



IN THE MATTER OF:

THE LABOUR RELATIONS CODE

- and -

CERTAIN EMPLOYEES OF BOSCO HOMES  
A SOCIETY FOR CHILDREN AND ADOLESCENTS

Applicant

- and -

ALBERTA UNION OF PROVINCIAL EMPLOYEES, and  
BOSCO HOMES A SOCIETY FOR CHILDREN AND ADOLESCENTS

Respondents

FILE NO: RV-00802

**BOARD MEMBERS**

Gerald A. Lucas, Q.C.	- Vice Chair
Deborah M. Howes	- Vice Chair
Reg Basken	- Member

**APPEARANCES**

For the Applicant: Raylene Y. Palichuk (Counsel)

For the Respondent Bosco Homes: David J. Ross, Q.C. (Counsel), Christopher J. Lane (Co-Counsel)

For the Respondent AUPE: Lyle S.R. Kanee (Counsel)

## REASONS FOR DECISION

### *Application*

[1] A seemingly straight forward revocation application has given rise to an interesting problem over the interpretation of section 52(3)(b).

[2] On February 19, 2002, the Board received an application for revocation from a group of certain employees at Bosco Homes A Society for Children and Adolescents (these employees are referred to as the "Applicant"). Apparently the parties agreed in connection with previous proceedings before the Board that the employer is comprised of both Bosco Homes A Society for Children and Adolescents, as well as a related wholly owned organization called ABH Child, Adolescent & Family Services (together they are referred to as the "Employer") and this arrangement is to apply to these proceedings.

[3] A certificate as bargaining agent for an agreed "all employee" unit of the Employers' employees was issued to the Alberta Union of Provincial Employees (referred to as the "Union") pursuant to a decision of the Board dated April 17, 2001. That certificate was back dated to September 12, 2000, being the date on which the Board had ordered a count of employee ballots cast in an earlier representation vote and had ordered the issuance of a certificate to the Union be delayed pending determination of a number of complaints filed by the Employer. On May 8, 2001 the Employer filed a judicial review application with respect to a portion of the Board's April 17, 2001 decision.

[4] The report of the Board's Officer regarding the February 19, 2002 revocation application indicates that at the time of the application at least 40% of the employees in the unit had signed the petition in support of the application; it recommends that a bona fide mistake made by the Applicant in naming the Union be amended; and, although it suggests the application would be timely under section 52(3)(a), it concludes that in view of the Employer's judicial review application it was not timely under section 52(3)(b) and therefore recommends the application be dismissed. Both the Applicant and the Employer objected to the Officer's conclusion that the application was time barred because of the judicial review application.

### ***Hearing***

[5] The Board conducted a hearing into the application on March 11, 2002, at which time none of the parties called any evidence but confirmed they were agreed that as of the date of the application more than 10 months had elapsed since the Union was certified and no collective agreement was in force. No other objections were raised with the Officer's report apart from that which dealt with the effect of the judicial review application. Accordingly, counsel proceeded with the presentation of their respective client's submissions over the meaning and effect of section 52(3)(b). At the conclusion of the hearing the Board indicated it was reserving its decision but, in accordance with Board practice and since it was satisfied that, apart from the timeliness issue, the uncontested evidence set forth in the Officer's report was sufficient to satisfy the other requirements of section 53, a representation vote of the employees in the unit would be conducted with the ballots to be sealed until such time as the Board otherwise orders.

### ***Employer's Submission***

[6] The Board has not previously determined the meaning to be given to section 52(3)(b), although in *CLAC Locals 63 & 65 v. Vertex Construction Services et al.* [2000] Alta.L.R.B.R 51 it gave consideration to the meaning of the related certification provision, section 37(2)(c) [formerly 35(2)(c)]. What the Board decided in that case was that the five subsections of section 37(2) are disjunctive and that if an application was timely under one of those subsections it could not simultaneously be found to be barred under another of them. However, what is missing from that *Vertex Construction* decision is any consideration of when the extension of the 10 month challenge free period created by section 37(2)(b) is to commence or can be said to be "triggered".

