SUPREME COURT OF NOVA SCOTIA

Citation: *Paladin Security Group Limited v. The Canadian Union of Public Employees Local 5479*, 2026 NSSC 19

Date: 20260107
Docket: Hfx No. 539352
Registry: Halifax

Between:

Paladin Security Group Limited

Applicant

and

The Canadian Union of Public Employees Local 5479

Respondent

and

Nova Scotia Labour Board

Respondent

DECISION ON JUDICIAL REVIEW

Judge: The Honourable Justice Scott C. Norton

Heard: December 17, 2025, in Halifax, Nova Scotia

Decision: January 7, 2026

Counsel: Nancy F. Barteaux, KC, and Megan Thompson, for the Applicant
Michael Bourgeois, for the Respondent CUPE

By the Court:

Overview

[1] The applicant employer seeks judicial review of the decision of the Nova Scotia Labour Board ("Board") dated November 18, 2024, dismissing the applicant's request for reconsideration of the Board's order for certification. The Board filed the record of the proceedings before it ("Record") but did not otherwise participate in the judicial review.

[2] The applicant, Paladin Security Group Limited ("Paladin"), is a privately owned security services company that provides 24 hour, seven days per week security services under contract to multiple clients in the Province of Nova Scotia, including, as relevant to this matter, the Nova Scotia Health Authority ("NSHA").

[3] The Canadian Union of Public Employees, Local 5479 ("CUPE") is the bargaining agent for a bargaining unit of Paladin employees comprised of all security officers employed by Paladin to fulfill its obligations to supply security services under contracts or arrangements with the NSHA at all locations where Paladin is contracted to provide such services, excluding Site Supervisors, Schedulers, Mobile Patrol Officers, Field Managers and such other persons excluded by sub-section 2(2) of the *Trade Union Act*, R.S.N.S. 1989, c. 475 ("TUA" or "*Act*").

[4] The decision of the Board under review was made under file number LB-2315 ("Decision"). It concerned an application from Paladin requesting that the Board reconsider its earlier decision (under file number LB-1940) dated November 3, 2022, as supplemented by additional reasons on May 5, 2024, regarding certification.

[5] Paladin also requested that the Board consider specific evidence in relation to its application for reconsideration, particularly new evidence about the certification vote count and evidence of the subsequent bargaining process.

[6] The Board determined that it was satisfied that the evidence proposed by Paladin could not be considered for purposes of an application for reconsideration and accordingly, the application for reconsideration should be dismissed.

[7] Paladin says that the Decision should be quashed because it is unreasonable and/or procedurally unfair. CUPE says that the decision is reasonable and the Board provided Paladin with adequate procedural fairness.

[8] For the reasons that follow, I dismiss the application.

Background

[9] The following is a summary of the relevant and complicated procedural history:

1. On July 7, 2021, CUPE filed an application for certification with the Board with respect to the employees of Paladin working at Nova Scotia Health Authority sites located throughout the Province of Nova Scotia. This application was assigned file number LB-1940.
2. On July 30, 2021, Paladin filed a complaint with the Board, alleging an unfair labour practice under section 58 of the *Trade Union Act*, RSNS 1989, c. 475 (the "Act"). Paladin alleged that a pamphlet created by a representative of CUPE during the organizing drive contained a "false and misleading promise". The Board identified this complaint as file number LB-1953.
3. Following a Case Management Conference ("CMC") on August 3, 2021, the Board produced a CMC Summary dated August 5, 2021 (revised and reissued on August 9, 2021), which included a post-script comment that the Board had consolidated applications LB-1940 and LB-1953.
4. On August 9, 2021, counsel for Paladin responded to the Board's summary, requesting that the complaint (LB-1953) proceed in advance of the application for certification (LB-1940).
5. The parties made written submissions with respect to LB-1953 in September 2021 – Paladin on September 21, 2021, CUPE on September 24, 2021, with Paladin's reply submissions filed on September 28, 2021.
6. A remote hearing by videoconference was held on October 1, 2021, during which evidence was presented, and arguments were made with respect to Paladin's allegation of an unfair labour practice.
7. After the hearing, the Board advised the parties of a concern regarding its jurisdiction to hear a complaint filed exclusively under section 58 of the *Act*.
8. Another CMC was held on November 3, 2021. A summary was produced by the Board on November 4, 2021. The summary included a comment that the Board had proposed a resolution to the jurisdictional concern, proposing that the substance of Paladin's complaint, LB-1953, could be heard during the hearing for the certification application LB-1940. Paladin refused this option and again requested to have the matters heard separately.
9. Accordingly, the parties both made submissions with respect to the jurisdictional issue, as directed by the Board, on November 12, 2021, with rebuttal submissions filed by CUPE on November 18, 2021, and by Paladin on November 19, 2021.

