



March 5, 2001

**Directed to:** Blair Chahley Seveny - Leanne Chahley/Yvon Seveny, Blakely & Dushenski - Micah J. Field, Burnet Duckworth & Palmer - Daniel J. McDonald Q.C., McLennan Ross - David J.R. Ross Q.C., J.V. Driver Installations Ltd. - Bill Elkington, International Association of Bridge Structural, Ornamental & Reinforcing Iron Workers, Local 720 - George Papineau, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 488 - Cam Stilwell, United Brotherhood of Carpenters and Joiners of America, Local Union No. 1325 - Vince Burton, Christian Labour Association of Canada - Rod Schenk, Trade Union Coalition of Alberta - Adrien Graci

**RE: Applications for certification as bargaining agent brought by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 488, Edmonton, Alberta affecting J.V. Driver Installations Ltd., Edmonton, Alberta File Nos. CR-02875, CR-02876**

**RE: Applications for certification as bargaining agent brought by the International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Machinery Movers, Riggers and Welders, Edmonton, Alberta affecting J.V. Driver Installations Ltd., Edmonton, Alberta File Nos. CR-02857, CR-02858, CR-02859, CR-02860**

**RE: An application for certification as bargaining agent brought by the United Brotherhood of Carpenters and Joiners of America, Local Union No. 1325, Edmonton, Alberta affecting J.V. Driver Installations Ltd., Edmonton, Alberta CR-02866**

---

[1] In a series of Certification applications [1], the Unions applied for certification of a number of bargaining units of employees of J.V. Drivers Installations Limited. The Employer objects to these applications saying, among other arguments, that the applications are untimely as it already has a collective agreement with the Christian Labour Association of Canada (“CLAC”).

[2] In a preliminary application before the Board, the Employer and CLAC argued that the Board should not conduct a vote into the certification applications because of their timeliness objections. They argue that the Board has no authority to order a vote unless it is satisfied the Union enjoys 40% support of the employees in the bargaining unit applied for and the application is timely. They contend that the voting requirements set out in Information Bulletin #14 on the Timing of a Vote speak to the “requirements” for an application having been met. As “requirements” is plural, there must be more than one requirement contained in the *Code* that must be met for the Board to order a vote.

[3] We disagree with this argument. The *Labour Relations Code* outlines only one threshold requirement that must be met before ordering a vote – that of a minimum 40% support of the employees in the bargaining unit applied for. Section 32 sets out the Board’s inquiry into a certification application. Under this section, the Board cannot grant an application for certification unless it is satisfied that each of the components of Section 32 have been met. This section reads:

32(1) *Before granting an application for certification the Board shall satisfy itself, after such investigation as it considers necessary, that*

- (a) *the applicant is a trade union,*
- (b) *the application is timely,*
- (c) *the unit applied for, or a unit reasonably similar thereto, is an appropriate unit for collective bargaining,*
- (d) *the employees in the unit the Board considers an appropriate unit for collective bargaining have voted, at a representation vote conducted by the Board, to select the trade union as their bargaining agent, and*
- (e) *the application is not prohibited by section 36.*

(2) *Before conducting a representation vote the Board shall satisfy itself, on the basis of the evidence submitted in support of the application and the Board's investigation in respect of that evidence, that at the time of the application for certification the union had the support, in the form set out in section 31(a) or (b), of at least 40% of the employees in the unit applied for.*

(3) *The Board shall conduct any representation vote and shall complete its inquiries into and consideration of an application for certification as soon as possible.*

[4] In the application before us, there is no dispute that the applicant is a trade union, and that the unit applied for is an appropriate unit for collective bargaining.

[5] With respect to the timing of the vote, Section 32(3) demands that the Board conduct the representation vote and complete its other inquiries into the certification application as soon as possible. Thus it specifies a two pronged approach to certification applications. The first is the conduct of the representation vote. The second is the inquiry into the balance of the application. Both aspects must be done in a timely fashion. Of course the Board has found much benefit in conducting the representation vote as quickly as possible and, if there are then any objections to that vote, to seal the ballots and have the objections dealt with subsequent to the vote. This eliminates many unfair labour practices and eliminates gerrymandering of the voting contingent by stopping unjust dismissals or transfers and the like. It also results in a more accurate reflection of the employees' wishes at the time of the certification application as opposed to months down the line when the voting contingent may well change or certainly the feelings of the employees may have altered from the original certification application. Thus the Board has found a timely vote to be very effective and to create labour stability in the workplace.

[6] Section 32(2) sets out how a Union qualifies for a representation vote. This section provides that the Board must satisfy itself, on the basis of the evidence submitted in support of the application and the Board's own investigation in respect of that evidence, that the Union enjoyed at least 40% support of the employees in the unit applied for. If the 40% threshold has been met, the Board orders the vote. Nothing in Section 32(2) specifies that the Board must be satisfied as to the other requirements set out in Section 32(1) before ordering the vote. The only requirement set out in Section 32(2) is that of the threshold 40% support. The other matters set out in Section 32(1) are pre-requisites to the application itself being granted and are dealt with

after the vote has been conducted.

[7] As indicated above, this process protects the integrity of the vote as an indicator of the true wishes of the employees.

[8] In coming to this conclusion, we have considered the Employer's argument that *Construction Workers Union (CLAC), Local No. 63 and Construction Workers Association (CLAC), Local No. 65 v. International Union of Operating Engineers, Local Union No. 955 and Vertex Construction Services Ltd.*, compels a different result. There is no doubt that, as noted in *Vertex* an untimely application will bar certification. What the Employer and CLAC suggest here, however, is that an untimely application bars a vote. We disagree for the reasons set out above. There is simply no statutory basis to proceed as the Employer and CLAC suggest. The legislation indicates that the only pre-requisite to a vote is the 40% support. To the extent Information Bulletin #14 suggests a different approach, it is incorrect and must be changed.

[9] Nor do we find *Hat Pipeline Construction, A Division of Rattler Resources Ltd. v. United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canada, Local Union No. 488* [1992] Alta.L.R.B.R. 1 persuasive on this issue. That decision was speaking about the ballots being sealed and the Board addressing issues in dispute after the vote. It did not address when the vote occurs in relation to the required elements of Section 32(1).

[10] In light of the above interpretation of Section 32 we find the Board does not first have to be satisfied that the application is timely to order a certification vote. As a result, we ordered that the certification vote proceed and the ballots be sealed pending the results of the Board's inquiry into the certification application and the components contained in Section 32(1).

Mark L. Asbell, Chair