2025 NBKB 248

COURT FILE NO: FM-133-2024

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

DENTALCORP HEALTH SERVICES LTD.,

Applicant,

- and –

NEW BRUNSWICK UNION OF PUBLIC AND PRIVATE EMPLOYEES

Respondent,

DECISION

Date of Hearing: October 29, 2025

Date of decision: November 7, 2025

Before: Justice Richard G. Petrie

Representation of Parties at Hearing:

Kyle MacIsaac and Caroline Spindler, Counsel for the Applicant;

Peter Ashfield, Counsel for Respondent.

Petrie, J.

I. INTRODUCTION

[1.] The Applicant, dentalcorp Health Services Ltd., (dentalcorp or Applicant) brings a judicial review, under Rule 69 of the Rules of Court, of a decision of the New Brunswick Labour and Employment Board (the "Board"), dated September 26, 2024 which, separately, certified the Respondent, New Brunswick Union of Public and Private Employees (the "Union" or "Respondent") as bargaining agent for Dental Assistants, employed by the Applicant in two clinics located in Fredericton and Sussex, New Brunswick.

[2.] By way of its judicial review, the Applicant requests the Court to set aside the Board's decision, as it applies to each certification, as being unreasonable in three respects:

a. The Board granted the Respondent's request to amend the Applicant's name on the applications for certification contrary to jurisprudence and Board practice without justification, without evidence and based on an illogical and irrational chain of analysis;

b. The Board concluded that bargaining units comprised of only Dental Assistants were appropriate for collective bargaining without logical or rational analysis, contrary to Board jurisprudence and policy without justification, and without making a determination on the specific facts of each application; and

c. The Board concluded that bargaining units comprised of single locations were appropriate for collective bargaining without logical or rational analysis, contrary to Board jurisprudence and policy without justification, and without making a determination on the specific facts of each application

[3.] The Union submits that the Board's decision was reasonable on all accounts and that the judicial review application should be dismissed.

[4.] The hearing of the judicial review commenced on October 29th, 2025. At the suggestion of the Court and with Counsel's agreement, the parties argued (only) the first ground of review, being with respect to the Board's decision to allow the Union to amend the employers name on both applications pursuant to Section 126 (2)(j) of the *Industrial Relations Act*, RSNB 1973, c I-4 (the "*Act*"). The Court and Counsel acknowledged this to be a discrete issue.

[5.] As a result, the Court will first address the Board's amendment decision. In the event the Court accepts dentalcorp's position, the Board's decision will be set aside. In the event the Court rejects dentalcorp's position on the Board's decision allowing the amendment, the parties will return to court to continue arguments with respect to the remaining issues raised in the judicial review. In such an event, the Court undertook to use best efforts to schedule any return on an expedited basis.

II. FACTS

[6.] The Applicant owns and operates eleven (11) dental practices throughout the province of New Brunswick. The Respondent is a trade Union representing public and private employees in the province of New Brunswick.

[7.] The Board's decision, made by Chairperson David Mombourquette sitting as a single panel, provides a useful summary of the background of the case before it:

> 1. Two applications for certification were filed with the Board on August 24, 2023, by the New Brunswick Union of Public and Private Employees ("NBU"), naming Main Street Dental and Sussex Dental Clinic as Respondents.
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> 2. The application in Board File IR-059-23, seeks certification of the following bargaining unit:
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>> All Dental Assistants employed at Main St. Dental, Fredericton, NB, save and except those excluded by the Industrial Relations Act.
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> 3. The application in Board File IR-069-23, seeks certification of the following bargaining unit:
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>> All Dental Assistants employed at Sussex Dental Clinic, Sussex, NB, save and except those excluded by the Industrial Relations Act.
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> 4. A Reply in Board File No. IR-059-23 was filed on September 14, 2023, by dentalcorp Health Services Ltd. ("dentalcorp"). It proposed a different bargaining unit:
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>> All employees employed by dentalcorp Health Services Ltd. in the Province of New Brunswick, save and except Dentists and those excluded by the Industrial Relations Act, RSNB 1973, c 1-4.
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> 5. A Reply in Board File IR-069-23 was filed on September 18, 2023, by dentalcorp Health Services Ltd. It also proposed a different bargaining unit:
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>> All employees employed by dentalcorp Health Services Ltd. in the Province of New Brunswick, save and except Dentists

and those excluded by the Industrial Relations Act, RSNB 1973, c 1-4.

