



INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF UNITED STATES, ITS TERRITORIES AND CANADA, LOCAL 300, Applicant v. INLAND AUDIO VISUAL LIMITED, Respondent

LRB File Nos. 057-13 & 285-13; February 13, 2014

Vice-Chairperson, Steven D. Schiefner; Members: Ken Ahl and John McCormick

For the Applicant Union: Ms. Ronnie A. Nordal.

For the Respondent Employer: Mr. Paul J. Harasen.

CERTIFICATION – Practice and Procedure – Objection to Conduct of Representation Vote – Trade union files certification application with Board – Board orders pre-hearing vote and appoints agent to conduct vote – Agent conducts vote using mail-in balloting procedure – Parameters for vote included deadline for eligible employees to complete and return ballots to Agent – Agent grants extension to two (2) employees - Union argues that one (1) extensions should not have been granted and that this irregularity tainted entire voting process – Union seeks new representational vote - Board notes that Agent established original parameters for vote – Board satisfied that Agent had authority to modify those parameters – In alternative, Board satisfied that, under the circumstances, any non-compliance that occurred was not sufficient to render the representational vote void.

Regulations and forms, Labour Relations Board, s. 26 & 35.

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson:** These proceedings involve an objection to the conduct of a representational vote conducted in a certification application pending before the Saskatchewan Labour Relations Board (the “Board”). The objection was filed by the applicant trade union, the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of United States, Its Territories and Canada, Local 300 (the “Union”). The respondent employer is Inland Audio Visual Limited (the “Employer”).

[2] On April 1, 2013, the Union filed a certification application¹ with the Board seeking to represent the employees of the Employer. In its application, the Union estimated that there were six (6) to eight (8) employees in the unit. Satisfied on the face of the Union's application that the Union enjoyed the support of a sufficient number of employees within the proposed bargaining unit, the Board's Executive Officer issued a direction for vote on April 10, 2013. A representational vote was conducted at the workplace on or about April 16, 2013. However, it was subsequently discovered that a number of individuals voted who did not fall within the scope of the Union's proposed bargaining unit and a number of eligible employees did not participate. In addition, the Union alleged that a violation of *The Trade Union Act* had been committed concomitant with the vote and filed an unfair labour practice application² with the Board. Following a hearing, the parties agreed that a second representational vote ought to be conducted and the unfair labour practice application was withdrawn.

[3] As a consequence of the foregoing, the Board issued a second direction for vote on September 11, 2013. The parties agreed on the list of eligible voters and the employer provided the agent with the home addresses for all of the employees. On or about September 13, 2013, the appointed agent issued a notice of vote which read in part as follows:

NOTICE OF VOTE

To: All employees of Inland Audio Visual Limited, o/a Inland Audio Visual, in Saskatoon, SK, employed as Audio Visual Technicians.

TAKE NOTICE THAT, pursuant to a direction of the Labour Relations Board dated September 11th, 2013, a true copy of which is annexed hereto, a vote will be conducted by secret ballot through a mail in process for a period of fourteen (14) days subsequent to the date the package is advanced to the eligible voter, by the Registrar of the Labour Relations Board to determine whether or not the employees to whom this notice is directed to wish to be represented by the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 300, for the purpose of bargaining collectively with their Employer.

SECRET BALLOT

This vote will be conducted by secret ballot under the direct supervision of an agent of the Labour Relations Board through a mail in balloting process.

HOW TO VOTE

This package includes a ballot at page two (Mauve Ballot). You may mark your ballot, fold it and it must be placed in the small envelope provided. Then the small envelope must be placed in the larger white envelope containing your name and occupation, which is then to be placed into the third self addressed envelope for

¹ Application bearing LRB File No. 057-13.

² Application bearing LRB File No. 101-13.

deposit into a postal box. **It must reach this office no later than 14 days from the date upon which it was mailed to you (September 13th, 2013) that being September 27th, 2013.**

ELIGIBLE VOTERS

Those eligible to vote shall be the persons whose names appear below, and who, at the time of voting, are still in the employment of the employer referred to above.

