:00 p.m. on 16 April 2013. A copy of the email and attachment is attached as Exhibit "I".

13. The vote proceeded on Wednesday, 17 April and Thursday, 18 April 2013.

14. The union's scrutineer at the conduct of the vote was Sean Senechal. The employer's scrutineer at the conduct of the vote was Thomas Bluger.

15. The first poll occurred 17 April 2013 from 4:00 p.m. to 5:00 p.m. Thirty-five employees cast ballots in the first poll.

16. The second poll occurred 17 April 2013 from 10:30 p.m. to 11:00 p.m. Twenty-seven employees cast ballots at the second poll.

17. The third poll occurred 18 April 2013 from 9:00 a.m. to 10:00 a.m. fifteen employees cast ballots in the third poll.

18. On Monday, 22 April 2013 at approximately 1:49 p.m., the employer filed by email its Objection to the Conduct of the Vote.

19. On Monday, 22 April 2013 at 4:50 p.m., the Board Registrar forwarded to counsel for the parties an email providing the Board's list of 77 persons who voted in the representation vote, and requesting the employer provide the employee list by the close of business 23 April 2012. A copy of this email and the accompanying list is attached as Exhibit "J".

20. On 23 April 2013 at 11:22 a.m., the employer through counsel provided its list of employees. A copy of this email and the employer's list of employees is attached as Exhibit "k". Through subsequent agreement between the union and employer, the parties agreed that three names ought to be removed from the employer's list: Kenneth Gener, Wanderley Grant and Giovani Lopez.

21. On 23 April 2013, the Board Registrar provided to counsel for the parties a reconciliation of the voters who cast ballots with the list that had been provided by the Employer. A copy of this correspondence is attached as Exhibit "L".

22. On 30 April 2013 at 10:39 a.m., the Employer's counsel wrote to the Registrar to provide further information with respect to the reconciliation. A copy of this correspondence is attached as Exhibit "M".

23. On 15 may 2013, correspondence informing the board that the parties had resolved their differences with respect to the employee list and the bargaining unit description was forwarded to the Board. A copy of that correspondence is attached as Exhibit "N".

[6] The Employer also called one witness, Jaunita Tremeer, who provided testimony to supplement the Agreed Statement of Facts. Relevant portions of her testimony will be referred to below.

[7] During the lunch break of the hearing, we were advised that the witness and one of the Board members were acquainted socially. This was disclosed to the parties who agreed to continue with the hearing without objection to the continuation of the Board Member involved.

Relevant statutory provision:

[8] Relevant statutory provisions are as follows:

> *26 Where, pursuant to the provisions of the Act, the board directs a vote to be taken by secret ballot, the chairman shall appoint an agent to conduct a vote, and such agent shall, subject to such conditions as may be prescribed in the direction and with reasonable dispatch:*
> *(a) determine the list of employees eligible to vote*
> *...*
> *(e) prepare a notice or notices of the vote according to Form 13 and direct posting thereof;*
>
> *. . .*
>
> *29(1) 1) Any trade union or any person directly affected having any objection to the conduct of the vote or to the counting of the votes or to the report shall, within three days after the last date on which such voting took place, file with the secretary a written statement of objections in Form 15 and verified by statutory declaration together with two copies thereof, and no other objections may be argued before the board except by leave of the board.*
>
> *. . .*
>
> *35 Noncompliance with any of these regulations shall not render any proceedings void unless the board shall so direct*

Analysis and Decision:

[9] In *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industries and Service Workers International Union (o/a United Steelworkers Union, Local 1-184) v. Robert Buyaki and Edgewood Forest Products Inc.,*[4] Vice-Chairperson Schiefner provides

[4] [2013] CanLII 29666 (SK LRB). LRB File No. 062-13 at paragraphs 17-20.

background and rationale for the Board's policy of conducting pre-hearing votes as early as practicable:

