



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *Construction General Labourers, Rock & Tunnel
Workers, Local 1208 v. Paladin Security Group Limited,*
2025 NLCA 14

Date: April 28, 2025

Docket Number: 202401H0027

BETWEEN:

CONSTRUCTION GENERAL LABOURERS,
ROCK & TUNNEL WORKERS, LOCAL 1208

APPELLANT

AND:

PALADIN SECURITY GROUP LIMITED

FIRST RESPONDENT

AND:

THE LABOUR RELATIONS BOARD

SECOND RESPONDENT

Coram: W.H. Goodridge, D.M. Boone and K.J. O'Brien JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
General Division 202301G3257
(2024 NLSC 14)

Appeal Heard: December 12, 2024
Judgment Rendered: April 28, 2025

Reasons for Judgment by: D.M. Boone J.A.
Concurred in by: W.H. Goodridge and K.J. O'Brien JJ.A.

Counsel for the Appellant: Andrew G. Hurley
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Authorities Cited:

CASES CITED: *Construction General Labourers, Rock and Tunnel Workers, Local 1208 and Paladin Security Group Ltd.*, 2023 N.L.L.R.B. No. 10; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559; *Taylor v. Mallany*, 2019 NLCA 25; *Croft v. Foote*, 2023 NLCA 36; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653; *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21; *Island Medical Laboratories Ltd. v. H.S.A.B.C.*, 1993 CarswellBC 3610 (BCLRB), [1993] B.C.L.R.B.D. No. 329; *Crest Motor Hotel Ltd. v. B.C.G.E.U.*, [1987] CarswellBC 3887 (BCLRB), [1987] B.C.L.R.B.D. No. 189; *Compass Group Canada (Health Services) Ltd. v. Hospital Employees' Union*, 2007 BCCA 237; *Long Harbour Employers Association Inc. v. Resource Development Trades Council of Newfoundland and Labrador*, 2023 NLCA 24; *Hibernia Platform Employers' Organization and Unifor, Local 2121, Re*, 2021 N.L.L.R.B. No. 7; *United Brotherhood of Carpenters and Joiners of America, Local 579 v. Notre Dame Agencies Limited*, 2008 NLLRB 5 (CanLII); *Brink's Canada Ltd. (Corner Brook) and Transport and Allied Workers Union Teamsters Local 855, Re*, [2008] L.R.B.D. No. 26; *Portland Street Honda Inc. v. Unifor*, 2019 NSSC 316.

STATUTES CONSIDERED: *Labour Relations Act*, RSNL 1990, c. L-1, section 12.

D.M. Boone J.A.:

OVERVIEW

[1] This appeal arises out of a decision of the Labour Relations Board (the “Board”) and comes to this Court as an appeal from a judicial review of that decision (*Paladin Security Group Ltd. v. Construction General Labourers, Rock & Tunnel Workers, Local 1208*, 2024 NLSC 14).

[2] The First Respondent (“Paladin”) provides security guard services to facilities operated by Newfoundland and Labrador Health Services (the “Health Authority”). The Appellant (the “Union”) applied to the Board to certify a bargaining unit consisting of Paladin employees working at rural health care sites within the Eastern Health region.

[3] The Union supported its application to the Board with written submissions. Its position was that the unit it proposed was suitable for collective bargaining because the employees in that unit shared a community of interest. These employees, according to the Union position, worked within a circumscribed geographical area; reported to the same supervisor, who was responsible only for that area; and were never assigned to work at Health Authority sites outside that area.

[4] Paladin filed a written reply to the Union application in which it argued that any bargaining unit should be composed of its employees working at all Health Authority sites across the province. Paladin said that all its employees shared a community of interest. Paladin also argued that the unit proposed by the Union was vague and imprecise. Finally, Paladin noted that the Union had already applied to certify a bargaining unit composed of its employees working at the Health Authority Waterford Hospital site, and this was evidence of the Union engaging in an inappropriate building block approach to certification.

