United Food and Commercial Workers Canada Union, Local No. 401 v 1074867 ALBERTA LTD., 2026 ALRB 107

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CITATION: ***United Food and Commercial Workers Canada Union, Local No. 401 v 1074867 ALBERTA LTD.,* 2026 ALRB 107**

August 28, 2026

Directed to: United Food and Commercial Workers Union, Local No. 401 – Chaitali Shah / Jordan Pynn; 1074867 ALBERTA LTD. – Annette Wichmann / Lisa Roberts / Jesse Stillwell / John Warga

RE: An application for certification as bargaining agent brought by United Food and Commercial Workers Canada Union, Local No. 401 affecting 1074867 ALBERTA LTD. — Board File No. CR-06447

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[1] The United Food and Commercial Workers Canada Union, Local No. 401 (the "Union") has applied for certification of a bargaining unit of "All employees except office and clerical personnel" of 1074867 ALBERTA LTD. operating under the trade name of Kensington Art Supply (the "Employer"). The Employer has raised an objection, arguing the application is untimely pursuant to section 57 of the *Labour Relations Code* (the "*Code*") on the basis that it is the "same or substantially the same application" as a previously withdrawn application by the Union, discussed below. The Board found 40% support for the application and directed a vote with the ballot box sealed pending determination of that objection. The Board was further satisfied that the objection involved a point of law alone that could be appropriately considered via written submissions. The written submissions of the Employer, the Union, and the Employer's further reply, came before a panel of the Board (Schick, Gervais-Arbane, Norton) for determination. For the reasons set out below, the Board dismisses the Employer's objection.

[2] The Board Officer's Report, which is prima facie evidence before the Board, notes that on July 8, 2026, in previous Board File CR-06445, the Union applied for a bargaining unit of "All employees except office and clerical personnel" of Kensington Art Supply LTD. (the "First Application"). The Board Officer's Report indicates that the Employer purchased the assets of Kensington Art Supply LTD. on November 23, 2003. Kensington Art Supply LTD. was struck from the Alberta Corporate Registry on January 2, 2005. On July 10, 2026, the Union withdrew the First Application. Later that same day, it filed the current application.

[3] The Board Officer's Report indicates the current application is supported by individual hard copy petition evidence, and that the header of each petition reads that "I, the undersigned employee of: **Kensington Art Supply** have freely signed this petition in support of an application for certification …" The Board Officer accepted the petitions utilizing the trade name of the Employer (as well as the name used on the employee's payroll documents) as

satisfactory evidence, being satisfied that the employees signing the petitions knew what employer the planned certification application would affect.

[4] As the First Application was withdrawn before any Board Officer's Report was produced, the Employer never received notice via a Board Officer's Report of the petition header utilized in that certification application. The Employer asks the Board to audit the support evidence in both the First Application and the current application to determine whether the Union utilized the same support evidence, which the Employer argues would support their argument below that the applications were the "same or substantially the same application". As will be explained below, the Board is of the view that it makes no difference in law whether the same petition evidence was utilized in both applications, and the Board is prepared to determine the Employer's objection on that presumed (and in the Board's experience, highly probable) factual basis.

[5] The Employer's objection rests on section 57(1)(a) of the *Code*, which states:

> *57(1) Notwithstanding anything in this Act, if an application for*
>
> *(a) certification as a bargaining agent …*
>
> *has been refused by the Board or withdrawn by the applicant or remains before the Board but without being actively pursued by the applicant, the applicant shall not, without the consent of the Board, make the same or substantially the same application until after the expiration of 90 days from the date of the refusal or withdrawal.*

[6] The Board Officer's Report confirms, and it is common ground between the parties that, the Union did not seek consent of the Board to file the current application. If this application is "the same or substantially the same application" as Board File CR-06445, it is barred by that section.

[7] The Board Officer's Report found this was not the same or substantially the same application. It states:

> … the two applications name two completely different legal corporations. Because corporations are separate legal entities, a new application targeting an entirely different corporation is usually considered a fresh, independent application, rather than the "same or substantially the same" application. A review of each corporation's registry records shows there is no common ownership or operational control between the two corporations. As a result it appears that the two applications are not the same or substantially the same application, and that [the current application] is compliant with section 57 of the *Code* and therefore timely.

[8] To paraphrase the submissions made by the Employer, it argues this takes too restrictive a view of the meaning of "the same or substantially the same" in section 57. It asks the Board to prioritize substance over form. It notes for the Board the obvious and immediate connection of the two applications given the timeframe of one's withdrawal and the other's filing immediately thereafter. It argues, and the Board is prepared to assume for the purposes of this application, that both certification applications reference the same location and list the same

management contacts for the proposed employer. As shown above, they seek the same bargaining unit description.