6. In addition to the proposed "all employee" and province-wide bargaining units, dentalcorp stated that the dental clinic names in the applications are not legal entities and do not employ any individuals. It asserts that naming as respondent a non-legal entity is fatal to the applications, as it is not a mistake which constitutes a defect in form or a technical irregularity, as contemplated by subsection 79(1) of Regulation 82-92.

7. The Respondent seeks:
   a) rejection of the applications because they each name a non-legal entity as Respondent;
   b) alternatively, acceptance of the Respondent's proposed bargaining unit, which would significantly increase the number of employees in the bargaining unit and cause the level of membership support to drop below the 40% threshold required to order a vote; and
   c) a ten-month time bar any subsequent certification application, following dismissal of the applications.

8. In a letter to the Board dated March 6, 2024, NBU requested leave of the Board to amend each application so that the named Respondent employer in each application is "dentalcorp Health Services Ltd."

[8.] The Board consolidated the two certification applications for hearing.

[9.] Hearings were held April 2, 3, and 4, 2024.

[10.] At the hearing before the Board, the parties each called two (2) witnesses. The Union called Andrew McGilligan, an employee of the Union, and Robyn Price, a Dental Assistant employed by dentalcorp who worked at its Main Street clinic in Fredericton, NB. Dentalcorp called Kenneth Cross, it’s the Regional Human Resources Business

Partner responsible for its clinics in Atlantic Canada and Elaine Powell, the dentalcorp's Senior Director of Regulatory Compliance.

[11.] On September 26, 2024, the Board issued a 53-page, written decision and accompanying orders certifying the Union as the bargaining agent for:

> a) all persons employed as Dental Assistants by dentalcorp Health Services Ltd., carrying on business as Main Street Dental, Fredericton, NB save and except dentists, front desk staff, dental hygienists, managers and those above the rank of manager, and those excluded by the Act; and
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> b) all persons employed as Dental Assistants by dentalcorp Health Services Ltd., carrying on business as Sussex Dental, Sussex, NB save and except dentists, front desk staff, dental hygienists, managers and those above the rank of manager, and those excluded by the Act.

[12.] By way of its decision, at paragraphs 11 through 78, the Board summarized the *viva voce* evidence before it. Furthermore, the Board notes that each party provided a Book of Documents and, in addition, nine (9) other documents were entered as exhibits during witness testimony. The Board also summarized, in detail, the arguments of the parties before determining the relevant issues before it, namely whether the Union's request to amend the applications for certification should be granted, and whether the proposed units were appropriate for bargaining.

[13.] By way of its decision, the Board granted the Union's request to amend the applications for certification to reflect the employer's (dentalcorp) correct name, pursuant to s. 126(2)(j) of the *Act*.

[14.] In granting the Union's amendment request, the Board found that the " key issue in dispute" was whether the Union was required to lead evidence that its failure to identify the correct name of the employer was a *bona fide* mistake? Before me it is acknowledged that no evidence was led by the Union as to how it obtained the names of the employer it used in the applications.

[15.] Having accepted Union's request to amend its applications for certification, the Board went on to determine an appropriate bargaining unit and, in fact, proceeded to certify the Union as bargaining agent for the relevant employees of the employer in both applications.

[16.] Dentalcorp filed its Notice of application for Judicial Review on December 17, 2024.

III. ISSUES

1. What is the appropriate standard of review?
2. Was the Board's decision to grant the Union's request to amend its application on the basis of finding a *bona fide* mistake unreasonable.

Standard of Review

[17.] The parties both confirm that the appropriate standard of review of the Board's decision is reasonableness. I agree.

[18.] This determination follows the principles articulated by the Supreme Court in its seminal decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 ("*Vavilov"*).