Rob Mealey

Steve Grundmann

Dakai Sun

Jei Nui

True Newdorf

Darren McIntosh

Navrose Ratannse

Cody Diedericks

"Fred Bayer"

Returning Officer

Labour Relations Board

[4] Voting packages with ballots were mailed to eligible voters at the addresses that had been provided to the Board by the Employer. On or about September 24, 2013, the Union advised the agent that the Board had the wrong spelling for one (1) of the employees (Mr. True Neudorf) and that the address that had been provided by the Employer for him was wrong (was an old address). The Board agent contacted Mr. Neudorf and confirmed his correct address. Mr. Neudorf was advised that a new voting package would be mailed to him and that the deadline for completing and returning his ballot to the Board would be extended to October 9, 2013.

[5] On or about September 27, 2013, Mr. Darren McIntosh contacted the Board Agent and advised that his voting package had been sent to a mail box that he did not check very often. Mr. McIntosh indicated that he wished to cast a ballot in the representational vote but was concerned that his ballot would not make it to the Board within the stated deadline. The Board agent advised Mr. McIntosh that his ballot would be accepted if it was received by the Board no later than October 9, 2013 (the same extended deadline that had been granted to Mr. Neudorf).

[6] Ballots from all eight (8) eligible employees were completed and returned to the Board. The ballots from Mr. Neudorf and Mr. McIntosh were received after the original deadline but before the expiration of the extended deadline. The ballots were tabulated on October 16, 2013. The representational vote failed as the result of a tie; with four (4) employees voting for the Union and four (4) employees voting against the Union.

[7] On October 18, 2013, the Union filed an objection³ to the conduct of the vote. The Union takes the position that our agent erred in granting an extension to Mr. McIntosh and in accepting his ballot outside of the parameters originally established for the representational vote. The Union argues that Mr. McIntosh was granted a reasonable opportunity to vote and the fact that he didn't check his mail box in time is not a reasonable justification for an extension. The Union argues that the circumstances involving Mr. McIntosh are distinguishable from Mr. Neudorf. The Union takes the position that it was appropriate and necessary to send a new voting package to Mr. Neudorf and to grant him an extension because the Board agent had sent his voting package to the wrong address. The reason that Mr. Neudorf could not vote were factors entirely beyond his control. However, the reason Mr. McIntosh could not vote was his own behaviour (i.e. in failing to check his mail box); factors entirely within his control.

[8] The Union takes the position that it is important for the Board to protect the integrity of the voting processes. The Union argues that part of the integrity of the voting process is that ballots should not be accepted by the returning officer after the close of the scheduled polls. The Union relied on several decisions from the British Columbia Labour Relations Board in support of its position, including *Certain Employees of Western Shopping Centres (1969) Ltd. v. Western Shopping Centres (1960) Ltd.* [1989] B.C.R.C. 320-02 (B.C.L.R.B.), *Minolta Business Equipment (Canada) Ltd. v. Office and Professional Employees' International Union, Local No. 378*, 2003 CanLII 62936 (BC LRB), *NW Energy (Williams Lake) Corp. v. Canadian Union of Skilled Workers – BC, et. al.*, 2004 CanLII 65563 (BC LRB). The Union argues that these cases collectively stand for the proposition that, provided a reasonable opportunity to vote has been provided, a late ballot should not be accepted even if that person had a reasonable and justifiable excuse for wanting to cast a late ballot. The only justification for accepting a late ballot was if a returning officer failed to ensure that the subject employee had a reasonable opportunity to vote. The Union also relies upon the decision of the Ontario Labour Relations Board in *Joan Timothy v. London and District Service Workers' Union, Local 220 and Strathroy Nursing Homes Limited*, 1897 CanLII 3160 (ON LRB), where that Board refused to allow an eligible employee an opportunity to vote after the close of polls. In this case, the Board noted that the employee missed the vote because of factors beyond her control (i.e.: she was involved in a serious car accident).

³ Application bearing LRB File No. 285-13.