[9] The Employer also asserts what it views as a double standard in the Board Officer's Report. That is, if the Board Officer is prepared to accept a flexible approach to the name of the employer in a petition header on the basis that it satisfactorily identifies the relevant workplace, why does the Board Officer then assess "same or substantially the same" based on what it views as purely technical consideration of corporate name?

[10] The Board's typical approach, and the interplay of this question with the related question of whether the Board is authorized to simply amend the original application rather than a new application being required, can be seen in a number of cases.

[11] In *United Steelworkers of America, Local Union No. 6034 v. Jamel Metals Inc.*, [1997] Alta. L.R.B.R. 426 ("*Jamel Metals*"), the applicant union originally applied for certification of "Navajo Metals (IPSCO Inc.)" as the legal name of the employer. It then discovered that Navajo Metals was a trade name of the intended target for certification, but that the correct legal name was Jamel Metals Inc. while IPSCO Inc. was simply a customer of Jamel. The union initially urged the Board to amend, and then subsequently brought a new application for Jamel Metals Inc. without seeking consent under the then equivalent of section 57. The employer made similar arguments as the Employer makes here about consent being required. The Board stated:

> Counsel for the Union suggests that this is not the same or substantially the same application. The employer, as a legal entity, is not the same. Navajo Metals (IPSCO Inc.) he argued is a distinct entity (it may not even exist) from Jamel. IPSCO Inc. is not related to Navajo Metals except as a customer. He relied on the analogous trade union applicant cases in *Steelworkers, Local 722 v. Handleman Co. of Canada Ltd.*, [1988] Alta. L.R.B.R. 431; *C.U.P.E. Local 2158 v. Grande Prairie Spirit Foundation*, [1989] Alta. L.R.B.R. 79; *AUSE Local 100 v. Edmonton Separate School Board and CUPE Local 763*, [1987] Alta. L.R.B.R. 529; *AUSE v. Edmonton Separate School Board and CUPE Local 763*, [1988] Alta. L.R.B.R. 33; and *AUPE v. The Franciscan Sisters Benevolent Society,* [1995] Alta. L.R.B.R. 124.
>
> Information Bulletin #8 identifies the Board's practice of inquiring into the "proper corporate name, address and phone number" of the employer. This, it is trite to say, is in keeping with correctly identifying the employer of the employees in the unit — the employer, of course, being the "person who customarily or actually employs an employee." See: Section 1(m). As the issuance of a certificate obliges the named employer to bargain with the Union and to carry out certain other obligations under the Code, it is important to correctly identify the legal entity bound as the employer.
>
> Counsel for Jamel suggested it was within the Board's powers under section 17(4) to correct the name of the employer if it was apparent that everyone knew whom the Union intended to certify. Unfortunately, in our experience it is rarely that clear cut. While some of the affected persons may know whom the Union intends to certify, others may not. Proper notice is important to ensuring that affected parties can make their views about the application known to the Board. Frequently in construction certification applications, the union applies for a

multitude of similar corporate names, attempting to ensure that whatever common name the company may operate under is caught by one of the applications. Where the identity of the employer is in question, the Board will not use its amendment powers to substantially correct a faulty application.

The Board requires the trade union to identify the employer with sufficient particularity that the Board can provide notice under the Code and conduct its inquiries. We frequently, upon recommendation of the Officer, then amend the employer's name to reflect the correct legal name. Such changes include changing "Ltd." to "Inc." or vice versa, adding "Inc." or "Ltd.", inserting "(1996)" or "(Canada)" or even inserting the proper legal name for a common usage or trade name such as "Freson Markets Inc" for "Southview IGA." See*: UFCW, Local 401 v. Freson Market Ltd.,* [1995] Alta. L.R.B.R. 491. All of these amendments may be done where the identity of the employer is not in question, but the legal name needs to be clarified.

This practice is in keeping with the Board's decision *in Graphic Communications International Union, Local 34-M v. The Calgary Herald* … [1993] Alta. L.R.B.R. 222. There the Board found that its power to amend a bargaining unit description to a reasonably similar one did not empower it to consider what the Union intended to apply for and then make the amendments to the application. We see strong similarities to the unit the union intends to apply for and the identity of the employer it intends to certify.

We do not find that the applications affecting Navajo Metals (IPSCO Inc.) and Jamel Metals Inc. are similar or substantially similar. The legal entity identified as the employer is different in each case. If the same Union were to apply for an identical unit of employees at another firm, such as a competitor, it would not be a similar or substantially similar application. This application is no different. In health care and construction particularly, the Board frequently sees the same applicant applying for a standard unit of employees with a number of different employers. Each of those applications is treated as distinct. There is nothing in this case which convinces us that the two named employers are the same entity. We are not prepared, on the material before us, to conclude that the words "Navajo Metals" can identify only one entity. Therefore, section 55 does not apply. The application is timely.