[19.] The New Brunswick Court of Appeal in *Canadian Union of Public Employees, Local 2745 v. New Brunswick (Treasury Board)*, 2023 NBCA 33 ("*CUPE, Local 2745*"), helpfully discusses principles derived from *Vavilov*, at paragraphs 52 through 55:

> [52] In *Vavilov*, the Supreme Court clarified the law of judicial review and adopted a revised framework for determining the standard of review where a court reviews the merits of an administrative decision. **The Supreme Court established a presumption that reasonableness is the applicable standard in all cases and stated that an administrative tribunal's expertise remains a relevant consideration in conducting reasonableness review.**
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> [53] Judicial review on a reasonableness standard **"finds its starting point in judicial restraint and respects the distinct role of administrative decision makers." A reviewing court's role is to "review," and it is therefore required to show deference to the decision of an administrative tribunal. In so doing, it must refrain from deciding the issue itself** (emphasis in original; *Vavilov*, at paras. 75 and 83-85).
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> [54] Reviewing courts should only intervene in matters **"where it is truly necessary to do so to safeguard the legality, rationality and fairness of the administrative process." The focus should therefore not be "on the conclusion the court itself would have reached in the administrative decision maker's place"** (*Vavilov*, at paras. 13 and 15).
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> [55] **Deference to the specialized knowledge and expertise of administrative tribunals was affirmed in *Vavilov***, where the Supreme Court again emphasized that an administrative decision may be reasonable despite being "puzzling or counterintuitive" to generalists (para. 93).
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> [**Emphasis Added**]

[20.] While the Court of Appeal in *CUPE Local 2745* was dealing with an appeal of a judicial review of an Adjudicator's decision under the *Public Service Labour Relations Act*, their comments concerning *Vavilov* are equally applicable to the matter before me.

[21.] Further, in *CUPE Local 2745*, at paragraphs 57-59, 82, and 83, the New Brunswick Court of Appeal reinforced the principles of deference and the application of the reasonableness standard arising from *Vavilov* as follows:

> [57] **In *Vavilov*, the Supreme Court cautioned against a disguised correctness review. The reviewing court must not ask what decision it would have made, attempt to ascertain the range of possible conclusions, conduct a de novo analysis or seek to determine the correct solution to the problem** (at para. 83).
> [58] **The reviewing court must instead focus on the decision actually made and consider whether the decision as a whole, including both the rationale and the outcome, is reasonable (*Vavilov*, at paras. 15 and 83). Judicial review, and more specifically reasonableness review, is not a "line-by-line treasure hunt for error."** Furthermore, reviewing courts must not make their own "yardstick" and then use that yardstick to measure what the administrative decision maker did (*Vavilov*, at paras. 83 and 102).
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> [59] According to *Vavilov*, the written reasons given by administrative decision makers **"must not be assessed against a standard of perfection,"** and reviewing courts cannot expect them "to deploy the same array of legal techniques that might be expected of a lawyer or judge." Even if reasons do not include all the arguments, statutory provisions, jurisprudence, or other details the reviewing judge would have preferred, that on its own does not form a sufficient basis to set the decision aside. Administrative tribunals are not required to engage in a formalistic statutory interpretation exercise in every case. Reviewing courts must remain acutely aware that "administrative justice" will not always look like "judicial justice" (*Vavilov*, at paras. 91-92 and 119).
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> …
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> [82] **Reasonableness review requires courts to begin their inquiry with the reasons of the decision maker, putting them first, and "seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion"** (*Vavilov*, at para. 84). **The reviewing court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable" (Vavilov, at para. 99).**
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> [83] **Deference is an essential component of this process.** Exercising proper deference can reveal that "an apparent shortcoming in the [decision maker's] reasons is not, in fact, a failure of justification, intelligibility or transparency" (*Vavilov*, at para. 94).
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> [**Emphasis Added**]

[22.] It is interesting to note that the New Brunswick Court of Appeal in *CUPE Local 2745* refers, with acceptance, to the Ontario Court of Appeal decision in *Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v. Bricklayers, Masons Independent Union of Canada, Local 1*, 2022 ONCA 780 (*Turkiewicz*).

[23.] At paragraph 64 of *CUPE Local 2745*, the Court of Appeal states with respect to *Turkiewicz*:

> [64] Very recently, the Court of Appeal for Ontario in *Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v. Bricklayers, Masons Independent Union of Canada, Local 1*, 2022 ONCA 780, [2022] O.J. No. 4983 (QL), applied the Vavilov framework to a labour dispute. That case involved an appeal of a reviewing court's ruling that quashed three decisions of the Ontario Labour Relations Board ("OLRB"). The Court of Appeal's application of the reasonableness standard of review is instructive for the present appeal. In particular, the court wrote:
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> > **The Supreme Court affirmed in *Vavilov* that reviewing courts must not interfere with a tribunal's factual findings absent exceptional circumstances, and should refrain from reweighing and reassessing the evidence considered by the decision maker (para. 125). It explained that many of the same reasons that support an appellate court's deferring to a lower court's factual findings apply equally in the context of judicial review.**
> > The Board did not make the above-noted findings that the Divisional Court made about Mr. Turkiewicz's personal circumstances. There were no exceptional circumstances justifying the Divisional Court's departure from the general prohibition against reassessing evidence. Therefore, the Divisional Court erred in making those findings and in relying on them in concluding the OLRB decisions were unreasonable. [paras. 101-102]
>
> (**Emphasis Added**)