10. A hearing with respect to the "ins and outs" of CUPE's certification application, LB-1940, was held on December 15 and 16, 2021, remotely by videoconference.

11. In a Decision dated March 18, 2022, the Board determined that it did not have jurisdiction to hear the complaint giving rise to LB-1953, and also determined that it would not exercise its discretion under section 25(10) of the *Act* to dismiss CUPE's application for certification, LB-1940.

12. On April 26, 2022, Paladin filed Notice for Judicial Review with respect to the Board's Decision in LB-1953.

13. In a decision, 2023 NSSC 48, dated February 10, 2023, Justice Campbell of the Nova Scotia Supreme Court dismissed Paladin's Application for Judicial Review.

14. On March 6, 2023, Paladin filed Notice of Appeal of Justice Campbell's Decision.

15. The Nova Scotia Court of Appeal heard the matter on November 30, 2023, and issued its decision, 2023 NSCA 86, on December 13, 2023.

16. The Court of Appeal concluded that, with respect to the Board's decision in LB-1953, Paladin's appeal regarding section 58(1) of the Act was dismissed, but the ground relating to section 25(10) was remitted to the Board to explain its ruling. (paras. 76-77)

17. On January 24, 2024, before the Board had produced its supplementary reasoning for its ruling in LB-1953, Paladin filed the application (LB-1953) seeking reconsideration of the Board's decision in LB-1940, on the basis that the Board had not exercised its discretion to dismiss CUPE's application for certification pursuant to section 25(10). Paladin outlined the following grounds for reconsideration:

    18. As noted above, the Appeal Decision at paras. 65-66 has made it clear that the Board's reasons for dismissing LB-1953 did not preclude the consideration of the section 25(10) issue in LB-1940. Specifically, whether the Union's misleading communication was a breach of the *Act* which caused the representation vote to not reflect the true wishes of the employees such that it would dismiss the application.

    19. Further, the fact that the reasons in the Board Jurisdiction Decision were not sufficient deprived Paladin of the opportunity to further raise the section 25(10) issue in the proceedings of LB-1940 which followed the dismissal of LB-1953.

    20. Accordingly, Paladin requests that as the section 25(10) issue was not addressed in LB-1940 that the Board reconsider its decision not to exercise discretion to dismiss the certification application in LB-1940.

    21. Further, the Final Order certified the bargaining unit on the basis of the vote which had been counted. It appears that the section 25(10) issue was decided before the vote was counted. Paladin submits that determining the section 25(10) issue before counting the vote is the legally correct process

and does not argue that point, however the results of the vote provide additional information which is relevant to Paladin's requested reconsideration of the matter.

22. The results of the vote were counted on November 1, 2022. One hundred and seventy-nine (179) employees voted and of those, one hundred and fifty-seven (157) voted in favour of the Union (Schedule "K").

23. Paladin submits that the overwhelming majority support among employees for the Union is a result of the misleading statements made by the Union which made promises that were impossible to keep. Paladin submits that the statements induced employees into believing the Union's claims and voting in favour of certification with the belief that they would receive a benefit that they never could or would receive. The fact that an overwhelming majority of employees voted in favour of the Union shows that the Union's communication was effective in misleading employees and is further evidence that the representation vote did not reflect the true wishes of the employees.

24. That additional information was not available to the Board when it made its determination of the section 25(10) issue and has only become available after the fact. Accordingly, Paladin requests that the Board reconsider its decision in LB-1940 with the added benefit of this information.

18. After receiving the Application which became LB-2315, the Board advised the parties that a CMC with respect to the Application would be scheduled after the Board had produced its reasons, as directed by the Court of Appeal, with respect to the section 25(10) issue in LB-1953.

19. On May 22, 2024, the Board provided its supplemental reasons for LB-1953, elaborating on its reasoning with respect to section 25(10) of the *Act*.

