SUPREME COURT OF NOVA SCOTIA

Citation: Egg Films Inc. v. Nova Scotia (Labour Board) , 2013 NSSC 123

Date: 20130417
Docket: Hfx. No. 393069
Registry: Halifax

Between:

Egg Films Inc.

Applicant

v.

The Labour Board and The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories, and Canada, Local 849

Respondents

Judge:	The Honourable Justice Arthur W. D. Pickup
Heard:	March 6, 2013, in Halifax, Nova Scotia
Counsel:	Jack Graham, Q.C., and Michael Murphy, Articled Clerk, for the Applicant Ronald Pink, Q.C., and Andrew Nielsen, Articled Clerk, for the Respondent, IATSE, Local 849

By the Court:

[1] This is an application for judicial review of a certification decision of the Nova Scotia Labour Relations Board.

[2] On March 5, 2011, the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 906 ("The Union") applied under s. 23 of the *Trade Union Act*, RSNS 1989, c. 475, to become certified as the bargaining agent for motion picture technicians employed by Egg Films Inc. ("Egg Films").

[3] The Nova Scotia Labour Relations Board ("the Board") issued two decisions finding that the motion picture technicians were employees of Egg Films rather than "independent contractors", that the proposed bargaining unit was appropriate for certification under the *Act* and that certain challenges by Egg Films to the Board's application of its procedures were unfounded. It further determined which employees should properly be included in the bargaining unit, and which should be excluded. The Board certified the Union as bargaining agent on October 1st, 2012.

[4] Egg Films has brought this application for judicial review of both decisions of the Board.

Background Facts

[5] Egg Films is a commercial production company based out of Halifax, Nova Scotia, which has been operating since 2003. The majority of Egg Film's business comes from corporate and web video work. The company also derives a part of its income from creating television, radio and web based commercials.

[6] The respondent is the Atlantic Canadian Local of a North American Trade Union that represents technical workers in what is often described as the entertainment industry, consisting of film, television, commercials and live performances. Egg Films does not engage in long term projects, as it does not produce any feature films or television shows. Their shooting days generally last less than 24 hours, and they shoot for about 24 days per year. Egg Films primarily

contracts with corporate clients, as well as advertising agencies in the Atlantic region.

[7] Historically, the majority of technical employees engaged by Egg Films on any given project have generally been members of Local 849, and these employees perform the same work on an Egg Film set as they would perform on the set of a film or television program. While these workers are covered by a Collective Agreement when they work on films or television, they are not covered by a Collective Agreement when doing the same work for Egg Films. They are usually employed only for the duration of the particular project, which are mainly short-term. For example, on any given shoot a technician may work for only one day, but may do some preparatory work before hand.

[8] On March 5, 2011 Egg Films was involved in a one day shoot of a television ad for the Atlantic Lottery Corporation ("the ALC shoot"). The ALC had engaged an advertising agency, which in turn contracted with Egg Films to produce the commercial. Egg Films then hired the necessary personnel, including the motion picture technicians who are the subject of this proceeding.

[9] The employees that were hired for March 5, 2011 were laid off at the conclusion of that day's filming. Most were paid a daily or flat rate for their work that day and any preparatory work that they had done in the proceeding days. That same day, the union filed its application for certification sending it to the Board via registered mail. The Board received the application on March 9th, served it on the employer as required, and set April 16th as the date for the vote. Pursuant to the Board's regular procedure, a notice of the vote was posted in Egg Films' offices. The vote took place on April 16th as scheduled. The ballot box was sealed and the votes were not counted until both Board hearings had been decided. The Board certified the Alliance as bargaining agent on October 1, 2012.

[10] The applicant says it was unreasonable for the Board to conclude that technicians employed for a single day were "employees".

Issues

[11] The issues raised in this application for judicial review are:

i) What is the appropriate standard of review?

ii) Were the Board's decisions and interim orders one and two reasonable?

Appropriate Standard of Review

[12] The first question to be determined is the standard of review to be applied by this court in reviewing the decisions and interim orders of the Board. Since *Dunsmuir v. New Brunswick,* 2008 SCC 9, there are only two standards of review, correctness and reasonableness.

[13] The parties agree that the appropriate standard of review in this case is reasonableness. Despite this agreement it is still necessary for the court to determine the applicable standard of review. If existing jurisprudence establishes a standard of review for this tribunal, as in my opinion it has, then a formal standard of review analysis is not necessary.