[9] The Union also relied upon the decision of the British Columbia Labour Relations Board in *Intercom Security Limited v. Hospital Employees' Union*, [2010] 172 C.L.R.B.R. (2d) 257, 2009 CanLII 55212 (BC LRB) and the decision of the Newfoundland and Labrador Labour Relations Board in *Fabian Keeping v. Canadian Union of Public Employees, Local 1860*, 2011 CanLII 56999 (NL LRB). Both of these cases involved the issue of the accepting ballots received by the returning officer in a representational vote.

[10] In the present case, the Union argues that our agent violated the integrity of the voting process by modifying the established parameters for the vote when Mr. McIntosh had already been provided an adequate opportunity to vote. The Union argues that accepting Mr. McIntosh's ballot undermined the twin goals of certainty and expedition in the conduct of representational votes.

[11] By way of remedy, the Union seeks an Order from this Board that a new representational vote be conducted. The Union filed a written argument and brief of law, which we have read and for which we are thankful.

[12] The Employer takes the position that the actions of our agent in the conduct of the representational vote were reasonable, appropriate and consistent with the discretion delegated to him by the Board. The Employer notes that it was our agent (and not the Board) who set the original parameters for the vote. The Employer also notes that s. 26(h) of the *Regulations and forms, Labour Relations Board, Saskatchewan Regulations 163/72* (the "*Regulations*") authorizes our agents to give any special directions or instructions that he/she may deem necessary for the proper conduct of a representational vote. The Employer argues that the actions of the Board's agent (in granting extensions to the prescribed voting deadline) were aimed at preventing two (2) eligible voters from being disenfranchised because of delivery problems with the mail. Furthermore, the Employer argues that this discretion was exercised consistently with both Mr. Neudorf and Mr. McIntosh being granted the same relief. The Employer argues that it would set a dangerous precedent for the Board to now second guess the actions of our agent in the conduct of the representational vote particularly in light of the fact that the vote has been tabulated.

[13] The Employer asks that the Union's objection to the conduct of the representational vote be dismissed.

Relevant statutory provisions:

[14] Sections 26 and 35 of the *Regulations and Forms, Labour Relations Board*, read 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;*
- (b) *determine the form of the ballot;*
- (c) *determine the date or dates and hours for taking the vote;*
- (d) *determine the number and location of the polling places;*
- (e) *prepare a notice or notices of the vote according to Form 13 and direct posting thereof;*
- (f) *act as returning officer and appoint such deputy returning officer or officers and poll clerk or clerks as may be necessary;*
- (g) *invite the employer affected and any trade union whose name appears on the ballot each to appoint one scrutineer for each polling place and permit each scrutineer to be present at the polling place during the hours for the taking of the vote and while the ballots are being counted;*
- (h) *give special directions or instructions as he may deem necessary for the proper conduct of the vote.*

...

35 *Noncompliance with any of these regulations shall not render any proceedings void unless the board shall so direct.*

Analysis and Conclusion:

[15] *The Trade Union Act* requires that employees now vote prior to certification applications being granted by this Board. Simply put, representational votes must be held (by secret ballot) to determine whether or not the applicant trade union enjoys the support of a majority of employees in the subject workplace. These representational votes are supervised by agents appointed by the Board. It is the policy of this Board that representational votes ought to be conducted as soon as practicable upon the receipt of any application received by the Board wherein the representational question arises. See: *Button v. United Food and Commercial Workers, Local 1400 and Wal-Mart Canada Corp.*, 2010 CanLII 90104 (SK LRB) (Dated:

December 9, 2010, corrigendum released March 31, 2011). See also: *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 & Edgewood Forest Products Inc.*, [2013] 229 C.L.R.B.R. (2nd) 108, 2013 CanLII 2966 (SK LRB), LRB File No. 062-13.