[7] It is to be kept in mind that section 52(3)(b) creates a bar preventing employees from applying to exercise their right to disassociate. The Supreme Court of Canada confirmed in *R. v. Advance Cutting & Coring Ltd.*, (2001) 205 D.L.R.(4th) 385, what appeared to have been the effect of the majority decision in its earlier ruling in *Lavigne v. Ontario Public Service Employees Union*, (1991) 81 D.L.R.(4th) 546, that the fundamental freedom of association recognized by section 2(d) of the *Canadian Charter of Rights and Freedoms* includes the negative freedom not to associate. Although we are not here dealing with a *Charter* challenge, the effect of those decisions highlights that public policy considerations require that the bar created by section 52(3)(b) be interpreted strictly so as not to interfere with the recognized freedom possessed by the employees. Also, the statement of the Supreme Court of Canada, in *Re Bradburn and Wentworth Arms Hotel*,

(1978) 94 D.L.R. (3d) 161, to the effect that public policy considerations require that statutory open periods during which certification applications can be made are to be protected, similarly requires the open period in section 52(3)(a), during which a revocation application may be made, should be protected by strictly interpreting the bar created by section 52(3)(b).

[8] This result, that legislation such as section 52(3)(b) that limits the right of individuals to pursue a revocation application under section 52(3)(a) is to be strictly construed, is in keeping with the applicable principles of statutory interpretation: see *Driedger on the Construction of Statutes*, 3rd ed., by Ruth Sullivan, at 370-1, and *The Interpretation of Legislation in Canada*, 3rd ed., by Pierre-André Côté, at 466-7.

[9] Applying these principles to the interpretation of section 52(3)(b) it follows the extension of the 10 month challenge free period does not begin merely by filing a judicial review application in the Court, as that is not what the provision states. Rather, the period only begins when the Union's certification is "... questioned or reviewed by the Court...". Obviously, the purpose of section 52(3)(b) is to deal with a time period over which the parties have no control and that time begins after the parties have made their submissions to the Court and the Court then reserves its decision. On this basis the revocation application made by the Applicant is timely because the judicial review process initiated by the Employer on May 8, 2001 has not yet reached the stage at which the previous certification of the Union could be considered as a matter being "questioned or reviewed by the Court".

### ***Applicant's Submission***

[10] In addition to adopting the arguments of the Employer, the Applicant stresses that the right or freedom of individuals to disassociate cannot be denied them by the actions of others, especially since they are not parties to whatever court proceedings the Employer may have initiated.

[11] The Board's Information Bulletin #13, in describing the timing of a revocation application, indicates employees can apply during any one of five open periods, which are described disjunctively. The Applicant read this and followed it when submitting the application 10 months after the certification had taken place and no collective agreement was in force. The Officer agreed the application was otherwise timely were it not for the judicial review proceedings but does not explain how it was this subsequent time bar could deprive the Applicant of the right to make application during the period described in section 52(3)(a). If the Board is to interpret section 52(3)

as recommended by the Officer, it will fail to give section 52(3)(a) the broad and purposive interpretation it properly deserves and will, instead, deprive employees of their rights by failing to limit section 52(3)(b) to the strict interpretation it warrants. The Board often speaks of the importance of the right of employees regarding the selection of their bargaining representatives and it should not lightly interfere with that right.

[12] In *Dolphin Delivery Ltd. v. C.B.R.T.* (1993) 23 CLRBR (2d) 270, the Canada Labour relations Board states, at 281:

From the perspective of individual rights, employees' rights turn on their basic freedom to belong to the union of their choice: s. 8(1). Conversely, there is the right to change unions or to do away with union representation. These rights are directly linked in the North American system of free bargaining to what is commonly referred to as the "open period". In our Code this is governed by s. 24 (certification) and by s. 38 (revocation). In both cases the open period varies depending upon the existence or the term of a collective agreement. At regular intervals, employees take advantage of the possibility of changing or revoking unions as bargaining agents...