[24.] In New Brunswick, and indeed across Canada, labour boards have long been recognized as specialized tribunals with deemed knowledge and expertise in labour matters under their "home" legislation.

[25.] The Supreme Court of Canada has specifically held that labour relations boards "exemplify a highly specialized type of administrative tribunal and will generally be entitled to the highest level of judicial deference": *International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514 v. Prince Rupert Grain Ltd., Local 514*, [1996] 2 SCR 432 (SCC) at paragraph 24. (See also, the New Brunswick Court of Appeal in *Bransen Construction Ltd. v. CTA Local 1386*, 2002 NBCA 27; and *Carpenters and Joiners, Local 1386 v. Ferro-Chemi Crete Engineering*, 2021 NBQB 143 (*"Carpenters and Joiners, Local 1386")*, a judicial review of a New Brunswick Labour Relations Board decision wherein Justice Morrison, at para. 10, distills, in a most helpful summary format, numerous principles taken from *Vavilov*.

[26.] At the risk of repetition, I wish to again refer to *Turkiewicz*, where the Ontario Court of Appeal, at paragraph 55 through 61, reinforces a number of principles from *Vavilov*, which are relevant to the matter before me:

> [55] *Vavilov* states that the reasonableness review approach is based on the following principles. Courts are to intervene in administrative matters only if it is truly necessary to safeguard the legality, rationality, and fairness of the administrative process. **Such reviews start from the principle of judicial restraint and respect for the distinct role of decision makers (para. 13). The reviewing court should respect administrative decision makers and their specialized expertise, should not ask how they themselves would have resolved an issue, and should focus on whether the applicant has demonstrated that the decision is unreasonable (para. 75).**

[56] **In conducting a reasonableness review, the court must focus on the decision actually made by the decision maker. The court should refrain from deciding the issues itself. It does not ask what decision it would have made in place of the administrative decision maker, attempt to ascertain the range of possible conclusions, conduct a *de novo* analysis, or seek to determine the correct solution.** Instead, the reviewing court considers only whether the actual decision, including both the rationale for the decision and the outcome to which it led, was unreasonable (para. 83).

[57] Where reasons have been given, the reasonableness review puts those reasons first. **The court must examine the reasons with respectful attention, seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (para. 84).**

[58] **A reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that bore on the decision (para. 85)**. It bears the hallmarks of reasonableness – justification, transparency, and intelligibility (para. 99).

[59] Two types of fundamental flaws can render a decision unreasonable. The first is a failure of rationality internal to the reasoning process (para. 101). To be reasonable, a decision must be based on reasoning that is both rational and logical. **The reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic (para. 102)**.

[60] **The second type of fundamental flaw arises when a decision is untenable, in some respect, in light of the relevant factual and legal constraints that bear on it (para. 101). Elements in this evaluation include: the governing statutory scheme; other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the parties' submissions; the past practices and decisions of the administrative body; and, the potential impact of the decision on the individual to whom it applies (para. 106). The governing statutory scheme is likely to be the most salient aspect of the relevant legal context (para. 108).**

[61] I would add that the reviewing court must bear in mind the expertise of the administrative decision maker with respect to the questions before it. At para. 31 of *Vavilov*, the Supreme Court states that "expertise remains a relevant consideration in conducting [a] reasonableness review." Being attentive to a decision maker's demonstrated expertise may reveal to a court why a decision maker reached a particular outcome or provided less detail in its consideration of a given issue (para. 93). Moreover, decision makers' specialized expertise may lead them to rely, when conducting statutory interpretation, on "considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise" (para. 119). As such, relevant expertise of the administrative decision maker must be borne in mind by a court conducting a reasonableness review, both when

> examining the rationality and logic of the decision maker's reasoning process and the decision itself, in light of the factual and legal constraints bearing on it.
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> [**Emphasis Added**]

[27.] From all of the above, I recognize the limitations and restraints placed on me as a reviewing court in the context of a judicial review. I am to avoid substituting my decision for the Board's. I am to show respectful deference.