[16] The agents who have been appointed by the Board to supervise these representation votes utilize both traditional polling and mail-in balloting procedures depending on the circumstances of a particular workplace. In *International Union of Heat and Frost Insulators and Allied Workers, Local 119 v. Northern Industrial Contracting Inc.*, 2013 CanLII 67367 (SK LRB), LRB File Nos. 183-13 & 227-13, this Board found that mail-in balloting is an acceptable voting procedure. In coming to this conclusion, the Board noted that the use of mail-in balloting represents a deviation from the accepted polling procedures associated with traditional polling, including the fact that no fixed polling place is utilized and that scrutineers can not be present during the voting process, as eligible voters complete their ballots at the location of their choosing. Nonetheless, the Board concluded that the benefits of mail-in balloting justified the use of this alternate voting procedure. The benefits cited by the Board were efficiency and increased voter participation.

[17] However, in doing so, the Board also expressed its expectation that, when a mail-in balloting process is used, our agent will use reasonable efforts to ensure that the list of eligible voters is accurate, as is the mailing addresses for eligible voters. In the Board's opinion, our primary goal, irrespective of the voting procedure utilized by our agents, is to ensure that all eligible voters have a reasonable opportunity to participate in the representation question. While this goal is tempered by the desire for efficiency and the need for finality in determining the representational question, there can be no doubt of this Board's primary concern is that employees are afforded an adequate opportunity to vote on the fundamental question of whether or not they wish to be represented by a trade union in their future dealings with their employer.

[18] This Board recently had occasion to comment on the conduct of representational votes, on the goals and expectations of the Board associated therewith, and on the discretion granted to our agents in conducting representational votes in *United Food and Commercial Workers, Local 1400 v. 303567 Saskatchewan Ltd. (c.o.b. as Handy Special Events Centre)*, (February 28, 2013), LRB File Nos. 064-12, 075-12 & 081-12:

[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.

[19] In the *Handy Special Event* case, the agent appointed by the Board had been contacted by two (2) employees on the day of the representation vote. These two (2) employees had been sent to Regina by their employer and everyone assumed that they would be able to return to Saskatoon in time to participate in the vote. However, by noon of that day, it had become apparent that, through no one's fault, they would not be able to return to Saskatoon before the close of polls. Based on this information, the agent permitted the employees to vote while they were in Regina. The employer filed an objection to the conduct of the representational vote and argued that permitting these two (2) employees to vote in Regina was an irregularity that tainted the voting process. The employer had argued that another employee, Ms. Begalke, was away on holidays on the day of the vote and yet no special arrangements were made for her to cast her ballot after she returned⁴. In the *Handy Special Event* case, the Board was satisfied that our agent had the right to modify the established voting procedures and made the following observations:

[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.

[20] This Board's decision in the *Handy Special Event* case is indicative of the discretion granted to our agents in the conduct of representational votes. This discretion arises out of the authority granted pursuant to s. 26(h) of the Regulations. In our opinion, the discretion

⁴ It should be noted that Ms. Begalke did not contact the Board's agent or otherwise indicate that any special arrangements were necessary for her prior to or during the voting process. The concern about Ms. Begalke's ability to vote (because she was away on holidays) only arose after the representational vote was complete.

granted to our agents in the conduct of representational votes promotes efficiency in our proceedings and thus labour relations in the province generally. There can be little doubt that our proceedings would be significantly delayed if the Board attempted to define the parameters for each representational vote. Doing so would defeat the purpose of having pre-hearing votes in the first place by exposing employees to the inevitable pressures and not-insignificant risk of coercion and/or improper influences while waiting for a panel of the Board to determine the appropriate parameters for the vote. In our opinion, timely pre-hearing representational votes are an important policy of the Board and our agents require some degree of discretion to enable these votes to be conducted within the time frame desired by this Board.

[21] For the same reason that our agents require discretion in establishing the parameters for representational votes depending on the circumstances of each particular workplace, the decisions they make deserve an element of deference. Our proceedings would become highly pedantic and pressure would mount for our agents to testify if this Board was to adopt an approach of routinely reviewing the minutia of each and every decision made by our agents in the conduct of representational votes. In our opinion, neither of these results are desirable. As we have noted, our agents are called upon to make difficult decisions and they often must do so within short time constraints. While this does not mean that errors will not occur, in our opinion, the lens through which the conduct of a representational vote must be viewed are whether or not the actions of our agents were reasonable in light of circumstances of the particular workplace and the Board's expectation of expediency in the conduct of those votes.