The recommendation of the Officer as to the meaning to be given to section 52(3)(b) would deprive the employees of their right to do away with union representation.

[13] Section 10 of the *Interpretation Act* requires that an enactment be construed as being remedial and be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects. As a consequence, section 52(3)(a) is to receive a liberal interpretation because it confers rights, but section 52(3)(b) is to be strictly construed as it deprives employees of rights. This contrast between liberal and strict construction is described in the *Driedger* text, cited by the Employer, at 355-7.

### ***Union's Submission***

[14] The Union disagrees with the Employer's assertion that the Board, in its *Vertex Construction* decision, did not interpret section 37(2)(c) [formerly 35(2)(c)]. In that case the decision of the Howes Panel (which was partly varied on reconsideration by the Lucas Panel) is set out at page 57 of the Lucas Panel decision relied on by the Employer, which in part states:

The second scenario is where a certificate exists. It has two subsets. In the first subset, the union is newly certified and is given a ten month challenge free period in

which to attempt to negotiate a first collective agreement. If the ten months expire and no collective agreement is in place, a union may seek to certify these same employees.

The second subset is merely an extension of the first because one of the parties has filed an application for judicial review of the Board's decision to certify a bargaining agent. It extends the time frame within which the union can attempt to reach a collective agreement to ten months after the Court's award on the Board's decision to certify...

This purpose of section 37(2)(c), to extend the challenge free period until 10 months after the Court's award, was not varied by the Lucas Panel as indicated by what that Panel states, in part, at paragraph [26]:

...As mentioned by the Prior Panel, that subsection is intended to extend the time period during which the union and employer can attempt to reach a collective agreement, until 10 months after the conclusion of judicial review proceedings. But that does not mean the parties are to refrain from bargaining during the period of the judicial review proceedings and, if a collective agreement is reached before the conclusion of the Court proceedings, the purpose of the subsection has been served....

[15] Based on these comments, what can reasonably be implied as to the meaning of section 52(3)(b) is that no group of employees may apply for revocation until 10 months after the Court rules on the Employer's judicial review application. That is, section 52(3)(a) gives the Union a 10 month period of stability in which to carry out collective bargaining free of challenge from any others. Section 52(3)(b) recognizes that the judicial review application creates a cloud hanging over the collective bargaining process which prevents the intended, and unchallenged, period of bargaining from occurring. Although the employees may be frustrated by the Union's failure to achieve the desired results in collective bargaining much of that is due to the outstanding judicial review application which inhibits collective bargaining. To overcome this situation section 52(3)(b) provides for an extension of the closed period until the Court decision is made, after which the parties have a 10 month challenge free period to pursue collective bargaining on an uninhibited basis.

[16] As for the *Advance Cutting & Coring* case relied on by the Employer, the headnote (which was all that the Employer supplied) indicates LeBel, J. was of the view that, "the management of labour relations requires a delicate exercise in reconciling conflicting values and interests". This

would suggest that no one interest trumps or outweighs another interest and instead the interests of each of the Union, the Employer and the employees must be delicately reconciled so as to achieve the purpose of the legislation. When the Union is certified it only has a licence to bargain and cannot impose its will on the employees or on the Employer. Because of the judicial review proceedings the Employer does not treat the Union or the collective bargaining process with the degree of seriousness that it should, so the purpose of section 52(3)(b) is to extend the Union's licence to bargain for a period of 10 months after the cloud has been removed from the Union's right to represent the employees.

[17] The extension of the closed period for 10 months following the Court's decision is part of the delicate reconciliation of interests aimed at achieving the purpose of section 52(3). It just happens that, in the instance of subsection 52(3)(b), the interest of the Union, to be assured of a 10 month period of unchallenged collective bargaining with the Employer, is favoured over the interests of the employees. However, the predominant position of the interests of the employees is elsewhere recognized in subsections 52(3)(a), (c) and (d). In this respect, section 52(3)(b) is permissive and as much deserving of the large and liberal interpretation as that urged by the Applicant with respect to section 52(3)(a). Neither of these provisions is to be construed strictly.