[12] While the Employer claims the circumstances of this case are distinguishable, as discussed below the Board finds the principle articulated in *Jamel Metals* is equally applicable here.

[13] Similarly, *IBEW, Local 424 v. Konecranes Canada Inc.*, [2007] Alta. L.R.B.R. LD-090, was a case of a misnaming of the employer in a revocation application, in which the same general principles apply. In that case, the revocation applicants proceeded with their original application, asking the Board to amend the name on that application. The Board stated at paras. 5-6:

… the Board finds the Union’s objection to the change of name from Konecranes Canada Inc. to Konecranes (2006 Alberta) Inc. succeeds on three grounds. Namely:

1. This is not a simple name change or correction but rather a case of naming the wrong corporate entity;
2. Absent an application by the employees pursuant to Section 18(4) of the *Code* and lacking any evidence being called as to the mistake, the Board is unable to amend the name of the employer;
3. This is not a mere technical breach as contemplated by Section 18(5) of the *Code.*

The Board would observe that if the employees are able to bring the application under Konecranes (2006 Alberta) Inc., such would appear not to be time barred by operation of Section 57 as such application would concern a different corporate entity than Konecranes Canada Inc.
[Emphasis added]

[14] These two cases are particularly informative, because they show the significant difference in the Board's approach to errors such as misspellings, use of common versus legal names, or mistaken usage of Inc. versus Ltd. (where the alternative does not exist), versus mistakenly naming a legal entity with its own separate corporate existence.

[15] The Employer's proposed approach to the definition of "same or substantially the same" certification application in section 57 runs contrary to this long-established Board case law and practice. In circumstances where applications refer to entirely separate legal entities, with their own unique reference on the corporate registry, an application to certify one legal entity is not in the Board's view the same or substantially the same as an application to certify the other. The subjective intention that the Union did indeed intend to certify the same group of workers is insufficient to overcome this important legal distinction. The Board is further satisfied this view is equally applicable to a separate corporation, such as the one in this case, which appears to have been struck for administrative non-compliance. While that event places the current corporate existence of the struck corporation into question, the specific naming in an application of a separate entity that once existed, and still provides results on the corporate registry system, gives rise to sufficient questions concerning the application and its effect, that the same approach to its sameness or substantial sameness is warranted in such circumstances.

[16] The Board also notes that this long-standing approach to permitting re-application in such circumstances would have been well-known to the Union and would have dictated its approach upon discovering the error in its original application. That is, there is no surprise here that the Union did not seek consent under section 57, even though based on the factors for such consent (discussed at *Telecommunications Workers Union (TWU), United Steelworkers Local Union 1944 v ADT Securities Services Canada, Inc.*, [2021] Alta. L.R.B.R. LD-055 at paras 22-28) it likely would have been easily provided in the circumstance. Changing the Board's longstanding approach midstream in this case would be manifestly unfair to the Union in these circumstances.

[17] The Board would note in response to the Employer's submissions that there is an appropriate difference between the treatment of the naming of the employer in an application for the purposes of applying section 57 versus the treatment of the employer's name within the petition header. The nature of the question being posed by the Board in assessing a petition drives the flexibility the Employer comments on in its submissions. Whether a petition header provides evidence "in a form satisfactory to the Board" that employees "in the unit applied for" have "indicated their support for the trade union" (in the wording of section 33 of the *Code*) requires the Board to assess what it can glean of the employees' intention from the petition,

beyond the legal niceties of the corporate name of the employer. For the reasons outlined above, questions concerning the legal name of the employer in the application itself, and for the purposes of section 57, involves different considerations.

[18] The Union seeks costs of responding to this objection, in part due to the suspected use of generative AI in the creation of the Employer's submissions.[1] While the Board has found the Employer's objection here to be without merit, and while certain of the Employer's arguments mischaracterize elements of the Board's cases, policies and procedures, the Board is not prepared to exercise its restrictive costs authority under section 12(2)(i) in the particular circumstances of this case.

[19] Accordingly, the Board dismisses the Employer's objection to the timeliness of the application. The only objection having been dismissed, the Board directs the counting of the ballots.

Jeremy D. Schick, Vice-Chair

[1] For reference, the Board recently referred to the use of generative-AI and potential costs consequences in *Kay v Association of Academic Staff University of Alberta and University of Alberta (Board of Governors)*, 2026 ALRB 84, paras. 34-36.