ONTARIO LABOUR RELATIONS BOARD

OLRB Case No.: **0379-14-R**

International Brotherhood of Electrical Workers, Local Union 353, Applicant v. **Strabag Inc.**, Responding Party v. Construction Workers, Local 52, affiliated with the Christian Labour Association of Canada, Intervenor

BEFORE: Eli A. Gedalof, Vice-Chair

APPEARANCES: Kathryn Carpentier, Howard McFadden and Gord Nye appearing for the applicant; Andrew Reynolds and Teri O'Neill appearing for the responding party; Elizabeth Forster, Andrew Regnerus and Randall Boessenkool appearing for the intervenor

DECISION OF THE BOARD: March 4, 2015

1. This is a construction industry application for certification being dealt with under section 8 of the Labour Relations Act, 1995, S.O. 1995, c.1, as amended (the "Act"). Specifically, it is an application to displace the intervenor, Construction Workers, Local 52, affiliated with the Christian Labour Association of Canada ("Local 52"), as the bargaining agent for Strabag Inc.'s ("Strabag") electricians. By decision dated July 11, 2014, the Board, differently constituted, referred this matter to hearing on two issues. The first issue is the responding party and intervenor's argument that this application should be dismissed as barred by section 7(10) of the Act, or that the Board should exercise its discretion under section 111(3) of the Act to refuse to entertain this application. The second issue concerned the description of the appropriate bargaining unit and an associated timeliness issue. This decision deals only with the first issue.

Overview and the Parties' Positions

2. Subsection 7(10) of the Act provides:

> (10) If the trade union withdraws the application after the representation vote is taken, the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year after the original application is withdrawn.

3. The responding party and Local 52 argue that section 7(10) of the Act operates to impose a mandatory bar on this application, by virtue of a previous application for certification filed by the Labourers' International Union of North America, Local 183 ("Local 183") in Board File No. 0012-14-R, in which Strabag and Local 52 contend that Local 183 "withdrew" an application to represent electricians, including electricians who would fall within the bargaining unit applied for here (the "LIUNA Application"). In that application, a vote was conducted between Local 183 and Local 52, in which electricians within the applied-for bargaining unit participated. Subsequent to the vote, Local 183 sought to amend its bargaining unit to restrict it to its designated craft unit of construction labourers. Ultimately, in accordance with an agreement between the parties, the Board certified Local 183 for that unit, by decision dated July 11, 2014. That amendment to the applied for bargaining unit, argue Strabag and Local 52, was effectively a withdrawal of the application to represent the electricians.

4. The applicant disputes that the prior application was "withdrawn" within the meaning of section 7(10) of the Act. Rather, while the LIUNA Application initially sought a bargaining unit that included all employees in the non-ICI sectors of the construction industry, the bargaining unit was subsequently amended with leave of the Board to include only construction labourers. An amendment, argues the applicant, is not a withdrawal, and in fact the application was successful with a certificate issuing. Section 7(10) refers to "the application", and the applicant argues that "the application" cannot be simultaneously allowed and withdrawn.

5. Subsection 111(3) of the Act provides:

> (3) Despite sections 7 and 63, where an application has been made for certification of a trade union as bargaining agent for employees in a bargaining unit… and a final decision of the application has not been issued by the Board at the time a subsequent application for the certification…is made with respect to

> any of the employees affected by the original application, the Board may,
>
> (a) treat the subsequent application as having been made on the date of the making of the original application;
>
> (b) postpone consideration of the subsequent application until a final decision has been issued on the original application and thereafter consider the subsequent application but subject to any final decision issued by the Board on the original application; or
>
> (c) refuse to entertain the subsequent application.

6. There are two aspects to the responding party and Local 52's argument under section 111(3) of the Act.

7. First, they address the question of whether or not section 111(3) of the Act is a complete code which supersedes section 7(10) of the Act in the circumstances where there are multiple outstanding applications for overlapping bargaining units. The responding party and intervenor say that it is not, and argue instead that the two provisions can be read together harmoniously. They argue that while the Board can exercise its discretion under section 111(3) of the Act to postpone consideration of a subsequent application, once that prior application is dealt with and it comes time to consider the subsequent application, if the conditions of section 7(10) are met then the bar should be applied. This is in fact what the Board did in *Sheppard Group,* [2001] O.LR.D. No. 752 and [2002] O.L.R.D. No. 1847, albeit without any substantial analysis of the issue. The responding party also relies on the Board's decision in *William Day Construction Ltd.* [2007] OLRB Rep. November/December 1183, in which the Board considered the application of section 7(10) of the Act in circumstances of overlapping contemporaneous applications, but rejected it on the facts, finding that there had not been a withdrawal of the prior application, but rather a dismissal under section 8.1. As in *Sheppard Group,* the interaction of sections 7(10) and 111(3) was not analyzed in any substantial manner.