[18] The Employer seems to suggest that the Officer's interpretation of section 52(3)(b) would lead to a potential abuse of process by, for example, giving rise to a deliberate filing of a judicial review application, that then languishes unheard in the courts, solely for the purpose of preventing timely revocation applications from being filed. However, it is the Employer who has filed this judicial review application and no one suggests the Union has abused the process or delayed a hearing of that Court application. If the Applicant is concerned with a delay in the hearing of the judicial review application perhaps those employees could seek intervenor status in those proceedings and ask the Court to expedite the hearing of that application.

### ***Employer's Reply***

[19] Although the Board's decision in *Vertex Construction* does refer to section 37(2)(c) as extending the challenge free period in section 37(2)(b), it does not address when that extension begins or what event triggers that extension, nor does it give any consideration to the meaning of the words, "questioned or reviewed by the Court". The Union treats section 52(3)(b) as though it says the extension of the challenge free period begins by the mere filing of the judicial review application, but that is not what the section says.

[20] The Union's suggestion that the *Advance Cutting & Coring* case states that no one right or interest trumps another right or interest is not accurate. The fundamental freedoms recognized by the *Charter* do prevail over other unrecognized rights or interests.

### ***Applicant's Reply***

[21] Contrary to the Union's suggestion, considerable doubt exists as to whether individual employees would be accorded intervenor status in the judicial review proceedings initiated by the Employer. Also, if the extension of the challenge free period was to commence as the Union suggests, upon the filing of the judicial review application, the possibility exists that if the Employer did not proceed with that application and no collective agreement was ever concluded, a revocation application could remain untimely for many years.

### ***DECISION***

[22] This application raises a difficult issue over the interpretation of section 52(3) of the *Code*, which provides as follows:

*52(3) An application for revocation of bargaining rights may be made by the employees in the unit*

- (a) if no collective agreement is in force in respect of any of the employees in the unit, at any time after the expiration of 10 months from the date of the certification of the trade union, and at any time if the trade union is not certified,*
- (b) if the certification of a bargaining agent in respect of any of the employees in the unit is questioned or reviewed by the Court, at any time after the expiration of 10 months from the date of the final disposition of the question or review, unless the Court quashes the decision of the Board to certify the bargaining agent,*
- (c) if a collective agreement for a term of 2 years or less is in force in respect of any of the employees in the unit, at any time in the 2 months immediately preceding the end of the term of the collective agreement, or*

- (d) *if a collective agreement for a term of more than 2 years is in force in respect of any of the employees in the unit, at any time*
  - (i) *in the 11th or 12th month of the 2nd or any subsequent year of the term, or*
  - (ii) *in the 2 months immediately preceding the end of the term.*

[23] The approach taken by the Board in the interpretation of this provision is that found in section 10 of the *Interpretation Act* which directs as follows:

*10 An enactment shall be construed as being remedial and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.*

[24] On a number of occasions the Board has stated that it considers the *Code* to be legislation that is remedial in nature. Accordingly, we do not accept the arguments advanced by the Applicant and the Employer that the Board should depart from that position and, instead, should construe subsection 52(3)(b) as deserving of a strict construction. These arguments were premised on the assertion that the freedom of association referenced in section 2(d) of the *Charter of Rights and Freedoms* includes the negative freedom not to associate. The Board previously observed, in *CUPE Local 38 v. City of Calgary and Enmax Corporation*, [2001] Alta.L.R.B.R. 529, at para. 51, that the Supreme Court of Canada, in its *Advance Cutting & Coring* decision, has clarified that section 2(d) does include the negative right not to associate. However, the Board's observations upon that decision also included the comment that:

...Even though eight of the nine judges hearing the appeal agreed section 2(d) includes the negative right to be free from compelled association, they were divided over the scope of the right and the precise test to apply in determining if it was infringed.