[22] In coming to this conclusion, we acknowledge that the decisions of the British Columbia Labour Relations Board in *Western Shopping Centre, supra*, in *Minolta Business Equipment, supra*; and in *NW Energy (Williams Lake) Corp, supra*, as well as the decision of the Ontario Labour Relations Board in *Timothy v. London and District Service Workers' Union, supra*, are indicative of a greater emphasis on the so-called twin goals of certainty and expedition. These decisions place much emphasis on the desire that, once the parameters of a representational vote have been settled, they remain settled and not be modified. In our opinion, these decisions are distinguishable because these cases involved traditional polling procedures (and not mail-in balloting). In our opinion, the use of mail-in ballot procedures requires a degree of flexibility on the part of our agents to correct for erroneous address information from

employers (which is surprisingly common), as well as to mitigate problems in mail delivery. When traditional polling is used, these types of variables are not an issue.

[23] In our opinion, greater guidance can be found in the decision of the Newfoundland and Labrador Labour Relations Board in *Keeping v. CUPE, Local 1860, supra*, and the decision of the British Columbia Labour Relations Board in *Intercom Security v. Hospital Employees Union, supra*. Both of these cases involved mail-in balloting procedures and both of these cases demonstrate the need for some degree of flexibility to be exercised in conducting representational votes by mail-in ballots. In the *Keeping* decision, the Newfoundland and Labrador Board accepted five (5) late ballots that had arrived after the close of polls (after the prescribed return date) but had been cast and were post-marked (i.e.: had been mailed by the respective employees) prior to the close of polls. In the *Intercom Security* decision, the British Columbia Board concluded that an employee (Mr. Meade) should be permitted to cast a late ballot because his first ballot arrived damaged and the officer conducting the vote advised him not to complete that ballot and that another ballot would be sent. When that second package did not arrive, the BC Board concluded that Mr. Meade did not have a reasonable opportunity to vote and thus he should be allowed a new opportunity to cast a ballot on the certification vote. Both of these cases demonstrate that, under appropriate circumstances, the established parameters for a representational vote may be changed to permit eligible employees to vote. In other words, both of these cases demonstrate that the need for certainty and expediency in the conduct of representational votes must be tempered by some degree of flexibility and discretion to account for problems associated with the delivery of ballots to eligible voters and the return of those ballots within the prescribed deadlines.

[24] As indicated, the lens through which the conduct of our agents must be viewed is the reasonableness of his/her decisions in attempting to provide eligible employees with an adequate opportunity to vote while at the same time recognizing the need for efficiency and expediency. At the outset, our agents are expected to establish procedures and parameters for the representational vote that attempt to provide an adequate opportunity for the majority of eligible voters to cast their ballots. When mail-in balloting is used and errors are discovered in the voters list or the mailing addresses of eligible voters, then measures should be taken to rectify such errors if they are discovered prior to the end of voting. In doing so, it may well be necessary to modify the established procedures for voting as these are extenuating circumstances. If new voting packages need to be sent out, it is likely that new deadlines will

need to be established to permit the affected employees an adequate opportunity to vote. When mail-in balloting is used, these are permissible modifications to the voting procedure and our agents have the discretion to make such changes if they deem it necessary for the proper conduct of the vote.

[25] As we noted in the *Handy Special Event* case, it is our agents who determine how, when and where representational votes will be conducted. We are satisfied that our agents have discretion to modify those parameters in extenuating circumstances. For example, if there is a delay in an employee receiving his/her package, it may be necessary to grant a modest extension to the deadline for returning that ballot. Similarly, a late ballot may be accepted if it is post marked prior to the prescribed deadline. All of these are extenuating circumstances and the concomitant modifications to the original parameters for the vote to cure these types of defects are usually quite minor (a modest extension to the deadline). If extensions or special arrangements are made in response to extenuating circumstances, they must be modest and should, to the greatest extent possible, not delay the voting process. On the other hand, the established voting procedures should not be modified to aid employees who are merely careless as to their democratic rights (if they don't check their mail until after voting is over or if they forget to complete their ballots within the prescribed time). Furthermore, there is neither a guarantee, nor expectation, of perfect democracy in the conduct of representational votes. It is entirely possible that some employees may not be able to exercise their democratic rights no matter how much care is taken in planning the conduct of a representational vote.