[28.] I also note that the burden is on the party challenging the decision to show it to be unreasonable. (*Vavilov*, para. 100) The challenging party, dentalcorp, must satisfy me that any shortcomings or flaws relied on, are sufficiently central or significant to render the decision unreasonable. (*Vavilov*, para. 100)

A. Was the Board's conclusion to accept the Union's request to amend or correct the name of the employer on both applications reasonable?

[29.] The Board's authority to make its decisions stems directly from the *Act*. Subsection 126(2)(j) of the *Act* specifically empowers the Board, when satisfied that a *bona fide* mistake has been made in the naming of a person as a party, to "correct" with the proper name. This subsection similarly allows the Board to substitute or add new parties to the proceeding and on the same basis.

[30.] Subsection 126(2)(j) of the *Act* states:

> 126(2) Without limiting the generality of subsection (1), the Board has power,
> …

> (j) where in any proceedings before the Board the Board is satisfied that a *bona fide* mistake has been made with the result that the proper person or trade Union or Counsel of trade Union's has not been named as a party or has been incorrectly named, to order the proper person or trade Union or Counsel of trade Union's to be substituted or added as a party to the proceedings or to be correctly named upon such terms as appear to the Board to be just, and
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> …

[31.] In this way, while the decision to amend, or not, is clearly left to the Board, subsection 126 (2)(j) also serves as a constraint on the Board's authority to amend, in that it must first be satisfied there to have been a *bona fide* mistake justifying the request.

Context of the Board's Decision

[32.] The context of the Board's decision under review is, of course, a critical consideration. Here the Board was dealing with two applications for certification (consolidated into one hearing).

[33.] The certification of a union as bargaining agent for a unit of employees of an employer under the *Act*, is a consequential determination as it creates a number of significant legal duties and obligations for the relevant parties including the obligation to bargain a collective agreement.

[34.] A critical factor in any labor certification is that the employer be correctly identified not only to allow the Board to properly adjudicate the matter, but also to give legal

meaning to any resulting order and for purposes of any resulting legal obligations on the named employer under the *Act*.

[35.] In the matter before the Board, the Union had brought two applications, essentially naming the employer in each as the dental clinics where the dental assistants worked i.e.: “Main St. Fredericton” and “Sussex Dental”.

[36.] Dentalcorp filed a Reply to the certifications and specifically took issue with the Union’s naming of the employer party. Dentalcorp specifically pled for the dismissal of the two applications on the basis that, in both, the named employer entity was not the employer. Dentalcorp took the position that such misnaming was a substantive defect, and that the Union knew or ought to have known the name of the actual employer and as a result, the applications should be dismissed.

[37.] By way of a subsequent letter to the Board, prior to the hearing, the Union requested leave to amend each application so as to correct the name of the employer in each application to “dentalcorp Health Services Ltd”. Further it requested, if the amendments were made, to revise the bargaining unit descriptions for each application accordingly (see page 474 of the Record)

[38.] Prior to the hearing of the applications for certification, the Union filed a pre-hearing written submission in respect of its request to amend each application (Record at page 475)

[39.] At its hearing, the Board heard evidence with respect to the certification applications and the parties' arguments. The parties disagreed as to the proper approach to the issue of the proposed amendment or correction to the employer's name.

[40.] Various labour board jurisprudence was submitted to the Board by the parties on the issue. Some of these board precedents were from New Brunswick and others seemingly from Nova Scotia, Ontario, Alberta, and British Columbia. This labour board jurisprudence contrasted in some respects on the issue of the degree and nature of evidence, if any, a Union would be required to lead in order to allow the Board, in those circumstances, to conclude either a "*bona fide* mistake" had been made (New Brunswick and Alberta legislation) and/or, in the case of British Columbia and Nova Scotia with different statutory language, whether the Board was satisfied an amendment to the employer's name was appropriate or just.