[14] I am satisfied that both the Supreme Court of Canada and the Nova Scotia Court of Appeal have determined that decisions of labour tribunals, and labour boards in particular, are to be reviewed on a reasonableness standard. For example, see *Canadian Union of Public Employees, Local 963, v. New Brunswick Liquor Corporation*, [1979] 2 S.C.R. 227 and *Casino Nova Scotia v. Nova Scotia (Labour Relations Board),* 2009 NSCA 4. As the Court of Appeal stated in *Casino Nova Scotia, supra* at para. 26 *:*

> ...The courts have emphasized the importance of deference to the decisions of Labour Relations Boards on core issues under industrial relations legislation, including the appropriateness of the unit and the definition of "employee"...

[15] In summary I am satisfied that the most deferential standard of review, reasonableness, applies to the two decisions of the Board before me. The court in *Dunsmuir, supra,* described the standard of reasonableness at para. 47:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for

> reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[16] Although the parties agree that reasonableness is the appropriate standard, and there is ample case law to support this conclusion, I believe it is helpful to do a standard of review analysis based on the factors set out in *Dunsmuir, supra,* as background for the analysis which follows.

[17] *In Dunsmuir, supra,* at para. 64, the majority set out the factors to consider in a standard of review analysis:

> The analysis must be contextual. As mentioned above, it is dependent on the application of a number of relevant factors, including: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of enabling legislation; (3) the nature of the question at issue, and; (4) the expertise of the tribunal. In many cases, it will not be necessary to consider all of the factors, as some of them may be determinative in the application of the reasonableness standard in a specific case.

The Presence or Absence of a Privative Clause

[18] Section 19(1) of the *Trade Union Act* specifically insulates certain decisions of the Board from judicial review, including the very issues that were before the Labour Board in the two decisions it released. The relevant portions of s. 19 are as follows:

> 19(1) If in any proceeding before the Board a question arises under this *Act* as to whether
>
> (a) a person is an employer or employee;
>
> ...
>
> (g) a group of employees is a unit appropriate for collective bargaining;
>
> (h) an employee belongs to a craft or group exercising technical skills;

...

> 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 so to do, 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.*

[19] The issues at the centre of this judicial review application are, according to the *Trade Union Act*, "not open to question or review". I conclude that the reason the decisions are "not open to question or review" is because the legislature has left these determinations to be made by the Board within its specialized expertise.

The Purpose of the Tribunal as Determined by Interpretation of the Enabling Legislation

[20] It is not in dispute that the purpose of the *Trade Union Act* and the creation of the Board is to provide a specialized administrative tribunal to resolve workplace disputes in an effort to maintain industrial peace.

The Nature of the Question at Issue

[21] The issues put before the Board were:

i) whether the employees were "employees" for the purposes of the *Act*,

ii) whether the bargaining unit proposed by the Union was "appropriate" as that term is understood in the *Act* and jurisprudence, and

iii) whether particular positions should be included or excluded in that unit.

[22] The Board also dealt with issues related to the application of its own policies and procedures to the facts of this case. All of these issues fell within the core expertise and mandate of the Board.

[23] Fundamentally, the nature of the questions before the Board involved the interpretation of its home statute, jurisprudence and the history of labour relations.

The Expertise of the Tribunal

[24] The Labour Board clearly has expertise in the area of the matters that were before it.

[25] In *Granite Environmental Inc. v. Nova Scotia (Labour Relations Board),* 2005 NSCA 141, the Court of Appeal said at para. 27:

> 27 The Panel drew from this precedential resource and applied or distinguished earlier Panel decisions. The chambers judge interpreted the Panel's earlier decisions to reach a different conclusion. In my respectful view, the Panel has more expertise than the court to draw from the Panel's historical precedent and deduce, distinguish and apply those principles to a new situation...

[26] A consideration of these four *Dunsmuir* factors supports the conclusion that the standard of review of Board decisions is reasonableness.

The Process of Review

[27] As *Dunsmuir, supra,* has established, when reviewing a decision on the standard of reasonableness, the reviewing court focuses primarily on whether there exists justification, transparency and intelligibility in the tribunal's decision making process, and whether the decision falls within a range of possible acceptable outcomes that are defensible in respect of the facts and law.

[28] The Supreme Court of Canada described the analysis in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras. 14 - 18:

> 14 Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses - one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at ss.12: 5330 and 12: 5510). It is a more organic exercise - the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).

