

August 14, 2023

International Association of Bridge, Structural,
Ornamental, and Reinforcing Ironworkers, Local 771
c/o Gary Caroline, Caroline Law
522 Arbutus Drive
Mayne Island, BC V0N 2J1
Via email

Black Iron Steel Erectors Ltd.
Box 755
Dalmeny, SK S0K 1E0
Via email

Dear Mr. Caroline and Black Iron Steel Erectors Ltd.:

**Re: LRB File No. 110-23; Application for Bargaining Rights
International Association of Bridge, Structural, Ornamental, and
Reinforcing Ironworkers, Local 771 v Black Iron Steel Erectors Ltd.**

[1] These are my reasons for issuing a direction for vote in an application for bargaining rights on behalf of the International Association of Bridge, Structural, Ornamental, and Reinforcing Ironworkers, Local 771 [Union] with respect to Black Iron Steel Erectors Ltd. [Employer].

[2] By way of brief background, the Union filed its application on July 26, 2023, indicating that there was approximately one employee in the proposed bargaining unit, described as:

That all Ironworkers, Ironworker Apprentices, Ironworker Journeyman, Ironworker Foreman, And Ironworker General Foreman engaged in the construction industry as defined in section 6-65 of the Saskatchewan Employment Act Employed by Black Iron Steel Erectors Ltd.¹

[3] The Employer confirmed the sole employee identified by the Union as falling within the proposed bargaining unit as of July 26, 2023.

[4] As of August 1, 2023, I was satisfied that the Union had met the support threshold required by s. 6-9(2) of *The Saskatchewan Employment Act*:

¹ Application for bargaining rights filed July 26, 2023, para 3.

6-9(1) *A union may, at any time, apply to the board to be certified as bargaining agent for a unit of employees appropriate for collective bargaining if a certification order has not been issued for all or a portion of that unit.*

(2) *When applying pursuant to subsection (1), a union shall:*

(a) *establish that 45% or more of the employees in the unit have within the 90 days preceding the date of the application indicated that the applicant union is their choice of bargaining agent; and*

(b) *file with the board evidence of each employee's support that meets the prescribed requirements.²*

[5] On August 1st, I issued a direction for vote in my capacity as the executive officer for the Board.³ On the same day, the Board's agent mailed out the notice of vote, with it indicating that there was one eligible voter in the proposed bargaining unit. The notice indicated that the Board would require the voter's ballot to reach the Board's office by August 15, 2023, being 14 days from the date the voter's ballot was mailed to them.

[6] Pursuant to s. 24(2) of *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021*, the Employer had 10 business days to file a reply to the Union's application for bargaining rights, after having been provided same by the Board. Having been provided with the Union's application on July 26th, this gave the Employer until August 11th to file a reply.⁴ The Employer did not do so.

[7] Having set out this background, I will explain my reasoning for why I considered it appropriate to direct a vote in in the within application.

[8] I begin by noting that in 2008, with amendments to *The Trade Union Act*,⁵ the Legislature removed the Board's discretion under that statute to not order a vote with respect to a certification application:

² *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [*The Saskatchewan Employment Act*], s 6-9.

³ Under the Board's delegation resolution I have delegated authority to direct votes pursuant to Part VI of *The Saskatchewan Employment Act*: <https://www.sasklabourrelationsboard.com/policy-statutes-and-regulations/delegation-of-board-powers-under-the-saskatchewan-employment-act>.

⁴ The Board's office was closed on Friday, August 4th and Monday, August 7th.

⁵ *The Trade Union Amendment Act, 2008*, SS 2008, c 26.

[14] In 2008, The [Trade Union Act](#) was amended to institute a requirement that employees vote prior to certification being granted by this Board. A representational vote was not mandatory under the legislation prior to 2008. While the Board had the authority to order that a representational vote be conducted prior to the amendment, the long standing jurisprudence of the Board was to accept card evidence of support and to only direct a representational vote in a certification application in limited circumstances (not relevant to the present application). With the 2008 amendment to the [Act](#), Saskatchewan adopted a mandatory vote regime, wherein the Board must now direct that a representational vote be taken (by secret ballot) in certification applications to determine what trade union, if any, has the support of a majority of employees in a workplace. In doing so, the legislature moved Saskatchewan from what had previously (and somewhat inaccurately) been referred to as an “automatic certification” system to a “mandatory vote” system. Since that time, the Board has appointed agents to supervise our representational votes and our agents are given some discretion in how these votes are conducted.⁶

[9] It is well-known that the Board aims to conduct representation votes promptly once a certification application has been filed. In 2013, in *Northern Industrial*, the Board explained this as follows:

[20] To be specific, our policy objective is to have representational votes conducted within days (preferably as few as 5 to 10 days) following the receipt of any application whether (*sic*) the representational question arises (and where the application appears on its face to be in order and meets the threshold requirements of the Act). In our opinion, doing so captures the wishes of employees on a timely basis and provides the best protection from undue influences and coercion, intentional or otherwise. Should an employer desire to communicate facts or opinions to their employees, the process used currently by the Board provides a modest opportunity to do so. In light of the not-insignificant risks associated with an employer attempting to communicate with employees about collective bargaining at this sensitive period of time, in our opinion, the amount of time provided is sufficient. Certainly, in the present application, the Employer would have had more than a sufficient period of time within which to communicate its views to its employees if it desired to do so.⁷

⁶ *International Association of Heat and Frost Insulators and Allied Workers, Local 119 v Northern Industrial Contracting Inc*, 2013 CanLII 67367 (SK LRB) [*Northern Industrial*], at para 14.