> *[17] Throughout modern history, individuals have formed associations for the pursuit of common purposes or the advancement of common causes. Freedom of association is one of the fundamental freedoms protected by the Canadian Charter of Rights and Freedoms. At its most basic, freedom of association is society's recognition that some aspects of an individual's interest in self-actualization and fulfillment can only be realized through combination with others and are of sufficient substance and import to be worthy of protection. Thus, s. 2(d) is meant to protect, among other things, an individual's association with others in the pursuit of certain types of common goals. Collective bargaining through a trade union of one's choosing is a protected associational activity for employees. For example, employees have the fundamental right to decide the question of whether or not they wish to be represented by a trade union and do so free from interference or coercion. These rights are not unlimited but they are fundamental rights protected by The Trade Union Act and now the Canadian Charter of Rights and Freedoms.*
>
> *[18] In Saskatchewan v. Saskatchewan Federation of Labour, et al. 2013 SKCA 43 (CanLII), the Saskatchewan Court of Appeal confirmed that delays in the conduct of a representational vote can give rise to a violation of an employee's s. 2(d) freedoms. In Saskatchewan Federation of Labour case, the Saskatchewan Federation of Labour ("SFL") and various other trade unions and labour organizations commonly argued before the Court of Appeal that The Trade Union Act had been rendered unconstitutional when the Act was amended in 2008 to introduce mandatory votes for certification applications without also prescribing time limits for the conduct of such votes. The SFL and others pointed to the concern that delays in the conduct of representational votes created opportunities for intimidation and coercion of employees. In rejecting the argument that The Trade Union Act was unconstitutional, Richards J.A., speaking on behalf of a unanimous Court, made the following observations on this point:*
>
> > *[114] While a statutorily prescribed time limit for conducting certification votes might be the preferable approach, I am not persuaded that the failure to include such a provision in the TUA Amendment Act makes the Act itself constitutionally infirm. This is because discretionary statutory powers must be exercised consistently with the demands of the Charter. See: Slaight Communications Inc. v. Davidson, [1989] 1 S.C.R. 1038 at pp. 1078-79.*
> >
> > *[115] This imperative suggests that if, in any particular case, the Labour Relations Board delays so long in conducting a vote that employees' s. 2(d) freedoms are demonstrably infringed, those employees would be able to obtain legal redress in relation to that specific failure of the Board. None of this would mean, however, that the TUA Amendment Act itself violates s. 2(d) because it fails to prescribe a time limit for conducting votes.*
>
> *[19] In other words, employees not only have a right to decide the representational question without coercion or interference, but excessive delay in permitting them to express their wishes can give rise to a Charter breach. We*

> *can see no reason in law or policy that the rights of employees in deciding the representational questions on rescission applications ought to be subject to any different considerations than the rights of employees on certification applications. As was noted by Ball J. in Saskatchewan Federation of Labour, et. al. v. Saskatchewan, et. al., 2012 SKQB 62 (CanLII), Q.B.G. No. 1059 of 2008, the freedoms enjoyed by employees to organize in, form or assist trade unions for the purpose of pursuing workplace goals as protected by s. 2(d) of the Charter also includes the freedom not to associate for such purposes. See also: Lavigne v. Ontario Public Service Employees Union, [1991] 2 SCR 211, 1991 CanLII 68 (SCC), 81 DLR (4th) 545. A natural application of this conclusion is that it is also a fundamental associational right of employees to decide whether or not they wish to continue to be represented by a trade union.*
>
> *[20] It has long been recognized by labour boards that representational votes ought to be conducted as soon as possible following receipt of an application wherein the representational question arises. Pre-hearing votes are an accepted means of capturing the wishes of employees on a timely basis and preserving that information for the point in time when the Board is able to make its determinations on the representational question. Pre-hearing votes shield employees from undue influences and the inevitable pressures associated with representational campaigns in the workplace pending determinations by the Board. In our opinion, these same considerations apply in equal measure to rescission applications as they do with certification applications. With all due respect, it is disingenuous to argue that prescribed time limits are constitutionally necessary for the conduct of certification votes but that delay is permissible, let alone necessary or appropriate, for representational vote on rescission application.*

[10] We concur with these statements which highlight the importance that the Board conduct votes in a timely manner to ensure the dual objectives of insuring that the wishes of employees are not influenced unduly, but also that the associational rights of employees as not demonstrably infringed as noted by Mr. Justice Richards (as he was then).