15 In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.

16 Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

17 The fact that there may be an alternative interpretation of the agreement to that provided by the arbitrator does not inevitably lead to the conclusion that the arbitrator's decision should be set aside if the decision itself is in the realm of reasonable outcomes. Reviewing judges should pay "respectful attention" to the decision-maker's reasons, and be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fateful.

18 Evans J.A. in *Canada Post Corp. v. Public Service Alliance of Canada,* 2010 FCA 56, [2011] 2 F.C.R. 221, explained in reasons upheld by this Court (2011 SCC 57, [2011] 3 S.C.R. 572) that *Dunsmuir* seeks to "avoid an unduly formalistic approach to judicial review" (para. 164). He notes that "perfection is not the standard" and suggests that reviewing courts should ask whether "when read in light of the evidence before it and the nature of its statutory task, the Tribunal's reasons adequately explain the bases of its decision" (para. 163). I found the description by the Respondents in their Factum particularly helpful in explaining the nature of the exercise:

> When reviewing a decision of an administrative body on the reasonableness standard, the guiding principle is deference. Reasons are not to be reviewed in a vacuum - the result is to be looked at in the context of the evidence, the parties' submissions and the process. Reasons do not have to be perfect. They do not have to comprehensive. [para. 44]

[29] In other words, the reviewing court must read the reasons of the tribunal together with the outcome to determine whether the results fall within the range of possible outcomes. If the tribunal's reasons permit the court to understand why the tribunal made its decision and to determine whether the conclusion is within the range of acceptable outcomes, then the *Dunsmuir* criteria are met.

[30] It is important for the purposes of this analysis to understand that it is not for the reviewing court to substitute its opinion on the outcome. That is, if the reasoning of the tribunal follows a rational route, it does not matter if the tribunal determined a different outcome. The reasonableness standard assumes the legislature intended that it be the function of the tribunal, not the court, to choose among reasonable outcomes.

[31] These principles were set out in the most recent decision of the Court of Appeal with respect to the concept of reasonableness in the Labour Board context. In *Cape Breton Island Building & Construction Trades Council et al. v. Nova Scotia Power Inc., et al.* 2012 NSCA 111, at paras. 38 and 39:

> 38 Put simply, reasonableness is neither acclamation by rote nor a euphemism for the court to impose its own view. Rather the reviewing court respects the Legislature's designation of a decision maker by analysing that tribunal's reasons to determine whether the result, factually and legally, occupies the range of possible outcomes.
>
> 39 In determining whether the tribunal's decision occupies the range of possible outcomes:
>
> > The court then assesses the outcome's acceptability through the lens of deference to the tribunal's "expertise or field sensitivity to the imperatives or nuances of the legislative regime". This respects the legislators' decision to leave certain choices within the tribunal's ambit, constrained by the boundary of reasonableness. The reviewing court does not ask whether the tribunal's conclusion is right or preferred. Rather the court tracks the tribunal's reasoning path, and asks whether the tribunal's conclusion is one of what may be several acceptable outcomes.

[32] The Supreme Court of Canada (set out concisely its position on the importance of deference to Labour Boards) in *Construction Labour Relations v. Driver Iron Inc.,* 2012 SCC 65:

> 2 The appeal is well founded. The Board considered the relevant provisions of the *Code* and the facts presented to it by the parties. Its interpretation of the *Code* and its conclusions were reasonable. Its decision was entitled to deference. The Court of Appeal had no valid grounds to review and quash the decision. The court focused on an assertion that the Board had failed to give proper consideration to the interplay between ss. 176(1)(b) and 178 of the *Code* and to the different meanings that could be ascribed to these provisions and to s. 176(2).
>
> 3 The Board did not have to explicitly address all possible shades of meaning of these provisions. This Court has strongly emphasized that administrative tribunals do not have to consider and comment upon every issue raised by the parties in their reasons. For reviewing courts, the issue remains whether the decision, viewed as a whole in the context of the record, is reasonable (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708).

[33] The question to be determined is whether the Board's two decisions are reasonable and have met the standard as I have explained.

Were the Board's Decisions and Interim Orders One and Two Reasonable?