⁷ *Northern Industrial*, at para 20.

[10] In 2014, *The Trade Union Act*⁸ was repealed with the enactment of *The Saskatchewan Employment Act*.⁹ The latter maintains the requirement for representation votes with respect to certification applications, generally, through ss. 6-12 and 6-13.¹⁰ In addition, however, it includes s. 6-22(2), which states:

6-22 ...

*(2) A vote by secret ballot is not required among employees in a bargaining unit consisting of two employees or fewer.*¹¹

[11] A similar provision did not exist in *The Trade Union Act* prior to its repeal.

[12] The Board has interpreted s. 6-22(2) as permitting it to issue certification orders without a vote for bargaining units consisting of one or two employees. In practical terms, this has meant that where the parties to a certification application agree upon the one or two employees who fall within the scope of the proposed bargaining unit on the date the application is filed *and* the Board is satisfied that there is unanimous support amongst those employees for the application, certification orders have been issued without a vote. I acknowledge that the Union has obtained orders in such circumstances on previous occasions.¹²

[13] Notably, the Board has never, to my knowledge, adopted the abovementioned practice with respect to rescission applications initiated by employees under s. 6-17 (applications to cancel a certification order). A vote has been required for every such application, regardless of the number of employees in the unit when the application is filed (i.e., one or two) and their unanimous support for it.

[14] The effect of the Board's different approaches to certification and rescission applications has been that employees have always had the opportunity to vote their conscience after a rescission

⁸ *The Trade Union Act*, R.S.S. 1978, c T-17 [*The Trade Union Act*].

⁹ *The Saskatchewan Employment Act*, s 10-11.

¹⁰ *The Saskatchewan Employment Act*, ss 6-12 and 6-13.

¹¹ *The Saskatchewan Employment Act*, s 6-22(2).

¹² See, for example: LRB File No. 078-19 (*Base Reinforcing Ltd.*: Amrud, K.C., Wainwright, McCormick, order issued April 29, 2019); LRB File No. 090-19 (*Phoenix Crane and Erectors*: Amrud, K.C., Wainwright, McCormick, order issued April 29, 2019); LRB File No. 094-20 (*AVC Industrial Inc.*: Mysko, Polsom, Ewart, order issued June 24, 2020); LRB File No. 034-22 (*JLG Industries Inc.*: Amrud, K.C., Holmes, Tolley, order issued March 24, 2022).

application is filed, but have not always had the same opportunity with respect to a certification application.

[15] This is significant, especially having regard to the Board's decision in *Arain*.¹³ In *Arain*, the Board determined that it is unnecessary to allow an employee to withdraw their support (which is relied upon to file a certification application), because the employee has the opportunity to vote:

[17] The Board's policy with respect to withdrawal of support originates under the former Trade Union Act which was repealed and replaced with the SEA. The question is whether, under the revised rules which require a secret ballot vote for certification or decertification, does such a policy remain appropriate. The Applicant argues that it is not. The Union argues that it is. For the reasons which follow, we agree with the position taken by the applicant in this case.

[18] Under the former[1] provisions of The Trade Union Act, the certification process, but not the decertification process, was a "card check" system. That is, a trade union would submit a set of support cards and if those cards showed that 50% +1 of the employees of an employer supported the application, it would be granted. Additionally, where the level of support reached 25%, the Board would order a vote to determine if the employees were supportive of the trade union's application. Decertifications were a totally different story. If sufficient support was submitted the Board would order a vote.

[19] It was not until amendments were made to The Trade Union Act in 2008 that a secret ballot vote was implemented for both certifications and decertifications upon demonstration of a 45% support level. These provisions were carried forward into the SEA.

[20] The ability to withdraw support prior to the filing of an application made sense under the "card check" system because there was no other opportunity for someone who felt that they may have made a hurried decision, or signed the card under peer or other pressure to indicate their true position to the Board prior to a certification being issued. With the 2008 amendments and their carry forward to the SEA, this ability to withdraw became unnecessary because employees had the opportunity to express themselves confidentially and secretly through the voting process.

[21] With the introduction of the secret ballot process, the check valve of the repudiation of support is no longer necessary and can be removed from the Board's process. If an individual wishes to withdraw their support they will have that opportunity when the Board conducts its voting process, assuming, of course, the threshold is initially met.¹⁴

[16] My direction of a representation vote for the within application conforms with the Board's reasoning in *Arain*. It also conforms with how the Board has dealt with all rescission applications,

¹³ *Arain v United Steel and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union*, 2018 CanLII 38249 (SK LRB) [*Arain*].

¹⁴ *Arain*, at paras 17-21.

regardless of unanimity of support for the application in a one or two person bargaining unit. The employee(s) in the (proposed) bargaining unit get(s) the opportunity to reflect and vote their conscience. Respectfully, a prompt directed vote should be anticipated in any certification or rescission application.

[17] These reasons are written in my capacity as the executive officer for the Board for the purposes of s. 6-97.¹⁵

Yours truly,

Michael J. Morris, K.C., Chairperson
Labour Relations Board

¹⁵ *The Saskatchewan Employment Act*, s 6-97.