[26] In the present case, we are satisfied that Mr. McIntosh contacted our agent prior to the prescribed deadline and expressed a problem with the delivery of his ballot. Our agent was satisfied that the problem Mr. McIntosh had experienced was sufficient to justify an extension. In our opinion, our agent had the discretion to modify the established procedures and, under these circumstances, we are satisfied that this discretion was reasonably exercised. While it is not necessary that we be satisfied that our agent's decision was correct, we do note that Mr. McIntosh demonstrated a desire to participate in the representational question and that he contacted our agent before the prescribed deadline (which is an important factor). It is also noted that a similar extension had been granted to another employee and, thus, the extension that was granted did not delay the process. In all the circumstances, it is not possible to conclude that the decision of our agent was unreasonable or that it was tainted by any desire

other than to permit an eligible employee an opportunity to participate in the representational question.

[27] Furthermore, this Board notes that the ballots have already been tabulated and, thus, the only remedy available to this Board is to conduct a new representational vote if we accept the Union's argument. If the Union's objection had been raised prior to the tabulation of the votes, certainly more remedial options would have been available. For example, Mr. McIntosh's ballot could have been sequestered to determine if it was statistically significant, as was done in the *Handy Special Event* case. However, because the vote has already been tabulated, to be successful in its application, in our opinion, the Union must demonstrate that the alleged impropriety in the conduct of the representational vote was of a sufficient magnitude to taint the entire voting process. With all due respect to the position advanced by the Union, no irregularity can be found in the conduct of the representational vote; let alone conduct sufficient to taint the entire process. The wishes of the eligible employees in this particular workplace were captured and have decided the representation question. To the extent that any irregularity in the conduct of the representational vote has occurred, we are not satisfied that it ought to render the entire process void. In our opinion, repeating the representational vote a third time is more likely to undermine the integrity of our voting processes than is accepting Mr. McIntosh's late ballot.

[28] For the reasons, the Union's objection to the conduct of the representational vote is dismissed.

[29] While Board Member Ahl concurs with these Reasons for Decision, it is noted that Board Member McCormick dissents.

DATED at Regina, Saskatchewan, this 13th day of February, 2014.

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson

Dissent:

[30] 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 I dissent as to the appropriate disposition of the Union's objection. In my opinion, the Board agent erred in accepting the ballot of Mr. McIntosh and another representational vote ought to be conducted.

[31] The parameters of the representational vote that were originally established by the Board agent were both clear and reasonable, including the deadline for returning ballots. While I am satisfied that the Board agent has a limited authority to extend the prescribed voting period, I am not satisfied that the circumstances of Mr. McIntosh's ballot justified the extension he was granted. Mr. McIntosh failed to check his mail box when he knew (or ought to have known) that a representational vote was taking place. In my opinion, the fact that he failed to check his mail box is not an extenuating circumstance sufficient to justify an extension of the prescribed voting period. Mr. McIntosh had an adequate and reasonable opportunity to vote and the fact that an employee neglects to check his/her mail box does not justify an alteration to the established timelines for the vote; just as being on holidays and out of the province did not justify an extension for Ms. Begalke in the *Handy Special Event* case.

[32] Furthermore, as there was no evidence that Mr. McIntosh marked and attempted to return his ballot prior to the established deadline (i.e.: there was no evidence as to the post mark (if any) that was indicated on the return envelope for Mr. McIntosh's ballot), I am not satisfied that the decision of the Newfoundland and Labrador Labour Relations Board in *Keeping v. CUPE, Local 1860, supra*, is applicable.

[33] In my opinion, the Union's Objection should be sustained and a new representational vote should be conducted.

John McCormick, Board Member