8. Second, and in the alternative, the applicant and intervenor argue that even if section 111(3) is a compete code in cases such as this one, the provisions of section 7(10), and the purposes which underlie it, should at least inform the Board's exercise of its discretion under section 111(3) of the Act. Given that electricians participated in

a prior representation vote, the responding party and intervenor argue that there should be a period of repose before the Board considers another representation application concerning these individuals.

9. The applicant argues that section 111(3) is clearly intended to supersede section 7(10) of the Act, explicitly operating "despite" that section. In particular, the applicant argues that where competing applications are filed in close proximity, it would serve no purpose but to defeat the representative wishes of employees if a union could simply file an application, have the matter proceed to a quick vote and then immediately withdraw, and therefore automatically bar its rival. The legislature, argues the applicant, intended to provide the Board with discretion and flexibility in these circumstances. In this case, there is no overlap between the bargaining unit awarded in the LIUNA Application and that which is sought in the instant application. Neither, argues the applicant, is there any suggestion of mischief in the manner in which the applicant applied. While there are some electricians who participated in both votes, the applicant argues that the majority of Strabag's electricians who participated in the instant vote had not previously had any opportunity to express their wishes. In the circumstances, the applicant argues that there is no basis upon which the Board ought to exercise its discretion to refuse to entertain this application.

Facts and Background

10. Fundamental to the arguments under both sections 7(10) and 111(3) is the question of whether there has in fact been a "withdrawal" of a prior application to represent electricians, within the meaning of section 7(10) of the Act. For this reason, it is necessary to look closely, as the parties did in their submissions, at what exactly transpired in the LIUNA Application.

11. The LIUNA Application was filed on April 1, 2014. The application form contained the following bargaining unit description:

> All construction employees in the employ of the Responding Party, in all sectors of the construction industry in OLRB Geographic Area 8, excluding the industrial, commercial and institutional sector, and save and except non-working foreman and persons above the rank of non-working foremen.

> Clarity note: "All construction employees" include all employees covered by the collective agreement between the Employer and CLAC, expiring June 30, 2014. These employees include but are expressly not limited to, the following trades: construction labourers, carpenters and carpenters' apprentices, millwrights and millwrights' apprentices, electricians and electricians' apprentices, and all employees engaged in the operation of cranes, shovel, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors. [emphasis added]
>
> A copy of Schedule "A" to this collective agreement, listing all of the classifications covered and descriptions thereof, is attached hereto.

12. The application as initially formulated therefore sought to displace all of the trades covered under Local 52's agreement, and did not include the ICI sector.

13. On the same day, the International Union of Operating Engineers, Local 793 applied to carve out its traditional craft unit of equipment operators from the CLAC bargaining unit. There is no suggestion of an overlap between the Local 793 application and the instant application, but the filing of this application provides some context for the manner in which Local 183 then sought to amend its bargaining unit.

14. On April 3, 2014, Local 183 filed an Amended application, in which it sought the following amended bargaining unit:

> All construction labourers in the employ of the Responding Party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction employees in the employ of the Responding Party, in all sectors of the construction industry in OLRB Geographic Area 8, excluding the industrial, commercial and institutional sector, and save and except non-working foremen and persons above the rank of non-working foreman and all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing of same, and employees engaged as surveyors in respect of whom the Board

> has certified the International Union of Operating Engineers, Local 793.
>
> Clarity note: "All construction employees" include all employees covered by the collective agreement between the Employer and CLAC, expiring June 30, 2014. These employees include but are expressly not limited to, the following trades: construction labourers, carpenters and carpenters' apprentices, millwrights and millwrights' apprentices, electricians and electricians apprentices, and all employees engaged in the operation of cranes, shovel, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors, subject to the exclusion of IUOE, Local 793 craft unit as set out in the above-noted bargaining unit description.
>
> A copy of Schedule "A" to this collective agreement, listing all of the classifications covered and descriptions thereof, is attached hereto.