[11] The Employer has objected to how the Board conducted the pre-hearing vote among its employees on a number of grounds. Those were:

1. *The Employer was not provided with sufficient opportunity to obtain legal counsel and advise in relation to the voting process;*

2. *The Board's agent did not determine the list of employees eligible to vote in accordance with Section 26(a) of The Regulations and Forms, Labour Relations Board;*

3. *The dates and hours for taking the vote were determined by the Board's agent without input from the Employer and were not appropriate given the Employer's shift schedules and the number of casual employees in the proposed bargaining unit;*

4. *The Notice of Vote was not prepared according to Form 13 in accordance with Section 26(e) of The Regulations and Forms, Labour Relations Board because it did not include a Voter's List of employees who were eligible to vote; and*

5. *If the Union did in fact provide transportation to employees to attend the vote, such activities compromised the objectivity of the voting process.*

[12] The Employer alleged that by virtue of the defects set out above that certain employees did not have the opportunity to vote and were thereby disenfranchised. As a remedy, the Employer sought that the Board order the ballots from the April 17 and 18, 2013 vote be destroyed and a new vote ordered to be held.

[13] The Union, in reply, argued that the Board should not easily set aside a representational vote, since to do so would be an extraordinary remedy. It argued that the test to be applied in this case was whether or not the conduct of the vote was such that it was tantamount to making it impossible for employees, by secret ballot, to freely express their choice.[5]

[14] In *Reese, Holiday Inn Ltd. and RWDSU, supra,* the Board reviewed the Board's authority with respect to reviewing the conduct of a vote. The test to be applied, as determined by the Board in that decision is whether the action complained of "was likely to have critically interfered with the employees' ability to freely express their wishes."

[15] The purpose of a vote, as pointed out by Vice-Chairperson Schiefner in *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industries and Service Workers International Union (o/a United Steelworkers Union, Local 1-184) v. Robert Buyaki and Edgewood Forest Products Inc.*[6] is to determine employees' fundamental associational right, which is whether or not to choose a union to represent them for collective bargaining. The focus of the Board in reviewing the conduct of a vote must, therefore, focus upon the impact any alleged impropriety would have on the right of employees freedom of choice of a bargaining representative. It is through that lens that the conduct complained of in this matter must be determined.

---

[5] See *Reese, Holiday Inn Ltd. and RWDSU* [1989] S.L.R.B.R. No. 33.

The Employer was not provided with sufficient opportunity to obtain legal counsel and advise in relation to the voting process.

[16] The Employer complains that due to the quick nature of the voting arrangements that it was not allowed sufficient time to obtain legal counsel to explain to it the nature of the application, its rights and responsibilities in respect thereof. The Employer complains that the application for Certification was filed on Friday, April 12, 2013. The Board Registrar advised Ms. Tremeer that the application had been received at 4:00 PM that day. Later that day (at 4:52 p.m.), the Registrar sent a copy of the application and a Reply form. He also asked Ms. Tremeer to provide "a comprehensive listing of all employees and their titles as of today, April 12, 2013."

[17] This email contact and the request for a comprehensive listing of employees is standard practice for the Board when applications requiring a vote are received by the Board. Only employees employed on the date of the certification application are normally permitted to vote (provided they remain employed on the date of the vote), hence the request that the list include all employees employed on April 12, 2013.

[18] Ms. Tremeer testified that she attempted to contact legal counsel following the telephone conversation with the Registrar and the follow up email to her. She testified that she was only able to obtain an appointment with counsel on the following Monday, April 15, 2013. She attended with counsel on that date.

[19] On April 15, 2013, the Registrar again requested that Ms. Tremeer provide the names and occupations of the employees at the worksite. He requested that they be provided to the Board by the close of business on April 15, 2013.

[20] On April 15, 2013, Mr. Tremeer provided the name of the Employer's counsel to the Registrar. The Registrar contacted counsel for the Employer and repeated his request that the Employer provide the "names of the workers for the purpose of the vote". He also advised counsel for the Employer that it was the intention of the Board to move to quickly capture the wishes of the employees through a vote to be conducted at the workplace on Wednesday, April 17 and Thursday, April 18, 2013.

---

[6] [2013] CanLII 29666 (SK LRB). LRB File No. 062-13 at paragraph 17.

[21] Counsel for the Union responded to the Registrar with respect to the Board's plans to conduct the vote on Wednesday and Thursday. In her email, counsel also advised that "[T]he union is making arrangements to facilitate voting by employees without independent transportation" and requested as much notice as possible concerning the times during which the vote would be conducted on those dates.

[22] The Registrar responded by providing a Notice of Vote to the parties setting out the times at which the vote would be conducted. He advised that "[T]he names are yet to be clarified, but, anyone presenting themselves at the workplace will be asked to identify themselves and the ballot double enveloped."