Position of the Parties

[34] The applicant challenges the Board's finding that the technical workers employed on March 5, 2011, having worked a single day and not being scheduled to return, were employees under s. 2(1)(k) of the *Trade Union Act*, which provides, *inter alia*, that " 'employee' means a person employed to do skilled or unskilled manual, clerical or technical work…"

[35] According to the applicant, it was unreasonable for the Board to find that it exercised control over the technicians. The applicant also alleges that the Board took into account irrelevant considerations in finding the workers to be "vulnerable" and not "economically independent," classifying them as "non-self-dependent" or "occasional" employees who were dependent on the commercial production industry, which the Board unreasonably conflated with the

film and television industry, as well as the construction industry. The applicant says the Board "failed to show proper deference to the legislature, and exercised its discretion in an unreasonable manner" in finding that the workers were employees.

[36] The applicant next argues that it was unreasonable for the Board to find that the unit applied for was an appropriate collective bargaining unit under s. 25(14) of the *Act*, which provides that "[t]he Board in determining the appropriate unit shall have regard to the community of interest among the employees in the proposed unit in such matters as work location, hours of work, working conditions and methods of remuneration." According to the applicant, it was unreasonable for the Board to find that the technicians had 'a continuing interest in Egg Films' workplace." The Board also allegedly adopted an unreasonably narrow definition of "motion picture technicians" and conflated the commercial production industry with the film and television industries.

[37] The applicant also says the Board "erred" in finding that the *Craft Units and Votes of Employees Regulations*, NS Reg 54/73, did not apply to the union, and that if they did apply, their conditions were met.

[38] More specifically the applicant set out the following issues in its submission:

(i) Was the Board unreasonable in finding that no material community of interest exists between the proposed group and other Egg Films workers?

(ii) Was the Board unreasonable in finding that the industry in which Egg Films is engaged belongs to a class of industry which traditionally or normally is organized by craft unions?

(iii) Was the Board unreasonable in finding that the continued normal operation of the Egg Films' production process is not dependent upon the performance of the assigned functions of the workers in the proposed unit?

(iv) Was the Board unreasonable in finding that the proposed group is more appropriate for collective bargaining than an employer, plant or sub-plant unit which included the workers in the group?

[39] The applicant goes on to submit that the Board failed to ensure that the true wishes of the workers were represented as required by s. 25(1) of the *Trade Union Act*, which provides:

> Where a trade union makes application for certification in accordance with Section 23, the Board shall take a vote of the employees in the unit applied for to determine their wishes with respect to the certification of the applicant trade union as their bargaining agent.

[40] The applicant says the Board unreasonably declined to review membership cards in order to ensure that the members had signed them with the intention of certification and that it unreasonably refused to alter its usual voting procedures, or to order a second vote, finding that the notice procedures undertaken were reasonable. The applicant also says the Board "unreasonably abandoned the 'double date' rule for determining voter eligibility, which requires workers to be employed on both the date of the certification application as well as the date of the vote" in favour of the "bright line" test used in the construction industry, thus unreasonably applying principles and definitions from Part II of the *Trade Union Act* to an application under Part I.

Position of the Respondent

[41] The union says Egg Films is asking the court to revisit "in minute detail almost all the factual, legal and policy decisions of the Board". The union agues that the reasonableness standard of review does not permit the court to reconsider each conclusion of the Board in the manner proposed by the applicant. It says the determinations of the Board fall squarely within the jurisdiction delegated to it by the legislature and within the scope of the *Act's* strong privative clause. It is not the function of a reviewing court, applying a reasonableness standard to determine what the correct decision would have been. Rather, the focus is whether there exists justification, transparency and intelligibility in the tribunal's decision-making process, and whether the decision falls within the range of possible acceptable outcomes that are defensible in respect of the facts and the law.

[42] The union argues that the Board's conclusions were completely and transparently reasoned and were supported by reference to evidence, jurisprudence and policy. It says that the Board's reasoning path is evident throughout and that

the outcomes fall inside the "range of reasonable outcomes" described by the jurisprudence. As such, the union says, this application should be dismissed.

The Decisions:

Decision Released April 3, 2012

[43] In its decision of April 3, 2012, the Board described the application for certification and the proposed bargaining unit. It then set out Egg Film's arguments, as follows:

i. That Egg Films had no employees, but rather engaged "independent contractors" to do the work in question.

ii. In the alternative, if the persons engaged were employees, the work was too casual or short-term to create a community of interest.

iii. That the unit applied for did not meet the requirements of the *Craft Units and Votes of Employees Regulations.*

iv. That the workers who voted were not eligible because they were not employed on both the date of application and the date of the vote, the so-called "double date" rule.