[5] The Board issued an order certifying the bargaining unit proposed by the Union. The Board is not required to give reasons unless asked to do so by one of the parties (*Labour Relations Act*, RSNL 1990, c. L-1, at s. 12) and it did not initially provide reasons for the bargaining unit order (Appeal Book, Tab 16). Paladin requested that the Board provide reasons for the bargaining unit order and the Board did so (*Construction General Labourers, Rock and Tunnel Workers, Local 1208 and Paladin Security Group Ltd.*, 2023 N.L.L.R.B. No. 10).

[6] The Board reasons said that the most compelling principle it must consider is the Board policy to maximize the freedom of employees to collectively bargain. It then noted that that policy must be balanced against the promotion of harmonious labour relations. The Board said that its role is to determine whether a proposed bargaining unit is an appropriate unit for collective bargaining; that another unit might be more appropriate is not the question it must decide. The Board noted that Paladin had not provided a valid reason not to certify an otherwise appropriate bargaining unit.

[7] The Board reasons said that the evidence showed a commonality of geography, supervision, and employer structure that demonstrated the unit proposed by the Union was appropriate.

[8] Paladin sought judicial review of that decision in the Supreme Court, arguing that the Board did not provide sufficient reasons for its decision because it did not deal with some of the arguments Paladin made in opposition to the Union's application. Paladin argued that this failure amounted to procedural unfairness, or alternatively, rendered the Board decision unreasonable.

[9] The Supreme Court justice (the "judicial review judge") decided that the Board did not provide adequate, or any, reasons for rejecting some of Paladin's arguments and that this breached the duty of procedural fairness owed to Paladin by the Board. He therefore ordered that the matter be reconsidered by the Board.

[10] The Union appeals. It argues that the judicial review judge erred by deciding that the review sought by Paladin engaged principles of procedural fairness. The Union argues that when a claim is made that tribunal reasons were insufficiently responsive then the administrative decision should be reviewed on a standard of reasonableness. The Union further says that the Board decision was reasonable. It asks this Court to set aside the judicial review decision and reinstate the decision of the Board.

[11] I would allow the appeal.

STANDARD OF REVIEW

[12] A decision of the Board is not subject to appeal, but it is subject to judicial review. The judge conducting the judicial review must choose whether to conduct

the review on a standard of correctness or reasonableness, and then apply that standard.

[13] On an appeal from judicial review, this Court asks whether the judicial review judge chose the correct standard and applied it properly. In effect, this means that this Court conducts its own review of the administrative decision (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at paras. 46-47).

ISSUES

[14] There are two issues:

1. Did the judicial review judge err in deciding that whether the Board reasons were sufficiently responsive was reviewable as a question of procedural fairness?
2. If so, and the standard of reasonableness should apply, was the Board's decision reasonable?

ANALYSIS

Issue 1: Did the judicial review judge err in deciding that whether the Board reasons were sufficiently responsive was reviewable as a question of procedural fairness?

[15] The judicial review judge recognized that reasonableness is the usual standard of review of a decision for the sufficiency of reasons:

[12] To the extent that one is assessing the adequacy of the reasons given by the Board, Paladin and the Union agreed that the appropriate standard is reasonableness. Reasonableness is, therefore, the standard that I will apply in my analysis if I find that there has been no breach of the duty of procedural fairness.

[16] The judicial review judge found that Paladin had made two arguments before the Board, which he described as follows:

[18] ... firstly, it said that the Union was employing a “building block” approach to organizing - one that made it easier for the Union to get the required votes, but one

which created problems for the employer because of the potential proliferation of bargaining units, the need to administer multiple collective agreements and the negative impact that such a process may have on Paladin's relationship with its sole client - the Health Authority. Secondly, Paladin said that the Union's bargaining unit description was too vague and imprecise.

[17] The judicial review judge decided, at paragraph 19, that the "Board's reasons provide no analysis whatsoever as to why these arguments were rejected", and therefore that "the Board did not provide adequate, or any, reasons for its decision concerning either the bargaining unit description or the building block issue. This had the effect of breaching the Board's duty of procedural fairness" (at para. 25). He ordered the matter back to the Board to be heard by a new panel.