[23] Later that day (April 15, 2013), after the close of business, counsel for the employer emailed the Registrar to complain that the issuance of a Notice of Vote was premature, the Employer was not given meaningful opportunity to consult with counsel, that there was no listing of employees on the Notice of Vote, the times for conduct of the vote were set arbitrarily by the Registrar, that the vote would interfere with events planned at the workplace, and that it was inappropriate for the Union to be organizing transportation to the workplace. Counsel for the employer requested that the vote be postponed.

[24] Upon receipt of the email from the counsel for the Employer, the Registrar advised counsel for the Employer that the vote would proceed as scheduled. He also advised counsel that if they felt the lack of names "is problematic," then they could take objection to the conduct of the vote as they have done.

[25] The vote then proceeded as scheduled. It was later determined that there were one hundred and seven (107) eligible voters, seventy-seven (77) voted. All ballots were double enveloped.

[26] With respect, we cannot agree that the Employer's limited access to counsel in any way impacted upon the employees' right to choose a bargaining agent. While Ms. Tremeer may not have been familiar with the Board's processes and what to do in the event of a certification application, whether or not the Employer had access to counsel cannot have any impact on how or if an employee either chooses to vote, or how that employee might vote.

[27] Furthermore, in his early correspondence with Ms. Tremeer on April 12, 2013, he directed her to the Board's website which provides information on the certification process. While that information may not have been precisely what she might have wanted to know, if would have provided a general overview for her information.

[28] Therefore, seen through the lens of the impact any alleged impropriety would have on the right of employee's freedom of choice of a bargaining representative access to counsel for the Employer does not impact on that freedom of choice.

The Board's agent did not determine the list of employees eligible to vote in accordance with Section 26(a) of *The Regulations and Forms, Labour Relations Board.*

[29] Section 26(a) of the Regulations directs that the agent appointed to conduct a vote to "(a) determine the list of employees eligible to vote". This provision is one which is often utilized by parties seeking to delay the conduct of a vote by delaying the provision of names to the Agent for the purposes of the vote. This delaying tactic is used not just by Employers, but also by Unions. Given the comments of Mr. Justice Richards (as he was then) in *Saskatchewan v. Saskatchewan Federation of Labour, et. al*[7] and the comments of Vice-Chair Schiefner in *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industries and Service Workers International Union (o/a United Steelworkers Union, Local 1-184) v. Robert Buyaki and Edgewood Forest Products Inc.*[8], the importance of conducting votes as quickly as possible must be underscored.

[30] By our comments above, we do not mean to suggest that the Employer in this case was attempting to delay the conduct of the vote, but want to highlight the necessity for the Board to move quickly when a vote is to be conducted. This requirement was underscored by comments made by Professor Peter Darby, (former chairperson of the Nova Scotia Labour Relations Board), in response to a question as to how their Board managed to conduct votes within the statutorily mandated 5 day period. He said that they go to the worksite and allow anyone who wants to vote, to vote regardless of who they are. All votes are double enveloped and they sort out who was eligible to vote later.

---

[7] 2013 SKCA 43 (CanLII).
[8] [2013] CanLII 29666 (SK LRB). LRB File No. 062-13 at paragraph 17.

[31] Following this philosophy, the Board, in this case ensured that it would have the ability to "sort it out later" by double enveloping every ballot. Double enveloping is a system whereby a voter is identified by name on an external envelope. His or her actual ballot is contained within a second envelope. If that person is found to be eligible to vote, then the outside envelope is opened and the second unmarked envelope deposited into the ballot box to be counted.

[32] No objections were taken to any persons who presented themselves to vote. All seventy-seven persons were accepted by the Employer's and Union's scrutineers as being employees eligible to vote. There was no evidence that any persons who were not eligible to vote, voted or that the lack of a voter's list deterred anyone from voting. The Board Agent who conducted the vote was instructed by the Registrar to allow anyone who presented themselves with proper identification to vote.[9]

[33] Again, seen through the lens of the impact any alleged impropriety would have on the right of employees freedom of choice of a bargaining representative the lack of a voting list did not impact on that freedom of choice.

[34] More importantly, the technical irregularity of not having a list of voters on the Notice of Vote is not fatal to this vote. Section 35 of the Regulations provides that "[N]oncompliance with any of these regulations shall not render any proceedings void unless the board shall so direct". In this circumstance, we would not exercise our discretion to so direct.

The dates and hours for taking the vote were determined by the Board's agent without input from the Employer and were not appropriate given the Employer's shift schedules and the number of casual employees in the proposed bargaining unit.