[41.] In the Board's decision, at paragraph 146 and 147, the Board summarizes the parties' arguments before it:

> 146. NBU requests that its two applications be amended in accordance with the Board's authority in subsection 126(2)(j) of the Act, to reflect the legal name of the employer at the Main Street and Sussex Dental clinics, i.e., dentalcorp Health Services Ltd. **It submits that it used the business name of each clinic identified on the clinic buildings and on their respective websites. It asserts that it made a "bona fide mistake" that resulted in the proper person was not named or was incorrectly named as respondent in each of the applications.**
>
> 147. **Dentalcorp asserts that there is no evidence before the Board that supports a finding that NBU made a mistake, let alone a "bona fide mistake", in using the operational business names for the clinics instead of dentalcorp's legal name**. Both Main Street and Sussex Dental were acquired by dentalcorp months prior to the filing date of the applications. Employees such as Ms. Price had received paystubs identifying dentalcorp

> as the new employer, and those employees had received orientation from dentalcorp and were given access to dentalcorp's web portal, DCHub. The correct legal name could have been readily ascertained by asking employees for a copy of their paystub or doing a corporate records search. There is no evidence that NBU took either step. This was a substantive error, not a technical defect or a derivation of the legal name, and the amendment should not be permitted.
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> (**Emphasis Added**)

[42.] At paragraph 148, the Board identified what it labeled as a "key issue in dispute" as follows:

> 148. In assessing the evidence and the authorities cited by the parties, the Board has identified the key issue in dispute is whether NBU is required to establish through evidence that its failure to use the legal name of the Employer was a mistake, and that the mistake was bona fide. Dentalcorp relies on the decisions of the Nova Scotia Board in *Spears*, supra, and the Alberta Board in *Konecranes*, supra, as support for the proposition that for an applicant to establish that it made a *bona fide* mistake, it must show that it was unable to determine the proper name after exercising reasonable due diligence.

[43.] At paragraphs 149 through 153, the Board proceeds to discuss some of the cited labour board jurisprudence dealing with similar or comparative legislative provisions, distinguishing some, while preferring others.

[44.] A critical paragraph in the Board's decision under review, is paragraph 154:

> 154. The Board does not accept dentalcorp's argument that NBU was required to introduce evidence explaining its mistake. **It is apparent from the evidence that dentalcorp continued to use Main Street and Sussex Dental as the business names for the clinics on both the buildings and websites, and that NBU simply failed to exercise diligence in identifying the legal name of the Employer.** There is no evidence that NBU acted other than honestly and in good faith.
>
> (**Emphasis Added**)

[45.] The Board also found there was no prejudice to the employer in either instance and as a result, the Board, without expressly saying so, was satisfied the Union had made a "*bona fide* mistake" and agreed to amend the applications accordingly under subsection 126(2)(j).

IV. ANALYSIS

[46.] Before me, dentalcorp argues:

> 50. The Board's conclusion that the Respondent made a bona fide mistake (upon which the requests for an amendment were granted) was made solely on the basis of assertions by NBU counsel, and not evidence. The Applicant states that any finding of fact that is not based on evidence - especially one so integral to a significant issue before the Board - is inherently unreasonable.

[47.] The Board's decision is not made in a vacuum. It has to be assessed in light of the circumstances, arguments, and legal constraints before it. Appreciating what those were, is central to any judicial review.

[48.] The Board wrote a lengthy and detailed decision. That alone does not render it reasonable. A decision of an administrative tribunal will only be reasonable if it is justified in light of the facts, including the evidentiary record before the decision maker and the factual context presented to it. Misapprehension of evidence, failure to consider evidence, and conclusions not based on evidence before the decision maker render decisions unreasonable, as confirmed in *Vavilov* at paragraph 126:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: Dunsmuir, at para. 47. **The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of**

> **them: see Southam, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it.** In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the **decision maker's approach would also have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: ibid.**
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> **[Emphasis Added]**

[49.] The New Brunswick Court of Appeal in *CUPE, Local 2745*, confirmed that reliance on material findings in the absence of evidence in support of a decision is unreasonable.

[50.] Drawing some parallels to *CUPE, Local 2745*, dentalcorp argues that here, the Board made the finding that the Union relied on the public facing names on the buildings and websites in identifying the employer on the applications for certification. The Board expressly relied on this finding in concluding the Union had made a *bona fide* mistake, thereby allowing the amendments to the applications for certification under s. 126(2)(j).

[51.] While I remain vigilant as to avoid engaging in microscopic or disguised correctness review; in reassessing or reweighing evidence; or substituting my own view, I can come to no other conclusion than that the Board fell into significant error by way of its assumptive finding as to explain the Union’s mistake and as a result its determination on the point suffers from a failure of rationality to the reasoning process.