[25] In the *Enmax* decision the Board did not find it necessary to explore the scope of the right not to associate nor the test to be employed in deciding if that right was infringed. Since we are not faced in this case with a *Charter* challenge to section 52(3) we, too, are not inclined to launch upon an exploration of the right not to associate.

[26] In the *Enmax* decision the Board considered a number of quotations from the judgements in the *Advance Cutting & Coring* case, as well as other earlier decisions of the Supreme Court of Canada and other tribunals. The conclusion reached was that section 2(d) of the *Charter* has little impact upon the *Code*, particularly to the extent the *Code* deals with bargaining rights and collective bargaining procedures. What we take from this is that the right not to associate will not be engaged by a provision like section 52(3)(b), which appears to have as its purpose the protection of a certified bargaining agent's right to engage in collective bargaining for a limited period. Consequently, we do not view the right not to associate as justifying a more restrictive interpretation of section 52(3)(b) than that to be given to the balance of section 52(3).

[27] In endeavouring to interpret section 52(3)(b), we first observe that the various clauses of section 52(3) are separated by an "or" at the end of the second last clause, leading us to conclude the clauses are to be treated disjunctively. A similar conclusion was reached by the Board in its *Vertex Construction* decision, cited by the Employer, dealing with the interpretation of section 37(2) [formerly 35(2)]. However, the *Vertex Construction* decision is not as helpful in this instance as the Employer argues. There, the Board determined the apparent bar against a second trade union applying for certification during pending judicial review proceedings did not continue in effect once a collective agreement was concluded, even if the collective agreement was one imposed by statute. The reason for that conclusion was the purpose for the added period of protection otherwise afforded to the bargaining agent's certification, by reason of the judicial review proceedings, was satisfied upon a collective agreement coming into existence. Thereafter, the only question as to the timeliness of a second trade union's certification application was whether that application was submitted during the last two months of the term of the collective agreement and, if so, it would not be barred by the unresolved judicial review proceeding. One effect of that interpretation would be to treat the judicial review bar mentioned in section 37(2)(c), not as a disjunctive clause, but as though it were conjoined with and applied only to the certification of the trade union mentioned in section 37(2)(b). Such an interpretation would also seem to be in keeping with the apparent direction in section 37(2)(b) that the 10 month period following the trade union's certification and, presumably, the extended period of protection resulting from judicial review proceedings, is no longer applicable if a collective agreement has

been entered into. In that event the later clauses of section 37(2) describing when, during the term of a collective agreement another certification application may be made, would govern.

[28] In the case before us we are not dealing with a situation in which the apparent purpose of section 52(3)(b) could be said to have been served as there is no collective agreement in effect. Had there been a collective agreement in force the reference in section 52(3)(a) to that fact would direct us to consider only the effect of section 52(3)(c) or (d), ignoring the content of section 52(3)(b). In a similar manner, the disjunctive effect of the clauses would have impelled us to conclude that section 52(3)(c) would override the effect of section 52(3)(b) in much the same manner as occurred in *Vertex Construction*. However, the situation we face is different. Although the Union's certification occurred more than 10 months previously, seemingly allowing for the revocation application to be timely under section 52(3)(a), the pending judicial review proceedings brought by the Employer to question the Union's certification gives rise to the bar to the revocation application created by section 52(3)(b). In effect, the 10 month challenge free period that is otherwise conferred upon the Union by section 52(3)(a) is revived or extended by the judicial review application.

[29] It was conceded by the parties that the way in which section 52(3)(b) is drafted may obscure the intention of the Legislature, particularly when trying to discern the relationship between that provision and section 52(3)(a). This led the Employer and the Applicant to argue that, because the clauses of section 52(3) are disjunctive, clause (b) must be construed as standing alone from clause (a) and should not be seen as an extension of the time described in clause (a) during which the Union's certification was to be protected. These parties argue the words used in clause (b) evince a separate and distinct period of protection for the Union's certificate, by creating a new bar to revocation, that does not arise from the mere filing with the Court of the judicial review application but only arises after the parties to the judicial review proceeding have concluded their submissions to the Court. Thereafter, upon the Court issuing its judgment or decision upholding the Union's certification, the 10 month bar created by clause (b) would come into effect. These parties point to the words used in clause (b), "...questioned or reviewed by the Court...", to support their contention that this new bar was only intended to take effect after the litigants have completed arguing the case in court. They said the purpose of this

bar was to extend protection to the Union's certificate upon the commencement of that period of time during which the parties had no control over the Court's proceedings, meaning the period that begins with the Court reserving its decision.