[44] The Board summarized and made findings of fact, and went on to describe the arguments made by each party as to each of the arguments raised by counsel for Egg Films. The Board also reviewed labour relations history, policy, legislative development and constitutional jurisprudence. In particular the Board discussed the constitutional context, including s. 2(d) of the *Charter of Rights and Freedoms* and its protection of the right of employees to join trade unions and engage in collective bargaining. The Board then discussed the recently added preamble to the *Trade Union Act*. Finally, the Board reviewed the "socioeconomic context for interpretation", noting the need to balance the workplace rights of employees with economic efficiency.

[45] The Board then went on to analyse the four issues in dispute under the following headings:

i. The film technicians are employees.

ii. The unit applied for is appropriate.

iii. The unit applied for is not precluded by the craft unit regulations.

iv. The "double date" employee issue is not a barrier to certification.

[46] I will briefly outline the Board's reasoning on each of these issues.

i. The Film Technicians are Employees

[47] The question was whether the film technicians were "employees". The Board noted the arguments of the parties and provided comment to justify its decision. The Board's concluding paragraph (at para. 59) described its reasoning process and its conclusion:

> On the foregoing assessment of the evidence, the Board concludes that the Applicant Union is correct that the "motion picture technicians" employed by Egg Films on March 5, 2011 were employees within the meaning of the *Act* and were not independent contractors. On March 5 the technicians had agreed to become [sic] integral part of the shoot directed and produced by the Respondent, and agreed to perform their work for the day under the supervision of Egg Films. While it was not a long term period of "subordination" to the Respondent's project needs, they were fully integrated into the shoot activities and integrated into the vision of the project which was not in their hands or of their making. While the technicians are far from entirely dependent on Egg Films for all their employment income, they are part of a workforce in the local film industry which is generally available for personal hire by production companies like the Respondent. The film technicians are not self-dependent, but dependent on the industry of which both they and Egg Films are a part. In accordance with the short hand phrase often used by labour boards when describing a purposive approach to the interpretation of the *Act,* it makes "good labour relations sense" to characterize those film technicians as employees in the Nova Scotia film industry.

ii. The Unit Applied for is Appropriate

[48] The next question before the Board was whether the bargaining unit was appropriate for collective bargaining. The Board recognized the long-standing

principle that a proposed bargaining unit must simply be "an appropriate bargaining unit" and not necessarily "the most appropriate bargaining unit". The Board went on to consider the parties' positions, and finally concluded at para. 63 as follows:

> ...But, if some purported blanket rule against the inclusion of "casual" employees in bargaining units were applied in relation to these specialized, occasional film technicians, they would be denied the opportunity to exercise their constitutional right to freedom of association and collective bargaining as instantiated by section 13(1) of the *Trade Union Act* and the provisions of sections 23 and 25 dealing with certification. A purposive interpretation of the *Act*, in accordance with the Preamble, applied to the conditions governing motion picture technicians in the film industry, leads to the conclusion that occasional employees in this industry can form a unit appropriate for collective bargaining even though, in some ways, their work could be described as "casual" in temporal terms and be treated differently in other industrial contexts. The Board therefore finds that the bargaining unit applied for by the Union is appropriate both in terms of membership and continuity or temporality.

iii. The Unit Applied for is Not Precluded by the Craft Unit Regulations

[49] The question here is whether the craft unit regulations to the *Trade Union Act* precluded certification. Again, the Board considered the arguments and summarized its conclusion at para. 68 as follows:

> The Respondent argued, at some length, about problems of fluctuation in the bargaining unit membership and that, depending on the project, it might hire a very few technicians for some shoots and a substantial numbers for others. The Respondent argued that it would not know who was in the bargaining unit and in relation to whom it was required to bargain. This is not a convincing argument. While an "occasional" bargaining unit group may seem more inchoate "between projects" than a full-time and regular part-time unit, all bargaining units fluctuate in terms of membership. People come, people go, and positions sometimes remain unfilled for some time. The point is that collective bargaining relates to positions or classifications and not just to individuals...

iv. The "Double Date" Employee Issue is Not a Barrier to Certification

[50] The "double date" rule is a rule of procedure of the Board requiring that in order to be eligible to vote, an employee must be employed both the on the date the certification application was filed and the date of the vote. The Board

reviewed the positions of the parties and, after discussion, found that applying such a rule on the facts of this case would preclude access to collective bargaining for these employees because of the nature of their employment.

Decision of September 20, 2012

[51] The reasons for decision in interim order 2 were released on September 20, 2012. This decision dealt with two issues, namely, the determination of appropriate employee inclusions in and exclusions from the bargaining unit previously found to be appropriate, and the employer's challenge to the Board's procedural decision respecting the notice to employees and the conduct of the vote. The employer raised the second issue after the first decision of the Board.