[52.] It is an inescapable conclusion that the Board relied upon, what it referred to as "evidence" (para. 154), to accept the Union's mistake or failure in correctly naming the employer in the two applications.

[53.] The problem is there was no evidence put before the Board, as acknowledged by Mr. Ashfield before me, to show the clinic's name on the outside of the buildings and/or the clinics' website *were* the reason for the Union's mistake in identifying the employer's name and resulting need to amend its applications. There was simply no evidence brought forward by the Union to explain why they named the entity they did as employer in either application.

[54.] Unfortunately, the Board made assumptions regarding the evidence, and in making those assumptions, it purported to exercise its authority under subsection 126(2)(j). A "holistic and sensitive review" of the decision (*CUPE, Local 2745*) leads one to conclude the Board made this error.

[55.] In the Board's efforts to address the dentalcorp's argument that the Union must lead evidence to explain the mistake *and* to show it exercised due diligence, the Board concluded there to be no requirement for the Union to prove it exercised reasonable due diligence in the circumstances. At paragraph 150, the Board cites in support, the *UFCW, Local 401* decision from the Alberta Labour Board along with the *Masterpiece* decision. The Board also found support for there being no "severable" absence of carelessness test on the Union from the New Brunswick Board's decision in *Campbell's Plumbing*

[56.] Two things can be true at the same time. It is important to understand what exactly the Board decided. While it found there to be no separate need for the Union to establish it exercised all due diligence in its naming of the employer party, it also determined a *bona fide* mistake had been made by the Union in both applications.

[57.] It is readily apparent that the Board conflated these issues in an effort to frame its decision consistent with its interpretation of prior board authorities. Keep in mind that the Board found at paragraph 154 of its decision:

> 154. …It is apparent from the evidence that dentalcorp continued to use Main Street and Sussex Dental as the business names for the clinics on both the buildings and websites, and that NBU simply failed to exercise diligence in identifying the legal name of the Employer. There is no evidence that NBU acted other than honestly and in good faith.

[58.] While a decision maker is entitled to make reasonable inferences from the facts before it, a decision based on an absence of evidence is an unreasonable one ("*Vavilov*"). No deference is required in such circumstances.

[59.] In my view, the Board's analysis and assumptive finding on this discrete but consequential issue falls short. It suffers from a failure of rationality internal to it's reasoning process. It is not clear, transparent or justifiable. A reasonable decision need, at a minimum, explain the result in view of the law and the key facts.

[60.] Before me, the Union argued that there was no need to call any evidence on the issue at the Board to establish the Union's mistake and resulting need for an amendment. In essence, the Union maintains before me, that once the Board rejected any requirement for the Union to lead evidence to show it exercised all due diligence or that its mistake

was not the product of fraud or deceit, there was, then, no requirement for *any* evidence on the issue of a *bona fide* mistake. There being no allegation of bad faith or fraud, the Board, the Union says, was free to make the "technical" correction based upon the Union's request and the fact that the employer was not prejudiced by the failure to use the correct legal name. I would simply note that a *bona fide* mistake in regards to technical details in documents before the Board are addressed separately under subsection 126(2)(k) of the *Act*. Also, prejudice is not relevant to the determination of whether a *bona fide* mistake occurred.

[61.] Mr. Ashfield explained before me that, to the best of his recollection, there was no evidence, nor "pitch" by the Union to explain how the employer's name was arrived at on each application, and nor was it necessary due to the Board's finding there to be no "severable" requirement for the Union to prove a lack of carelessness.

[62.] However, that is not, in fact, what occurred. A holistic review of the Board's decision, in light of both parties submissions before it, including as reflected in the Union's Pre-Hearing Brief, and the various labour board jurisprudence provided to the Board, makes it clear that the Board made a finding of a *bona fide* mistake by the Union, and central to that, was the Board's assumption, without evidence, that the Union's mistake was explained by way of their reliance upon the "public facing names of the clinics on the clinic's buildings and websites". To his credit, Mr. Ashfield, before me, acknowledges that the Board "likely" made this assumption. He says the Union had not put forth such an argument, nor evidence.