[18] The judicial review judge did not explicitly state the standard of review applicable to alleged deficiencies in procedural fairness. It is implicit in his decision that the judicial review judge applied a standard of correctness. As this Court held in *Taylor v. Mallany*, 2019 NLCA 25, at paragraph 20, and *Croft v. Foote*, 2023 NLCA 36, at paragraph 21, a finding that there has been a breach of procedural fairness results in a judicial or administrative decision being set aside.

[19] Respectfully, I find that it was an error for the judicial review judge to have reviewed the Board decision on the standard of correctness.

[20] Reasons are not required for all administrative decisions, but the governing statute (as in this case) or the common law may require that reasons be given (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 77; *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at 681-687; and *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 24, 27, 37, 42-43, 53, 67).

[21] Where reasons are required but no reasons are provided, that will be procedurally unfair.

[22] But, when reasons are provided, a claim that those reasons are insufficiently responsive to a party's submissions raises issues regarding the quality of those reasons, and not an issue of procedural fairness. "Any challenge to the reasoning/result of the decision should therefore be made within the reasonableness analysis" (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at paras. 21-22).

[23] The requirement for responsive reasons is a flexible concept that is too dependent on context to be measured by a standard of correctness. A decision can be partially responsive, raising the question of whether it is sufficiently so. A decision can also be responsive without being directly so. A finding that one thing is true or accepted may mean that another is necessarily found false or rejected. The rejection of an argument that is a condition precedent to another may mean that the second argument need not be discussed. Sometimes reasons that do not appear responsive on their face may nevertheless be so when the record, the practice, or the expertise of the administrative agency is considered with “respectful attention” (*Vavilov*, at paras. 93-94).

[24] Reasons were provided in this case. The Board’s reasons were more than perfunctory. The judicial review judge erred in approaching the question of the responsiveness of those reasons as one of procedural fairness and applying a standard of correctness.

[25] Reasonableness is the standard that ought to have been applied in reviewing the Board decision.

Issue 2: If the standard of reasonableness should apply, was the Board’s decision reasonable?

[26] The focus of reasonableness review must be on the decision actually made (*Vavilov*, at para. 83). A “reviewing court must begin its inquiry into the reasonableness of a 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*, at para. 84).

[27] There are two types of “fundamental flaws” indicating that an administrative decision is unreasonable: (1) a failure of rationality internal to the reasoning process; or (2) a failure of justification given the legal and factual constraints bearing on the decision. A reviewing court need not categorize unreasonableness as falling into one category or another. They are simply a helpful way of describing how a decision may be unreasonable (*Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at para. 64; and *Vavilov*, at para. 101).

[28] Paladin says that the Board decision failed to meet the standard of reasonableness required by the second aspect of *Vavilov* outlined above. It says that

the Board did not address two of its arguments and, therefore, the decision was not justified within the legal and factual constraints bearing on the Board.

[29] The two arguments which Paladin says the Board decision did not address were the vagueness or imprecision of the bargaining unit description proposed by the Union and the inappropriateness of the building block approach to bargaining units.

The unit description argument

[30] Paladin argued before the Board that the unit proposed by the Union was too vague and imprecise, for two reasons. First, Paladin said that the proposed unit included employees at one facility that Paladin staffed only on a temporary basis. Second, Paladin said that it also staffed similar facilities in the Central Health region that were not included in the proposed unit.

[31] In its argument before this Court, Paladin expanded on the difficulty it saw with the proposed bargaining unit including staff at a facility staffed only on a temporary basis: “If in the future, Paladin should provide a different type of services at this facility, given that it was only performing a limited service there at the time of the application, the Union’s bargaining unit description may inadvertently include employees that would not share a community of interest with the rest of the bargaining unit” (Paladin’s Factum, at para. 13).

[32] I note as an aside that even if the inclusion of employees at a temporarily-staffed facility was a valid criticism of the bargaining unit proposed by the Union, that criticism would apply as well to the bargaining unit proposed by Paladin.

[33] More importantly, it is difficult to understand why either of the two points relied upon by Paladin rendered the proposed unit description too vague or imprecise. In its reply to the Paladin argument, the Union referred to evidence before the Board that showed that the employees in the proposed unit reported to lead hands, who reported in turn to a common supervisor responsible only for the facilities included in the proposed unit description, that they had mobility among those facilities but little or no mobility between those facilities on the one hand and other facilities within the Health Authority on the other, and that there is significant geographic distance between the sites within the unit proposed by the Union and the employer’s other locations (Appeal Book, Tab 8).