[35] Ms. Tremeer gave extensive testimony concerning the impact that shift schedules could have had on the availability of persons to come out to vote. She testified that there were alternative times available which she suggested could have facilitated the employees' ability to vote. She provided data on when employees were working, as well as those who were on

---

[9] See paragraph [22] above.

holidays or other leave. From that data, on cross-examination, she acknowledged that 29 employees who were not working on the days on which the vote were held came in to vote.

[36] While the usual practice of the Board is to consult with the parties to determine appropriate times and dates for the conduct of a vote, the Board's Agent is empowered by the regulations[10] to "determine the date or dates and hours for taking the vote".

[37] There was no evidence provided which showed that employees who wished to vote were denied the opportunity to vote. Ms. Tremeer did provide a text message from one employee which advised she was unable to attend to vote. That would not, we think, be unusual in a group of 107 employees. 72% of the employees were able to vote, which easily surpassed the statutory threshold for a majority turnout of employees entitled to vote.

[38] Seen through the lens of the impact that this alleged impropriety would have on the right of employees' freedom of choice of a bargaining representative, the fixing of the times and dates by the Board Agent did not impact on that freedom of choice.

The Notice of Vote was not prepared according to Form 13 in accordance with Section 26(e) of *The Regulations and Forms, Labour Relations Board* because it did not include a Voter's List of employees who were eligible to vote.

[39] This allegation is similar to the objection taken above with respect to the failure to determine the list of employees eligible to vote in accordance with section 26(a) of the *Regulations and Forms, Labour Relations Board*. This allegation is again, a technical objection that has not been shown to have had any impact upon the voting process. Ballots were double enveloped and no objection was taken by either side with respect to those persons who presented themselves to vote. A sizable majority of the employees did vote notwithstanding the technical breach.

[40] Furthermore, as noted above, Section 35 of the Regulations provides that "[N]oncompliance with any of these regulations shall not render any proceedings void unless the board shall so direct". In this circumstance, we would not exercise our discretion to so direct.

---

[10] *Regulations and Forms, Labour Relations Board* SR 163/72 s. 26(c).

If the Union did in fact provide transportation to employees to attend the vote, such activities compromised the objectivity of the voting process.

[41] Both parties objected to the other providing transportation to employees for the purposes of voting. We concur with both parties that such a practice is not one that should be supported by the Board. There is, however, nothing in *The Trade Union Act*, nor the *Regulations* which expressly prohibit the practice.

[42] Nor was there any evidence that the provision of transportation to employees by both of the parties in any way impacted on their ability to vote or in any way influenced their decision.

Decision

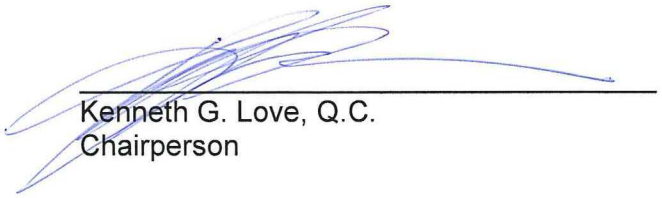
[43] There is no doubt that this vote could have been handled better by the Board. The timeframe which the employer was given to provide a listing of employees was far too short, being effectively only one day (Monday, April 15, 2013). The Board must ensure that there is a proper balance between the requirement that votes be conducted quickly upon an application being received and the need to provide adequate time to an employer or union to gather and provide information necessary for the conduct of the vote. In this case, the timing of the vote appears to have been dictated by the availability of a Board Agent who would be available in Saskatoon to conduct the vote. While the Board has limited resources and must attempt to utilize those resources in the most economic manner, we must not lose sight of the need to conduct the business of the Board in a fair and even handed manner.

[44] Counsel for the Employer noted in her written brief that "[A]t its core, this issue comes down to a question of procedural fairness, taken within the entire context of the situation". We agree with that comment to the extent that the Board did not provide the Employer with sufficient time to provide the information the Board sought. However, that failure impacted only the Employer and did not, we find, interfere with any employee's right to vote on the representational question.

[45] The Application to set aside the vote is denied. The ballots cast shall be tabulated and the results provided to an *in camera* panel of the Board for disposition. This panel will not be further seized with this matter.

DATED at Regina, Saskatchewan, this **11th** day of **July**, **2013.**

LABOUR RELATIONS BOARD



Kenneth G. Love, Q.C.
Chairperson