15. The amended application was filed on the same day that Local 183 delivered the LIUNA Application to the affected parties.

16. On April 7, 2014, both Local 52 and Strabag filed responses. With respect to the appropriate bargaining unit description, Strabag stated the following:

> (1) It is submitted that the Board's jurisprudence requires an Applicant in a displacement Application to take the bargaining unit which the incumbent has, both the geographic scope and the employees covered.
>
> (2) An accreditation cannot expand the bargaining rights beyond those held by the incumbent in non-ICI Sectors of the construction industry and therefore for the balance of Board Area 8 not covered by the scope of the CLAC Agreement this application is untimely.
>
> (3) It is submitted that in a displacement Application Local 183 is not permitted to "parse" the bargaining unit in the non-ICI Sectors for the

convenience of another Applicant, i.e. they cannot exclude Operating Engineers.

(4) For clarity the Responding Party has attached Schedule "A" listing employees who would come within Labourers traditional ICI bargaining units and a complete list of all employees who the Responding Party claims should be in the "all employee" unit.

17. Local 52 stated as follows:

Detailed description of the unit claimed by the intervenor to be appropriate for collective bargaining:

All employees of Strabag Inc. at the York Region Southeast Collector Truck Sewer Project save and except non-working foremen, persons above the rank of non-working foreman and security guards.

and

All construction employees including but not limited to all crane operators, machine operators, heavy equipment mechanics, carpenters, millwrights, electricians, welders, construction labourers, working forepersons and any apprentices of same at the Mid-Halton WWTP Effluent Outfall Tunnel in the Town of Oakville.

18. By correspondence dated April 8, 2014, Local 183 (and Local 793) made the following representation concerning the appropriate bargaining unit:

The Unions state that they are entitled to apply for the bargaining units set out in their applications (as amended in the case of Local 183). The Board has confirmed, in *ExpercomTelecommunications Inc.* (2012) CanLII 56712 (attached) and in many other proceedings, that a union filing a displacement application in the construction industry does *not* have to "take the unit as it finds it" where it is carving out its craft unit.

In this case, Local 793 has applied for its normal craft unit. Local 183 has applied for all other employees covered by the CLAC agreement. Both unions are

> entitled to do as they have done, and the net effect is to completely displace all bargaining rights held by CLAC. Both of these units are appropriate and consistent with section 158(2) of the *Act*.
>
> The Unions reserve the right to make further submissions at the appropriate time in this matter.

19. By decision dated April 9, 2014, the Board ordered votes in both the LIUNA and Local 793 applications. The Board did not make a final determination as to the appropriate bargaining unit. It did, however, reject the positions taken by all of the parties. With respect to Local 183's bargaining unit description in particular, the Board found (at paras 16-17):

> 16. The bargaining unit proposed by Local 183 is not an appropriate bargaining unit. Local 183 in its April 3rd letter amended its application to indicate that it related to the industrial, commercial and institutional sector. Section 158(1) of the Act establishes the description of an appropriate bargaining unit in a certification application that relates to the industrial, commercial and institution sector. The bargaining unit Local 183 proposed is all construction labourers employed by Strabag in the industrial, commercial and institutional sector of the construction industry in the province of Ontario and all construction employees of Strabag in Board Area 8 outside the industrial, commercial and institutional sector save and except employees in the operating engineers bargaining unit for which Local 793 is certified. When Local 183 seeks certification in relation to the industrial, commercial and institutional sector, section 158(1) establishes one bargaining unit for construction labourers. That one bargaining unit must be described in terms of construction labourers employed in the industrial, commercial and institutional sector together with construction labourers in at least one appropriate geographic area. If Local 183 is certified, the fact that upon certification the Board must issue two certificates pursuant to section 160(1) does not mean that portion of the section 158(1) bargaining unit encompassing sectors other than the industrial, commercial and institutional sector can include individuals who are not construction labourers.
>
> 17. Whether an application for certification "relates" to