[34] The Board adopted the position of the Union that the proposed unit was clearly described and circumscribed by common geography, by facilities, and by supervisory structure. It therefore decided that the proposed unit was appropriate for collective bargaining.

[35] The Board's conclusions sufficiently responded to Paladin's argument concerning the bargaining unit description because the Board found that it could delineate the proposed unit for the purpose of assessing its appropriateness for collective bargaining. The Board did not have to expressly say that the opposite position (that the unit was too vague and imprecise) was rejected.

The building block argument

[36] Paladin says that there was a second argument that the Board failed to address. This argument was based on the Union having previously applied to certify a bargaining unit of employees working for Paladin at the Health Authority Waterford Hospital site. In its submissions to the Board, and its arguments on judicial review, Paladin described its second argument by reference to the "building block tactic", as set out in its Reply before the Board as follows (Appeal Book, Tab 7, at 47):

- 4) b. Paladin says that there is a strong community of interest among the employees at all 15 sites to have one bargaining unit with one Collective Agreement should an application for certification succeed. This is evidenced by the fact that the Union is obviously instituting a "building block" tactic in organizing Paladin's employees to avoid the task of organizing an appropriate unit. Pursuant to the leading case of *Island Medical Laboratories Ltd v. HSABC*, 1993 CarswellBC 3610 [IML], in contrast to an initial application where access to collective bargaining is the most important principle when determining the appropriateness of a proposed bargaining unit, industrial stability is the most important principle in determining appropriateness at the second or additional stage of certification.

[37] The first thing to note about this argument is that the name accorded to it by Paladin, with the implication being that it is a proscribed Union organizing tactic, is not supported by the case Paladin cited. In *Island Medical Laboratories Ltd. v. H.S.A.B.C.*, 1993 CarswellBC 3610 (BCLRB), [1993] B.C.L.R.B.D. No. 329, the BC Labour Relations Board did adopt the building block approach set out in another BC Labour Relations Board case, *Crest Motor Hotel Ltd. v. B.C.G.E.U.*, [1987] CarswellBC 3887 (BCLRB), [1987] B.C.L.R.B.D. No. 189, which it described as follows:

[40] The issue in these two appeals is the appropriateness of the proposed bargaining units. We will therefore review *ICBC*, *supra*, *Woodward Stores*, *supra*, *Canadian Kenworth*, *supra*, and *B.C. Coal*, *supra*. A reading of these decisions combined with the experience of this Board convinces us that on applications for certification, the “community of interest” concept is the test employed in determining an appropriate unit. On *initial* applications, access to collective bargaining is the most important principle to consider in determining appropriateness.

[41] In regard to the *second or additional applications* (the expansion or addition of bargaining units) it is our conclusion that industrial stability, as set out in *ICBC*, *supra*, should be given increasingly greater weight. We set out the “building block” approach (see *Crest Motor Hotel Ltd.*, *supra*,) to the expansion of bargaining units which, in our view incorporates the “all-employee” unit as the most desirable bargaining unit.

(Emphasis in original.)

[38] The building block approach in cases before the BC Labour Relations Board has evolved into a “long-standing presumption against multiple bargaining units in a single employer structure, based on its potential to have an adverse impact on industrial stability” (*Compass Group Canada (Health Services) Ltd. v. Hospital Employees’ Union*, 2007 BCCA 237, at para. 54).

[39] Nowhere in *Island Medical* or *Crest Motor Hotel* does the BC Labour Relations Board describe this as a union organizing tactic. Rather, it is an analytical approach used by the Board.

[40] Further, the Board decision in this case was not unreasonable because it failed to advert directly to the building block approach. That reasons given for a decision “do not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred” is not on its own a basis to set the decision aside (*Vavilov*, at para. 91, citing *Newfoundland Nurses*, at para. 16).

[41] In considering the Board reasons, this Court has previously emphasized that the reasons of an administrative tribunal must be read with sensitivity to the explicit as well as the implicit findings obvious from the context (*Long Harbour Employers Association Inc. v. Resource Development Trades Council of Newfoundland and Labrador*, 2023 NLCA 24, at paras. 132-135).