[30] Accepting that clauses (a) and (b) of section 52(3) are disjunctive, the Board does not agree with interpretation that the Employer and the Applicant place upon clause (b). We do not view clause (b) as extending a new bar to revocation applications that arises only after the parties to the judicial review application have completed their submissions to the Court. In our view, the words, "by the Court", as used in the phrase, "questioned or reviewed by the Court", cannot be construed in this fashion. Instead, we view clause (b) as extending the period of protection initially afforded the Union's certificate by clause (a), to an additional 10 month period from the date of the conclusion or final disposition of the judicial review proceedings. We are also of the view this period of added protection under clause (b) begins with the timely filing of the judicial review application referred to in section 19. That section, in part, states:

*19(1) Subject to subsection (2), no decision, order, directive, declaration, ruling or proceeding of the Board shall be questioned or reviewed in any court by application for judicial review or otherwise...*

*(2) A decision, order, directive, declaration, ruling or proceeding of the Board may be questioned or reviewed by way of an application for judicial review seeking an order in the nature of certiorari or mandamus if the originating notice is filed with the Court and served on the Board no later than 30 days after the date of the decision, order, directive, ruling or proceeding or reasons in respect of it, whichever is later.*

*(3) The Court may, in respect of any application under subsection (2),*

*(a) determine the issues to be resolved on the application,*

*(b) limit the contents of the return from the Board to those materials necessary for the disposition of those issues, and*

*(c) give directions to protect the confidentiality of the matters referred to in section 14(6).*

[31] The effect of initiating a judicial review proceeding in accordance with section 19(2) gives rise to a legal proceeding which, until that proceeding is finally disposed of, either as the result of some step taken by the parties to the proceeding or by direction of the Court, is considered to be a pending proceeding over which the Court has complete jurisdiction. In that respect, not only is the Court given the specific jurisdiction described in section 19(3), but it also possesses the general jurisdiction as recognized by section 8 of the *Judicature Act*, RSA 2000, c. J-2:

*8 The Court in the exercise of its jurisdiction in every proceeding pending before it has power to grant and shall grant, either absolutely or on any reasonable terms and conditions that seem just to the Court, all remedies whatsoever to which any of the parties to the proceeding may appear to be entitled in respect of any and every legal and equitable claim properly brought forward by them in the proceeding, so that as far as possible all matters in controversy between the parties can be completely determined and all multiplicity of legal proceedings concerning those matters avoided.*

[32] The Board's decision certifying the Union, upon proper commencement of the judicial review proceeding to challenge that certification, is a decision that is then before the Court. At that point, and notwithstanding there may be other procedural steps needed before a hearing in Court will occur, the certification of the Union is appropriately described as being, in the words of section 52(3)(b), "questioned or reviewed by the Court". The Court's jurisdiction over that certification is not dependent upon or limited by whatever submissions may be made to the Court by the Employer or the Union. In our view, the earlier references to judicial review proceedings contained in section 19, combined with an understanding of the Court's general jurisdiction over proceedings properly commenced before it, make it unnecessary for the legislative drafter to add anything more to section 52(3)(b) to make clear that this period of added protection given the Union's certification arises upon compliance with section 19(2). The use of the phrase, "questioned or reviewed by the Court", suitably describes the consequence of filing the judicial review application in which the Board's decision to certify the Union is attacked by the Employer. The commencement of the judicial review proceeding is the manner in which the Employer asks the Court to question or review that certification decision and it was simply not necessary that section 52(3)(b) cross reference section 19(2) to make that clear.