> the industrial, commercial and institutional sector of the construction industry depends on whether the union applying for certification has proposed a bargaining unit that includes that sector. In other words, the applicant trade union decides when it makes its application for certification whether its application will relate to that sector. See Colonist Homes Ltd., [1980] OLRB Rep. Dec. 1729 at 1733; *Pelar Construction Ltd.*, [1981] OLRB Rep. Feb. 210 at 214; *Adams Report to the Minister of Labour*, May 1, 1980; *Aero Block and Precast Ltd.*, [1984] OLRB Rep. Sept. 1166. In my view, since the amendment made by Local 183 to its certification application to include the industrial, commercial and institutional sector, it is clear that the Local 183 certification application relates to the industrial, commercial and institutional sector and section 158(1) applies. Therefore the bargaining unit under section 158(1) must be described in terms of construction labourers only.

20. However, the Board in its April 9, 2014 decision left open the possibility that Local 183 might also be able to apply for a separate bargaining unit under section 158(2). It did not finally determine this issue, however, concluding that this could be determined following a Case Management Hearing. Further, the Board noted that the appropriateness of any bargaining unit outside of the ICI sector would depend in part on the outcome of Local 793's application (at paras 18-20). In order to permit the vote to take place as quickly as possible in accordance with section 8(5) of the Act, the Board ordered the following three voting constituencies, intended to preserve all of the possible bargaining unit outcomes in the LIUNA and Local 793 applications (at paras 27-29):

> a) Persons who may come within a bargaining unit proposed by Local 793;
>
> b) Persons who may come within the bargaining unit of construction labourers employed by Strabag;
>
> c) Persons who may not come within the bargaining unit of construction labourers but who may come within a bargaining unit of construction employees (including operating engineers) employed by Strabag.

21. A vote was conducted on April 11, 2014.

22. In post vote representations, filed on May 2, 2014, Local 183 took the following position concerning the appropriate bargaining unit:

> The Labourers' are entitled to amend the bargaining unit description to include the ICI sector. This was done prior to the application being served on any other party and there is no prejudice whatsoever to any party.
>
> The Labourers' and the Operating Engineers' are both entitled to include the ICI sector in their bargaining units in accordance with section 158(1) of the Act.
>
> The Labourers' and the Operating Engineers' are both entitled to be certified for the bargaining units for which they have applied, namely, the Operating Engineers' craft unit in the ICI sector for the Province of Ontario and in the non-ICI sectors in Board 8; and the Labourers' are entitled to be certified for all construction labourers in the ICI sector for the Province of Ontario and for all construction employees, save and except construction labourers and operating engineers, in the non-ICI in Board Area 8.

23. On May 8, 2014, the applicant filed the instant application.

24. On May 12, 2014, Local 183 wrote to the Board seeking leave to amend its bargaining unit again. Specifically, counsel for Local 183 wrote:

> On behalf of our client, we request the Board's leave to amend the bargaining sought in the application and in light of the Board's decisions dated April 9 and May 9, 2014, request the same bargaining unit as described in voting constituency no.2 set out in the decision dated April 9, 2014. We submit that such unit is appropriate as it is the traditional Labourers' unit while, by the same token, the Board rejected the amended unit previously sought by our client.

25. On May 15, 2014, the Board, differently constituted, ordered the representation vote in the instant application, and that vote was conducted on May 20, 2014. Fifteen persons cast ballots in that vote, and the parties subsequently agreed that ten of those persons were entitled to vote, and five were not.

26. On July 9, 2014, the parties to the Local 183 Application advised the Board that they had reached a resolution of the outstanding issues in the application, and specifically agreed that the bargaining unit set out in voting constituency no. 2 was the appropriate bargaining unit. As there were no further outstanding issues and as the majority of votes in that constituency were cast in favour of the applicant, the Board issued its standard certificates under section 158(1) of the Act.

Analysis

27. Given that the responding party's and the intervenor's arguments under both section 7(10) and 111(3) depend on the assertion that the sequence of events set out above constitutes a withdrawal of an application to represent electricians within the meaning of section 7(10) of the Act, the Board begins with that issue.

28. We note that the responding party relied on a number decisions in support of some basic propositions, including that section 7(10) applies to construction industry applications, that it operates to bar any union and not only the union that applied in the initial application, and that it applies irrespective of whether the ballots cast in the prior representation vote have been counted. The applicant did not take issue with these propositions and it is unnecessary to address them in any detail here.