20. After the Board's Supplementary Reasons for LB-1953 were produced and provided to the parties, a case management conference was held with respect to Paladin's Application for Reconsideration on July 5, 2024. The Board instructed the parties to provide written submissions with respect to four questions which were outlined in the July 15, 2024 "CMC Summary" circulated by the Board:

i. Is there other evidence, other than the vote count, that the Employer believes should be before the Board on the Employer's application for reconsideration?

ii. If so, would it be appropriate for the Board to consider such evidence given the way in which the original Decision on the s. 25(10) complaint was arrived at?

iii. In any event, is the vote count evidence that can be used to determine whether pre-vote conduct of the successful party violated s. 25(10)?

iv. If so, could such evidence have tipped the balance of the Board's reasoning/decision as explained in the most recent decision?

21. CUPE filed its submissions addressing these questions on August 16, 2024. This was CUPE's first opportunity to respond to the Application filed by the Applicant.

22. Paladin had identified "the results of the certification vote", and the "results of the collective bargaining process" as the new evidence it sought to present to the Board in order to demonstrate that CUPE's actions during the certification drive had the effect of "intimidat[ing] and coerc[ing] employees into voting in favour of certification and so the results of the vote do not represent the employee's true wishes."

23. In CUPE's reply submissions, with respect to Paladin's arguments regarding the "results of the collective bargaining process", CUPE argued in part:

    26. In its submissions, the Employer has identified "the outcome of the bargaining process" as the evidence, other than the vote count, that should be before the Board on the Employer's present Application.

    27. The Union submits that the identification of the proposed "evidence" as the "outcome of the bargaining process" is misleading and inappropriate.

    28. The Union submits that the bargaining process remains live. The fact that bargaining in incomplete necessarily means that there is no "outcome" to that process, and the framing is such that it attempts to create an illusion of circumstances that do not exist.

24. With respect to Paladin's argument regarding the "results of the certification vote", CUPE argued in part:

    74. A simplified framing of the Employer's argument is: a strong vote in support of a union is proof that the employees are incapable of making a reasoned decision with respect to union representation, and that such a result does not reflect the true wishes of these employees.

    75. The effect of such a finding would be to establish that a strong vote in support of a given union will always open the door to an employer to allege misconduct or otherwise challenge the legitimacy of a certification vote after the fact, based on nothing more than a strong vote in favour of certification.

25. On August 23, 2024, Paladin filed response submissions to the Board regarding CUPE's submissions. In the response submissions, Paladin objected to what it alleged were the CUPE's "substantive arguments on the merits of the Application as if Paladin had already provided its evidence."

26. After it had received the submissions of the parties (including the response submissions of Paladin), the Board conducted a hearing by paper review on the Application for Reconsideration and issued the Decision on November 18, 2024.

The Decision

[10] The Decision included a lengthy outline of the procedural history and the related legal proceedings which followed, including the timing and procedural history with respect to the Application for Reconsideration presently at issue before this court. This history and background provide critical contextual information which both helps to explain the Board's decision.

[11] The Board outlined the submissions and arguments of the parties at length, including the reply submissions of the Applicant. After reviewing the submissions of the parties, the Board specifically identified the issues raised, as well as the new evidence that the Applicant wished to present as part of its Application for Reconsideration.

[12] The Decision concludes at para. 88:

> [88] For the above reasons the Board was not persuaded that the evidence of the overwhelming vote in favour of certification, or the evidence of the history of collective bargaining after that certification, would be relevant or appropriate to support the Employer's application for reconsideration. Given that finding, there is also nothing to justify or support the Employer's application for reconsideration. It is accordingly dismissed.

Issues

[13] The issues on this review can be summarized as follows:

1. Whether the Decision is unreasonable because it is not justified, particularly in relation to:

   a. existing precedent;
   b. the statutory scheme and purpose of the TUA and labour relations policy;
   c. the facts and evidence before the Board.

2. Whether the Board breached the rules of procedural fairness owed to Paladin in the circumstances.

Standard of Review

[14] The parties agree that the standard of review on issue 1 is reasonableness in accordance with the Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. The Nova Scotia Court of

Appeal has recently summarized the principles of reasonableness review in *EMC Emergency Medical Care Inc. v. Canadian Union of Postal Workers*, 2024 NSCA 55, at paras. 32-47. At paras. 33-35, the Court of Appeal stated:

> [33] Reasonableness is a "reasons first" approach. The reviewing court does not start with its view, i.e. it does not fashion its "own yardstick … to measure what the administrator did" and then proceed with "disguised correctness review". Rather, the reviewing court "must begin its inquiry into the reasonableness of the decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion". (*Vavilov*, paras. 83-84; *Mason [v. Canada (Citizenship and Immigration), 2023 SCC 21]*, paras. 8, 58, 60 and 62-63)
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> [34] Both the administrative decision's outcome and reasoning matter. The outcome always must be justifiable and, where reasons were required, the reasons must "justify" the outcome. The reviewing court "must consider only whether the decision made by the administrative decision maker – including both the rationale for the decision and the outcome to which it led – was reasonable". (*Vavilov*, paras. 86-87; *Mason*, paras. 58-59)
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> [35] Reasonableness is "a single standard that accounts for context". Reviewing courts are to analyze the administrative decisions "in light of the history and context of the proceedings in which they were rendered". The history and context may show that, after examination, an apparent shortcoming is not a failure of justification. Context includes the evidence, submissions, record, the policies and guidelines that informed the decision maker's work and past decisions. Context also includes the administrative regime, the decision maker's institutional expertise, the degree of
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> flexibility assigned to the decision maker by the governing statute and the extent to which the statute expects the decision maker to apply the purpose and policy underlying the legislation. (*Vavilov*, paras. 88-94, 97, 110; *Mason*, paras. 61, 67, 70)

[15] The analysis which applies to a judicial review on the grounds of procedural fairness is not a "standard of review" analysis *per se*. Instead, a two-step approach is followed which first requires consideration of the content of the Board's duty of fairness, and then, whether the Board breached that duty. *Communications, Energy and Paperworkers Union of Canada, Local 141 v. Bowater Mersey Paper Co. Ltd.*, 2010 NSCA 19, at paras. 30-31.

[16] In *Burt v. Kelly*, 2006 NSCA 27 ["Kelly"], the Court described the two-step process, at para. 21:

> [21] The first step – determining the content of the tribunal's duty of fairness – must pay careful attention to the context of the particular proceeding and show appropriate deference to the tribunal's discretion to set its own procedures. The second step – assessing whether the Board lived up to its duty -- assesses whether the tribunal met the standard of fairness defined at the first step. The court is to intervene if of the opinion the tribunal's procedures were unfair. In that sense, the court reviews for correctness. But this review must be conducted in light of the standard established at the first step and not simply by comparing the tribunal's procedure with the court's own views about what an appropriate procedure would have been. Fairness is often in the eye of the beholder and the tribunal's perspective and the whole context of the proceeding should be taken into account. Court procedures are not necessarily the gold standard for this review.

[17] The content of the Board's duty of fairness is to be assessed based on the factors outlined by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817. At paras. 23 to 28, the Court provided a list of five non-exhaustive factors that are intended to assist a court determine whether the procedures that were followed respected the duty of fairness:

1. the nature of the decision being made and the process followed in making it.
2. the nature of the statutory scheme and the terms of the statute pursuant to which the body operates
3. the importance of the decision to the individual or individuals affected.
4. the legitimate expectations of the person challenging the decision.
5. the choices of procedure made by the agency itself.

Analysis

Issue 1 - Reasonableness

[18] Paladin argues that the decision was unreasonable because it was not justified.

[19] To be reasonable, a decision's outcome and the reasoning supporting the outcome must be justified. This is done through a decision's written reasons and requires that the decision maker demonstrate, through those reasons, that it has considered and responded to the various contextual constraints on its decision-making. The Court held in *Vavilov,* at para. 105:

> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.

[20] Paladin says that in the Decision, the Board's reasoning and determination with respect to the Reconsideration Application is not justified in relation to past practice and precedent. Paladin argues that the Board deviated from existing precedent, and then failed to justify its approach, and its implications, in light of the scheme and purpose of the *Act*. Rather than reviewing whether the evidence could support a finding that the decision to certify the Union should be reconsidered, the Board went a step further and assessed whether the evidence would do so based on assumptions and inferences - despite not having such evidence on the record before the Board.