[52] In dealing with each issue, the Board set out the background and the arguments of the parties, then did an analysis and provided its conclusions. The second decision was extensive, spanning some 46 paragraphs, and, like the first decision, clearly analysed the issues, dealt with the arguments of the parties, provided context, and background and set out the Board's conclusions.

Analysis

[53] The standard of review is reasonableness. I am not persuaded that the Board's two decisions attract any judicial interference, for the following reasons.

[54] In its submission on the various issues (as described earlier), the applicant invites the court to:

i. Substitute its own conclusion for that of the Board. For example, in argument on the question of whether the Board unreasonably found that Egg Films exercised control over the technicians, Egg Films submitted "the evidence does not support a finding that the technicians were 'controlled' by Egg Films ...". In effect, this court is asked to re-weigh the evidence, which is not permitted in the *Dunsmuir* standard of review analysis based on reasonableness.

ii. The applicant invites this court to rely on policy arguments and hypothetical scenarios. The applicant also relies on decisions of other administrative tribunals to suggest that the Board should not have reached the conclusions it did. All of

this argument is made to suggest that the Board was unreasonable in not reaching similar conclusions. With respect, these arguments are not consistent with the reasonableness standard of review. For example, to argue that another tribunal took a different view on a particular issue and that the Board should have taken the same view is asking this court to determine the matter on a correctness standard. Moreover, the use of hypothetical examples by Egg Films is not consistent with the reasonableness standard of review. The court is invited to come to a contrary view on a particular decision of the Board and, therefore, substitute its view. Similarly, in paras. 91 and 92 of its submission, Egg Film makes further policy arguments suggesting the Board was unreasonable because it reached different policy conclusions than the applicant would have preferred. The applicant asserts, for instance, that "good labour relations sense" would have led the Board to a different result. In other words, the applicant urges this court to substitute its own judgment.

[55] In arguing that the Board unreasonably found that the bargaining unit was appropriate, Egg Films is again inviting the court to apply a correctness standard. The applicable standard is reasonableness. It is not for this court to determine the correct result. In a reasonableness analysis, this court simply tracks the reasoning path of the tribunal to determine whether the tribunal's finding or conclusion is within a set of rational outcomes. If it is, it does not matter that there may be other potential rational outcomes.

[56] In dealing with the question of whether the Board followed unreasonable procedures, there was no argument by the applicant as to a failure in the reasoning of the tribunal, nor is there any argument that the Board's conclusion is not within the range of reasonable outcomes. It is not for this court to second guess the Board's decision on the matter.

[57] Dealing with the "bright line" test, the applicant argues that the Board should have applied the usual rule. In its submission, the applicant proposes various other options that the Board might have chosen in conducting the vote. The fact that other possible methods were available does not mean the option chosen by the Board was unreasonable.

[58] The above is a representative sample of the arguments put before this court that the Board's decisions were unreasonable. The overarching difficulty is that

this court is being asked to reweigh the evidence, consider other possible outcomes, and generally substitute a proposed contrary result without any reference to the Labour Board decision. With respect, this is a correctness standard.

[59] I am satisfied that there is nothing unreasonable in the two decisions reached by the Labour Board. The decisions were clearly written and easily understood. Each of the decisions set out the evidence relied upon, including legislation, policy and jurisprudence. These decisions set out the arguments of the parties that were before the Board and the Board's analysis and conclusion. The Board applied its particular expertise to difficult interpretative questions which fell clearly within its legislative mandate and on which it is entitled to deference.

[60] Further, the reasons given for the Board's conclusions on the issues before it were transparent and understandable. Its conclusions that the workers were employees under the *Act,* that the bargaining unit was an appropriate unit for collective bargaining, respecting its own procedures, all flow logically from its reasons and the results fall well within the range of acceptable outcomes.

[61] As set out in *Construction Labour Relations, supra,* at para. 3:

> 3. The Board did not have to explicitly address all possible shades of meaning in these provisions. This Court has strongly emphasized that administrative tribunals do not have to consider and comment upon every issue raised by the parties in their reasons. For reviewing courts, the issue remains whether the decision, viewed as a whole in the context of the record, is reasonable (*Newfoundland Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708).

[62] I so find and dismiss the application for judicial review.

[63] Costs to the respondent union in the amount of $1500.00.

Pickup, J.