29. There was also no dispute between the parties concerning the appropriate general approach the Board should take to interpreting section 7(10) of the Act. As the Supreme Court of Canada succinctly put it in *Rizzo & Rizzo Shoes Ltd.*, 1998 CanLII 837 (SCC):

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

30. The responding party's argument focuses on the purpose of the bar provisions in the Act generally. In *Access Security Professionals Inc.* [2005] OLRB Rep. January/February 5, the Board commented on the current provisions, which have evolved over time, and noted that at least one of the purposes of the mandatory bar was that holding a representation vote can cause disruption in the workplace which may affect employee productivity. The bar, the Board

noted, "gives the employer and employees, particularly those who do not want union representation, the opportunity to work in a more or less calm period (at para 37)." In *Red Cross Care Partners*, [2013] OLRB Rep. May/June 690, the Board summarized this principal as follows (at para. 18):

> 18. Without engaging in any extensive parsing of the Board's case law on this point, which is not a controversial one in any event, the acknowledged purpose of the bar is to provide a period of repose to the workplace parties following an organizing campaign that has not been successful, but where employee wishes have been tested. It has been specifically recognized that both employers and employees are the beneficiaries of this period of repose. See for example *Greenvilla Homes* 2005 CanLII 8233 (ON LRB) at ¶13.

31. There was no dispute between the parties that the purpose of the bar is to create a period of repose. Strabag, supported by Local 52, argues that its interpretation would give effect to this purpose. It argues that while Local 183's initial bargaining unit may have been inappropriate, the fact that it continued to pursue the full scope of the initial unit for which it applied, for a significant period of time, after having received the Board's April 9, 2014 decision, can only mean that it accepted that it was applying for two separate bargaining units, the second of which included electricians. Strabag argues that the second unit was clearly an appropriate unit for which it was entitled to apply, that a vote was conducted of that unit, and that the practical result of the "amendment" was effectively to proceed with the application for first unit, and withdraw its application for the second unit. Had the applicant continued to pursue the second unit, and been unsuccessful in the vote, this application would have been barred under section 10(3). Since section 7(10) does not permit a party to avoid this risk simply by withdrawing before the application is dismissed or even before the vote is counted, a purposive interpretation of section 7(10) of the Act requires that it be applied in these circumstances.

32. There is much that is compelling in the responding party's argument. I certainly accept that form should not trump substance and that if Local 183 had effectively withdrawn an application to represent a bargaining unit that included electricians, after the vote, the mere fact that the effective withdrawal was characterized as something other than a withdrawal ought not to defeat the purposes of the Act.

Had Local 183 applied for two separate bargaining units on a single application form, had the Board permitted it to do so, and had it then elected to pursue only one of those bargaining units and not the other, the Board might well have concluded that that would constitute a withdrawal of an application. That is because in such a case, there would effectively be two separate applications for certification, albeit filed on a single form, one of which was "the application" withdrawn for the purposes of section 7(10) of the Act. But that is not, in my view, what occurred in the LIUNA Application.

33. In the LIUNA Application, the Board concluded that the Labourers' designated bargaining unit under section 158(1) could not be combined with employees outside of the designation. The bargaining unit applied for was not an appropriate one, and the Board made that determination. The Board also concluded that the applicant was clearly seeking a bargaining unit that included its own designated trade under section 158(1) of the Act, and the Board concluded that that bargaining unit was appropriate. The Board left open the possibility that Local 183 could apply, simultaneously, for a second but separate bargaining unit. However, as the applicant argued, those two units are not something that Local 183 ever sought, and neither was the Board ever required to determine whether Local 183 would in fact be permitted to do so. At paragraph 19 the Board specifically noted that "[t]he Board need not determine whether Local 183 will be permitted to amend its application to seek certification in respect of two bargaining units—one described in respect of construction labourers pursuant to section 158(1) of the Act and the other described in terms of employees other than construction labourers pursuant to section 158(2) of the Act." As the Board does generally, it ordered a quick vote with voting constituencies that the Board constructed itself in order to allow for the widest possible range of outcomes in the case. But that does not mean that the applicant ever applied for a separate bargaining unit mirroring the Board's second voting constituency.