[21] The Board began its analysis and reasoning by stating:

> [63] The Employer wants the Board to reconsider its decision to certify the Union. The application is based on two bits of evidence the Employer says were not available at the time of the Board's decision in the Complaint Order to dismiss the Employer's s.58(1) and
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> [64] s.25(10) arguments. The first is the fact that a large majority of employees voted in favour of the application. The second is what it says is the Union's failure to conduct meaningful bargaining after November 1, 2022 for a first collective agreement.
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> [65] The preliminary issue is whether either or both bits of evidence can or should be accepted by the Board on a reconsideration application.
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> [66] It is important to bear in mind at this point what is actually in issue. The Employer's position—one that it has maintained all along—has and continues to be that the Union, by making the representations and promises that it did, had either
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> a. breached the Act or its regulations, "in so significant a way that the representation vote does not reflect the true wishes of the employees:" s.25(10), or
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> b. sought by "intimidation or coercion to compel a person to become or refrain from becoming a member of a trade union:" s.58(1), or
>
> c. both.

[67] The Board has already decided, on the basis of evidence and submissions from both parties before the vote was counted, that;

a. the Union's representations did not constitute intimidation or coercion, and

b. did not breach the Act or its regulations in so significant a way that the vote did not reflect the true wishes of the employees.

[68] The Employer now returns to the Board seeking a reconsideration of that decision pursuant to the authority granted the Board by s.19(1) of the Act to reconsider any decision or order made by it. The Employer says, in effect, that the 'new' information calls into question the foundation of and reasoning in the Certification Order; and that if such information was taken into account the Board would, could or should change its decision and dismiss the certification application. We were not persuaded for the following reasons that it would be just or appropriate to consider such evidence.

[Italics in original.]

[22] The Board then cited the entire relevant section of the *Act*, section 19(1), and emphasized the concluding language of that section:

> 19 (1) If in any proceeding before the Board a question arises under this Act as to whether …
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> > the Board shall decide **the** question and the decision or order of the Board is final and conclusive and not open to question, or review, but the Board may, **if it considers it advisable to do so**, reconsider any decision or order made by it under this Act, and may vary or revoke any decision or order made by it under this Act. (All emphasis added by the Board)

[23] The Board then stated, at para. 70:

> [70] Section 19(1) does two things. First, it authorizes the Board to decide the questions enumerated under sub-sections (a)-(k) and makes any such decision "final and conclusive and not open to question or review." But second, it also authorizes the Board to reconsider any decision or order made by it under the Act, regardless of whether the decision related to those enumerated sub-sections or not.
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> [71] What is the purpose of that power to reconsider a decision or order that would otherwise be final, conclusive and not open to question or review? In the Board's view it is to deal with two situations. The first situation would involve a fact or facts that would have been substantively material and relevant to the decision or order, but which were not known—and which could not reasonably be expected to have been known or discovered—before the decision was made. Take, for example, the discovery after a certification decision was made that during the

> certification drive the union or the employer had secretly coerced and intimidated the employees to vote a certain way. The discovery of such evidence—evidence that would be material to the question of whether the vote represented the true wishes of the employees—would clearly be a serious matter. It would be one that would justify an application for reconsideration. Note however, that it would be evidence of a fact that existed ***before*** the decision was made, but which could not have reasonably be discovered until ***after*** the decision was made.
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> [72] The second situation involves decisions that had given rise to a policy of the Board that had been followed and applied in succeeding decisions or orders. Developments in industrial society over time might call into question that policy, and that in turn might call for a reconsideration of the question of whether it ought still to be followed or applied. We have in mind, as an example, the decision in *United Brotherhood of Carpenters and Joiners of America, Local 83 v. Elite Formwork Atlantic Ltd* 2022 NSLB 88. There the Board was, in effect, asked to reconsider a long-standing policy, one rooted in a much earlier decision, as to the practice of differentiating between compulsory and non-compulsory trades in Part II applications for certification.
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> [73] The Employer's application does not fall clearly within either situation. The Employer has not discovered any evidence of facts or evidence that existed before the vote that would have been material to the question of whether the vote represented the true wishes of the employees. Nor is the Employer challenging the Board's usual (but not invariable) practice of deciding all issues and objections before a vote count. (Indeed, at para. 21 of its Application for Reconsideration the Employer agreed that "determining the s.25(10) issue before counting the vote is the legally correct process and does not argue that point," arguing only that, "the results of the vote provide additional information which is relevant to Paladin's requested reconsideration of the matter.")
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> [74] But even if the Employer's two 'facts'—the vote count and the history of collective bargaining—could arguably be fit within the two situations contemplated by s.19(1), the Board was not persuaded that it would be "advisable" to consider them as justifying a reconsideration of its decision to certify the Union.
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> [Bold and italics in original.]

[24] The Board then engaged specifically with the evidence that Paladin sought to introduce.