[63.] A review of the Union's Pre-Hearing Brief before the Board perhaps suggests otherwise and may well explain where or how the Board was led astray. The Union's Pre-Hearing Brief states:

> 14. The Applicant submits its mistakes in incorrectly naming the Respondent were bona fide. **The Applicant used the public-facing names of the clinics, as shown on their websites, and this did not create confusion or ambiguity as to the target of the applications.**
> …
> 24. Respectfully, the Applicant submits this argument supports the Applicant's position on this request for leave. Naming another, separate, legal entity could potentially create confusion, **whereas using a public-facing business name at a physical location**, that is not a separate legal entity, does not create confusion as to who is the "proper person", or which workplace is being applied for.
> …
> 30. However, given the lack of allegation of intent to deceive the Board or any party, **and the fact that using the public facing names used by the applied-for clinics accurately identified the proper person** (albeit not with their correct legal name), the Applicant submits that further information is not necessary.
> …
> 31. We respectfully request that the Board grant the Applicant's request to amend the applications considering:
>
> - There is no allegation of intent to mislead the Board or any party;
> - There is no allegation of fraud or deceit or any other action contrary to the accepted definition of bona fide in relation to the mistake on the application forms;
> - **Using the public facing names of the applied-for clinics did not cause any confusion as to which bargaining units were covered by the applications, nor would there be any prejudice to the Respondent in permitting the Applicant to amend**;
> - The Board is expressly empowered to use its discretion to correct the mistake by section 126(2)() of the Act; and
> - The mistake was understandable, given the Board's practice in the Applicant's experience, which is reflected on its standard forms.
>
> (**Emphasis Added**)

[64.] To repeat, at paragraph 146 of the decision under review, the Board specifically references the Union's submissions above as facts.

[65.] At the risk of further repetition, there was, no evidence put forth to connect the Board's findings to those "facts" as the reason for the Union to have made the mistake they made, i.e. an absence of evidence to support a key finding. The Union's mistake was likely easily explainable, and certainly not an onerous burden for the Union to address in evidence. However, as Mr. MacIsaac maintains before me, it remained a necessary one.

[66.] The confusion seemingly stems from the Board attempting to grapple with the separate issue of whether the Union was required to additionally establish due diligence.

[67.] The assumption by the Board to purportedly explain the mistake by the Union as a *bona fide* one, in turn, is foundational to the exercise of its (admittedly wide) discretionary authority under subsection 126(2)(j), but it exists. It was made here without any evidentiary basis to support the finding. It was purely an assumptive finding on a material issue.

[68.] To be clear, a fulsome reading of the Board's decision suggests that *even the Board* felt it needed to make a finding to, at least minimally explain the mistake, in order to exercise its corrective authority. It did so, albeit without actual evidence on that point.

[69.] While there was much discussion, both at the Board hearing and before me, as to different lines of reasoning of a labour board's authority to correct the proper employer name in matters before it, I am unaware of any authority to suggest that there is "no need for any evidence" to allow the Board to exercise its discretion to amend.

[70.] All of the board jurisprudence both before the Board and *this Court*, to differing degrees, suggest at least some evidence was before those Boards which would reasonably allow them to conclude how the "mistake" arose in order that an incorrect or an incomplete named employer entity on a labour board matter needed to be amended or corrected.

[71.] The issue of no severable requirement on the Union to establish due diligence may well be a decision the Board is able to reasonably determine based upon existing board authority, but there is an initial, more basic determination the Board had to make. At a minimum, the Board must be satisfied, on the evidence, that there was a mistake, and some explanation must be needed to establish the *bona fide* nature of it.

[72.] The reasonableness of the Board requiring, or not, the Union, in all circumstances, to show due diligence is not the subject of my decision. My fault with the Board is much more discrete and I will refrain from pronouncing on the reasonableness of the Board finding no separate need to establish a lack of carelessness as part of determining a *bona fide* mistake. However, the Board need still determine a *bona fide* mistake was made and here, the Board did so without evidence to justify that conclusion.

V. DISPOSITION

[73.] For the foregoing reasons, the Board's decision to amend both applications is determined to be unreasonable. I hereby declare the Board's decision, dated September 26, 2024 be removed into this Court and quashed.

[74.] The Board's decision to grant the two certifications will, necessarily, also be set aside.

VI. COSTS

[75.] Dentalcorp, as the successful party, is entitled to an award of costs of $2,500.00 plus reasonable disbursements.

DATED at Burton, N.B. this ___ day of November, 2025.

_____

Richard G. Petrie, J.C.K.B.