34. In this context, I accept the applicant's argument that it would stretch the language of section 7(10) of the Act beyond reason to conclude that the applicant "withdrew the application" for a bargaining unit that it did not seek in the first place, and which only existed as a voting constituency and a theoretical possibility held out by the Board—on its own motion—and put forward in order to permit the Board to carry out its administrative function of ordering a quick vote. The only bargaining unit which the applicant ever applied for that

included electricians was one that the Board found could not possibly be appropriate by virtue of section 158(1) of the Act, and which therefore required either amendment or dismissal of the application. The voting constituency that the Board ordered including electricians was not a bargaining unit that the applicant had ever applied to represent. The responding party asks the Board to presume that Local 183 must have wanted to pursue a bargaining unit reflecting the second voting constituency since it allowed the matter to proceed until May 12, 2014 when it sought and the bargaining unit to match the 158(1) designated craft unit. Yet the only definitive action taken by Local 183 in that regard, on the record before the Board, was to amend its application to match the only bargaining unit that the Board actually concluded was appropriate. To characterize that action as a "withdrawal" of "the application" would not, in my view, give effect to the plain and ordinary meaning of the words in section 7(10) of the Act. Local 183 filed only one application on the facts of this case, and that application was not withdrawn.

35. In reaching this decision, the Board is also influenced by the need to ensure that what constitutes a withdrawal of an application for certification is both clear and ascertainable. A withdrawal can have significant consequences that reach beyond the immediate parties to the application being withdrawn, as this case illustrates. As the applicant argued, the withdrawal of an application for certification under section 8 requires that Board made a determination under section 7(8)[1], and the Board will generally identify the potential consequences arising from the withdrawal in a decision of the Board. None of those events occurred in the instant case.

36. Further, we note that bargaining units are routinely amended during the post-application process. There are frequently disputes between parties concerning the scope of the appropriate bargaining unit, and whether or not a particular class of employee should be included in that unit. The Board is frequently required to set voting constituencies that include the broadest possible bargaining unit in order to conduct a quick vote, including voting constituencies that might include employees who the parties ultimately agree ought not to be included. Where parties ultimately agree that certain classes of employees are excluded, the Board does not generally bar those employees from seeking representation in a subsequent application. Indeed, the Board is not aware of any instance in which a bar has

[1] Section 7(8) provides that "An application for certification may be withdrawn by the applicant upon such conditions as the Board may determine."

been imposed in such circumstances, and the Board was certainly not provided with any such examples. The responding party's interpretation of section 7(10) of the Act would vastly expand the imposition of the one year bar to preclude such employees from seeking representation, could undermine the resolution of disputes concerning the appropriate description of bargaining units in certification applications, and open up the possibility of further gamesmanship of the kind alluded to by the applicant. In my view, such an interpretation is inconsistent with the purposes set out in Section 2 of the Act.

37. In light of the Board's finding that on the facts of this case there has not been a withdrawal of the prior application, the Board need not determine whether section 7(10) of the Act is supplanted by section 111(3) of the Act. In either case—whether supplanted by section 111(3) or because there has not been a withdrawal of the prior application – section 7(10) would not operate to bar the instant application. The Board therefore declines to determine this issue.

38. The responding party and Local 52's argument that the Board should exercise its discretion under section 111(3)(c) was based on its position that the conditions under section 7(10) had been met, and that even if section 7(10) did not strictly apply, the purpose underlying section 7(10) should inform the Board's exercise of discretion under section 111(3). Having determined that the conditions under section 7(10) have not been met, any consideration of section 7(10) would in fact militate in the other direction. In this case, the Board finds that there is nothing in the events giving rise to this application that would cause the Board to exercise its discretion under section 111(3)(c) to refuse to entertain this application. This application was filed within approximately one month of the prior application, and there has been no suggestion that the applicant has acted improperly in any way, or sought to abuse the Board's process in any manner. While certain electricians cast ballots in the LIUNA Application, there is no meaningful sense in which their representational wishes have been tested, and no reason that they should be precluded from expressing those wishes in this application.

39. The Board therefore declines to dismiss this application under either section 7(10) or section 111(3)(c) of the Act. This matter will continue as scheduled on March 24 and May 7, 2015 in order to determine the remaining outstanding issues.

40. I remain seized.

"Eli A. Gedalof"
for the Board