Vote Count

[25] With respect to the vote count, the Board addressed the Applicant's arguments with respect to evidence regarding the outcome of the vote count by identifying five (5) issues the Board had with the proposed introduction of this evidence:

32. First, the Board noted that Paladin was presented with the opportunity to make a choice with respect to the procedure to be followed by the Board in hearing the CUPE's Application for Certification and Paladin's related complaint. Paladin made a choice, which was followed by the Board. In the Decision, the Board noted that "It would be procedurally unfair, unjust, and an abuse of process to permit the Applicant, having expressly chosen to have its complaint determined before the vote was counted, to then seek a 'do over' by, in effect, having it determined after the vote count."(para 75)

33. Second, the Board noted that "strictly speaking" it wasn't the result of the vote count that Paladin sought to introduce as evidence. It was "an inference, based on [the result of the vote count] that the employees were swayed by what it says were misrepresentations by the Union". The Board noted that that argument had already been made and rejected by the Board. (para 76)

34. Third and fourth, the Board noted that it had already decided "from an objective standpoint" that the disputed representations made by CUPE did not amount to a violation of the Act. This finding had the effect of making the proportion of those who voted in favour of CUPE irrelevant to Paladin's complaint. Further, the Board identified that Paladin's argument with respect to the proportion of the vote count was "based on the assumption that a member's vote in favour of certification was premised on the Union's representations regarding the transfer of employment to the NSHA" as opposed to any other reason the member may have had for voting in support of CUPE. (paras 77-78)

35. Fifth, the Board addressed the policy ramifications of Paladin's proposed approach of considering the outcome of a certification vote as evidence of misconduct on the part of whichever party was "successful" in the vote, noting that to do so would "drag the Board into dangerous territory … it is unwilling to venture into without good reason."

[26] This analysis clearly outlined the Board's justification for its position with respect to the vote count evidence Paladin sought to present in support of its application. The reasoning is transparent and intelligible, it considered the applicable statutory regime, demonstrated an understanding of the facts and circumstances giving rise to the applicant's application, and identified relevant concerns which would arise with respect to the administration of the statutory regime delegated to the Board by the Legislature.

[27] The Board's analysis regarding the vote count evidence clearly demonstrates the hallmarks of reasonableness identified by the Court in *Vavilov*, at para. 99. The Board's concerns with respect to the ongoing administration of the *Act* and the provincial labour relations regime are precisely the type of considerations identified by the Court in *Vavilov*, at para. 29-30, in establishing the deferential reasonableness standard as the default standard of review.

[28] Paladin argues that the Board deviated from precedent regarding the consideration of a certification vote result as evidence, relying on *CUPE v. Guelph Wellington Association for Community Living*, 2000 CarswellOnt 5609 as the only precedent in support of the assertion that "the margin of votes in favour versus votes against" was "valid evidence in assessing the legitimacy and reliability of a certification vote as to employees' wishes".

[29] In *Vavilov*, the Court addressed the role of precedent acting as a constraint on an administrative decision maker, at para. 112:

> Any precedents on the issue before the administrative decision maker or on a similar issue will act as a constraint on what the decision maker can reasonably decide. An administrative body's decision may be unreasonable on the basis that the body failed to explain or justify a departure from a binding precedent in which the same provision had been interpreted. Where, for example, there is a relevant case in which a court considered a statutory provision, it would be unreasonable for an administrative decision maker to interpret or apply the provision without regard to that precedent. The decision maker would have to be able to explain why a different interpretation is preferable by, for example, explaining why the court's interpretation does not work in the administrative context. …
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> [Emphasis added.]

[30] With respect, a decision of the Ontario Labour Relations Board is not binding upon the Nova Scotia Labour Board. Further, in the Decision, the Board wrote that "The Ontario Board was not considering why the employees voted the way they did, which, in effect, is what the Employer here is asking us to do." (para. 80)

[31] The Decision adequately addressed the *Guelph* decision and explained the Board's rationale for refusing to accept Paladin's framing of *Guelph* as a precedent. I find that the Board's rejection of a novel interpretation of a twenty-year-old decision, addressing a distinguishable matter, from a different jurisdiction, was patently justified and reasonable.