[33] We agree with the parties that, conceptually, it is questionable whether section 52(3)(b) should be a disjunctive clause, separate and apart from clause (a). It may make more sense if the extension to the revocation bar arising from the judicial review proceedings was directly connected with and related only to the certification of the bargaining agent. In that fashion, it would be clear the effect of the judicial review proceedings did not preclude a revocation application being made during the time periods described in clauses (c) or (d) of section 52(3). However, since clauses (a) and (b) are disjunctive, when giving meaning to clause (b) that is separate and apart from clause (a), the Board is obliged to consider the purpose served by that clause and search for its plausible meaning. As was done in the *Vertex Construction* decision, when dealing with the similar section of the *Code* relating to certification applications, the purpose of this bar that arises from the judicial review proceedings must have been intended to protect the bargaining agent's certification from being challenged during the defined period of time in order that collective bargaining may occur. But that protection will come to an earlier end if the parties succeed in concluding a collective agreement. Upon a collective agreement being concluded, the timing of a subsequent revocation application, or another certification application, will be dependent upon the open periods, as defined in the applicable clauses of either section 37 or 52, that arise toward the end of the term of the collective agreement.

[34] We agree with the argument advanced by the Union, based on the *Vertex Construction* decision, that the purpose of section 52(3)(b) is to extend the time during which the union and employer can attempt to reach a collective agreement, until 10 months after the disposition of the judicial review proceedings. This follows from the obvious recognition that it will be the employer who seeks to have the Court question or review the union's certification, and that those proceedings are likely to inhibit the employer from concluding a collective agreement with the union so long as those proceedings continue. Consequently, the union may be deprived of having a 10 month period in which to pursue collective bargaining, during which its certification is protected from revocation applications, or other certification applications, which clause (a) intended the union to receive and, accordingly, clause (b) provides that period of extended protection. Of course, this does not suggest the employer is, during the currency of its judicial review application, excused from its obligation to bargain in good faith with the union but the

reality is, that through a variety of means, the employer may be able to quite legitimately delay that process of collective bargaining until the Court has decided the Board's decision to certify the union should be upheld.

[35] The Applicant argued it was misled by the contents of Information Bulletin #13 into believing the revocation application could be filed 10 months after the Union's certification, notwithstanding the court challenge to the certification. This, it claimed, was due to the fact the Bulletin says employees "may apply during one of five open periods", the second open period being described as "ten months after certification, if no collective agreement is in force". The third open period is described as "ten months after the date of the Court's decision on a challenge to the certification, if the certification is not overturned". The Board's Information Bulletins are, as that name implies, intended to provide the public with information about certain subject areas covered by the provisions of the *Code* and, generally, they deal with the procedural aspects of those subject area. It is hoped these Bulletins are accurate in terms of what they cover but they do not supplant the provisions of the *Code*. In this case, we have no evidence from the Applicant so are unaware if they read the Bulletin, if they gave any thought to the meaning of the third open period, if they spoke with the any of the Board's Officers about revocation applications, if they reviewed section 52(3), or if they were aware of the Board's powers to interpret the meaning of the *Code*. Without evidence we are not prepared to draw any conclusions about the Applicant's state of mind when submitting the revocation application. Nor are we prepared to conclude the words used in Bulletin #13 must mean that a revocation application may be made 10 months after certification even when there is a Court challenge to the certification, but if that is what can be read into the Bulletin then, in our view, such a statement is simply erroneous.

[36] Accordingly, we agree with the recommendation of the Officer and dismiss the revocation application as being untimely under section 52(3)(b). The ballots taken in the vote of the employees in the unit will not be counted and will be destroyed thirty-one days after the date of

this decision.

ISSUED and DATED at the City of Edmonton, in the Province of Alberta this 29th day of April, 2002 by the Labour Relations Board and signed by its Vice-Chair.

A handwritten signature in black ink, appearing to read 'G. Lucas', written in a cursive style.

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Gerald A. Lucas, Q.C., Vice-Chair