[42] “[R]eview of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the

proceedings” (*Vavilov*, at para. 91) which “may explain an aspect of the decision maker’s reasoning process that is not apparent from the reasons themselves or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency” (*Vavilov*, at para. 94).

[43] The context may include, for instance, that the decision-maker followed a well-established line of administrative case law that no party had challenged during the proceedings (*Vavilov*, at para. 94). Whether a particular decision is consistent with the administrative body’s past decisions is also something that the reviewing court should consider when determining whether an administrative decision is reasonable (*Vavilov*, at para. 131).

[44] The Board in previous cases has recognized the significance of its past practice, and the importance of consistency in reasoning across its decisions (*Hibernia Platform Employers’ Organization and Unifor, Local 2121, Re*, 2021 N.L.L.R.B. No. 7, at para. 128).

[45] The Board’s past practice did not include the building block approach. In its Response to Paladin’s Reply before the Board, the Union noted that the principles of *Island Medical* had not been adopted by the Board in any previous case (Appeal Book, Tab 8, at 56). Instead, the Union said that the Board had previously considered access to collective bargaining to be the most significant factor even when considering multiple bargaining units for a single employer. In support of this proposition, the Union referred the Board to its previous decisions in *United Brotherhood of Carpenters and Joiners of America, Local 579 v. Notre Dame Agencies Limited*, 2008 NLLRB 5 (CanLII), and *Brink’s Canada Ltd. (Corner Brook) and Transport and Allied Workers Union, Teamsters Local 855, Re*, [2008] L.R.B.D. No. 26.

[46] Both those cases involved union applications for certification of single sites of a multi-unit employer. In neither case did the Board apply a presumption against multiple bargaining units. To the contrary, in *Notre Dame*, the Board considered the following among the factors to be applied in deciding the appropriateness of a proposed unit:

Employee Access to Collective Bargaining and the Right to Join a Union — This is the factor given considerable weight by the Canada Labour Relations Board in the “Bank” decisions, and it concerns the fear that if a bargaining unit is too large to spread out over too many locations, then the practical effect would be to deny access to collective bargaining to those employees.

[47] Paladin's argument to the Board made no effort to demonstrate why the Board ought to follow the building block approach rather than principles derived from its own past decisions. The Board did not need to explicitly address a presumption applied by the BC Labour Relations Board but never shown to have been utilized by the Board. I agree with the conclusion of Jamieson J. in *Portland Street Honda Inc. v. Unifor*, 2019 NSSC 316, at paragraph 85, that a labour relations board is not required to address a principle said to be adopted in cases cited to it from the board of another jurisdiction.

[48] The Board reasons referenced both *Notre Dame* and *Brink's* and said that it "distilled" from those cases the principles that it would apply in considering the bargaining unit application: an obligation to maximize freedom to join a labour union balanced with the obligation to promote harmonious labour relations, with the greater weight being given to employee access to collective bargaining. The Board also noted that the question before it was not whether the proposed unit was the most appropriate unit, but rather whether it was an appropriate unit.

[49] The Board's reasons referred to the importance of access to collective bargaining. The reasons should be read as implicitly adopting the significance of that factor even in a context where a union proposes a single-site certification, but the employer proposes an all-employee unit encompassing the whole province.

[50] I therefore would conclude that the Board decision, read with attention to the context, was sufficiently responsive to Paladin's building block argument.

CONCLUSION AND DISPOSITION

[51] The only challenge that Paladin made to the Board decision was that it was insufficiently responsive to two of its central arguments. I find that the Board reasons were sufficiently responsive.

[52] Paladin bore the onus of demonstrating that the Board decision was not reasonable. I find that it did not do so.

[53] I would therefore allow the appeal and restore the decision of the Board on both the bargaining unit and certification applications.

[54] I would award the Union its Column III costs in this Court and the Supreme Court of Newfoundland and Labrador.

D.M. Boone J.A.

I concur : _____
W.H. Goodridge J.A.

I concur : _____
K.J. O'Brien J.A.