History of Collective Bargaining

[32] With respect to the history of collective bargaining, Paladin argues that the Decision "significantly misstates its arguments". The Board allowed for the Application for Reconsideration to be amended to address this argument. Paladin argued:

> Additionally, however, Paladin also points to the results of the collective bargaining process, which was not available to the Board when it certified the Union in LB-1940, showing that the Union's misleading communication influenced the representation vote. With the consequences of the misleading and incorrect communication made clear, the bargaining unit no longer appears dedicated to reaching a collective agreement – the basic purpose of the Union.
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> [Emphasis added.]

[33] The Board found that it was not necessary or wise to venture down the path urged by Paladin. The Board stated, beginning at para. 85 of the Decision:

> [85] First, the aim of the enquiry urged upon us by the Employer is secondary to the Employer's main goal, which is to support an inference (and no more than that) that because the Union acted badly after the certification it must have acted badly before the vote. …
>
> [86] Second, and moreover, the use of evidence of post-event conduct to establish pre-event intent is problematic, dangerous and is generally frowned upon. For example, a finding that the Union acted badly after certification would not establish that it had intended to act—or had acted—badly before certification. There is no clear causal or relevant connection between the two. The Employer's argument in some sense is a reversal of the *post hoc, ergo propter hoc* logical fallacy—in other words, because the Union acted badly after certification it must have acted badly before. But sequence in time—and all the more a reverse sequence in time—does not establish causation.
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> [87] The Board was accordingly not persuaded that the evidence of the history of collective bargaining that took place after November 1, 2022 was sufficiently relevant evidence of the Union's intent in making the representations that it did before the vote in July 2021. Nor would it be a reasonable use of the Board's time and resources—or those of the parties—to engage in an enquiry into the Union's conduct that is not intended to remedy that conduct but is rather to attempt to re-open an issue that had been closed by the Board's Complaint Order, as explained by the Supplementary Reasons.

[34] The Decision demonstrates the Board's attention to the substance of the argument of Paladin while also considering the probative value of the proposed evidence. I find this reasoning by the Board to be transparent and intelligible. It provided clear justification for its position on the issue.

[35] Paladin alleges that the Board's Decision in the present Application for Reconsideration represents a departure from "the Board's established practice and policy", citing the *Decision EllisDon Corp and Beswick, Re*, 2016 NSLB 29. Paladin argues that *EllisDon* establishes an entitlement to a hearing on its Application for

Reconsideration and that by proceeding by paper review the Board denied Paladin its right to hearing.

[36] I am not persuaded that Paladin has established that the *EllisDon* decision amounts to "established practice or policy". Regardless, as is outlined, and in fact emphasized, by the Decision, the critical language of s. 19(1) of the *Act* states that "…the Board may, **if it considers it advisable to do so**, reconsider **any** decision or order made by it under this Act…" (emphasis in original).

[37] I find that the Board's exercise of its discretion in this instance is tethered to the rationale and purpose of the legislative scheme and the objectives for which the discretion was conferred. In my view, the Decision provides a justified, transparent and intelligent explanation for its conclusion on this issue.

Adequate Procedural Fairness

[38] Paladin alleges that the Board breached its duty of procedural fairness by depriving "the Applicant of a meaningful opportunity to present its case" by allegedly deciding "to evaluate the evidence's value, rather than its admissibility for reconsideration".

[39] The Decision clearly outlined the discretionary nature of s. 19(1) of the *Act*, refers to Board policy and relevant case law (paras. 69-73). At para. 74, the Board explained that even if the "facts" Paladin sought to introduce could be fit into the situations contemplated by s. 19(1) and the Board's policy, it was not persuaded to exercise its discretion to reconsider the Certification Order.

[40] The nature of the information the applicant sought to present in support of its application was expressly within the institutional expertise of the Board. The context of the Decision, and the effect it could have on the labour relations regime the Board is responsible to oversee, was considered and explained in the Decision.

[41] The Board reviewed and considered the submissions of the parties and accurately identified that, with respect to both grounds for reconsideration, the applicant was effectively seeking to introduce an inference to be drawn from the proposed evidence, with the intention of "re-open[ing] an issue that had been closed by the Board's Complaint Order, as explained by the Supplementary Reasons". (para. 87)

[42] I find that the Board met its duty of procedural fairness and produced a Decision which easily meets the hallmarks of reasonableness.

Conclusion

[43] For these reasons, the application is dismissed with costs payable to CUPE. If the parties are unable to agree on costs, I will accept written submissions of no more than three pages on or before January 30, 2026. CUPE will prepare the order accordingly.

Norton, J.