Manitoba Labour Board
Suite 500, 5th Floor - 175 Hargrave Street Winnipeg, Manitoba, Canada R3C 3R8
T 204 945-2089 **F** 204 945-1296
www.manitoba.ca/labour/labbrd

CERTIFICATE NO. MLB-7061
Case No. 25/14/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

United Food and Commercial Workers Union, Local No. 832,

Applicant/Union,

- and -

INSTABOX WINNIPEG LTD.,

Respondent/Employer.

BEFORE: **A. B. Graham, Vice-Chairperson**

C. Lorenc, Board Member

I. Giesbrecht, Board Member

This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.

SUBSTANTIVE ORDER

WHEREAS:

1. On January 23, 2014, the Applicant (the "Union") filed an application for certification (the "Application") with the Manitoba Labour Board (the "Board") pursuant to Section 34(1) of *The Labour Relations Act* (the "*Act*") for a bargaining unit described as:

> ***"All employees of Instabox Winnipeg Ltd. in the Province of Manitoba, save and except Receptionist, Accountant, Office Manager, Sales Staff, Quality Control, Production Manager, Plant Manager and those excluded by the Act."***

…/2

2. On January 28, 2014, following an extension of time, the Employer through Counsel filed its Return, opposing the application filed by the Union on the basis that the individuals in the bargaining unit are currently represented by the Instabox Employees Association (the "Association"). The Return also stated that the application should be dismissed on the basis that it is untimely pursuant to Section 35(2) of the *Act,* because there is a current collective agreement in effect between the Employer and the Association. Further, if the application is determined to be timely, the Employer requested that certain individuals in the classifications of "Head Maintenance", "Head Shipper", "Die Room Supervisor" and "Die Room Assistant" classifications be excluded from the proposed bargaining unit.

3. On January 29, 2014, the Union through Counsel, filed a Reply to the Employer's Return, objecting to the requested exclusions, and further submitting, that the Association is not a duly constituted union as of the date of the Application.

4. On January 29, 2014, the Board served notice to the Association of the proceeding. There was no Intervention filed with the Board by the statutory deadline.

5. On January 30, 2014, the Employer through Counsel, filed documentation that the determination of whether or not the Application is timely ought not be determined summarily and that a hearing would be required, and further, that the Union would bear the initial onus of establishing that the Association ought not be recognized by the Board.

6. On February 3, 2014, the parties were advised that the Board had determined exceptional circumstances existed, pursuant to Section 48(4) of the *Act* warranting an extension of time for the conduct of a Representation Vote, if necessary.

7. On February 5, 2014, the Board, following consideration of all material filed, advised the parties that it was satisfied that irrespective of the ultimate resolution of the issue raised by the Employer regarding the composition of the bargaining unit, the Applicant had met the minimum statutory requirements of Section 40(1) of the *Act,* because at the time the application was filed, 65% or more of the employees in the unit wished to have the union represent them as their bargaining agent.

   Further, the Board noted that no allegations of impropriety pursuant to Section 45 of the *Act* had been raised and that no intervention had been filed by the "Association" despite having been served with notice of the Application, and in default of so doing the Association would not be entitled to notice of any further proceedings. The Board also advised the parties that it was the intent of the Board to deal with the issue of timeliness and bargaining unit appropriateness at the hearing, and appointed a Board Representative pursuant to Section 140(6) of the *Act* to undertake to assist the parties in settling the matter.

8. On March 4, 2014 and March 5, 2014, following discussions with the Board Representative, the parties agreed that the classification of "*Die Room Supervisor*" should be **excluded** from the applied-for bargaining unit description; and the classifications of "*Head Maintenance*", "*Head Shipper*" and "*Die Room Assistant*" should be **included**. The bargaining unit description should be amended to the following:

> ***"All employees of Instabox Winnipeg Ltd. in the Province of Manitoba, save and except Receptionist, Accountant, Office Manager, Sales Staff, Quality Control, Production Manager, Plant Manager, Die Room Supervisor and those excluded by the Act."***

Further, the Union maintained its position that the Association was not and is not a duly constituted union, therefore the alleged existence of a collective agreement is immaterial to its Application for certification. The Employer maintained its position that a collective agreement was in force at the time the Application was made and the Application ought to be dismissed.

9. On April 30, 2014 and May 1, 2014, the Board conducted a hearing, at which time the parties appeared before the Board and submitted evidence and argument. All parties were represented by Counsel.

10. Two witnesses were called on behalf of the Union. They were:

    i. T.K. – T.K. has worked as a part-time employee of the Employer since 1998 and as a full-time employee since 2005. He is currently employed as a Flexo Operator. In 2006 he became the Vice-President of the Association and in 2008 he became President of the Association. He held that position until November 2013, when he resigned.

    ii. B.K. – B.K. has been employed by the Employer for approximately 25 years. He served two terms as Vice-President of the Association approximately 8 years apart.

11. Two witnesses were called on behalf of the Employer. They were:

    i. M.S. – M.S. has worked for the Employer since 1997, and has been the Employer's Office Manager since 1998.

    ii. E.L. – E.L. worked for the Employer for many years, commencing in 1985. He retired in 2003. He also served as the first President of the Association

commencing in or about 1988. He also served a second term as President of the Association, several years later.

12. Most of the background facts related to the Union's Application for certification are uncontested. They can be summarized as follows:

(a) Prior to 1988, most of the employees working in the manufacturing operations of the Employer were represented by a certified bargaining agent namely the Canadian Paperworkers Union, Local 830 (the "Paperworkers Union"). In 1987, E.L. on his own behalf and on behalf of a group of petitioning employees of the Employer applied to seek cancellation of the Paperworkers Union certificate (the decertification application). Following a representation vote, the decertification application was granted. In relation to the decertification application, E.L. received legal advice from an experienced labour relations lawyer.

(b) Following the decertification of the Paperworkers Union, E.L. was advised by the lawyer who assisted him in the decertification application, to form an Employee's Association and to prepare a constitution to be approved and adopted by the members of the Association. E.L. accordingly proceeded to form the Association. He did so by using a form of petition prepared by the lawyer and by organizing an initial meeting of interested employees which was held in the parking lot of a major grocery store. When asked at the hearing of these proceedings to explain why he had formed the Association, and to explain the purpose of the constitution, E.L. replied that he could not recall, but that he had been advised by the lawyer that the formation of an Association and the preparation and adoption of a constitution were necessary and accordingly he followed the advice of the lawyer.

(c) In terms of preparing a constitution, E.L. obtained a precedent from a comparable business. He and two other fellow employees reviewed the precedent, and removed the clauses which they did not think were necessary or applicable. Following the preparation of that document (which he testified was probably in handwritten form), a meeting of the membership of the Association (i.e. the plant employees of the Employer) was convened and the constitution was approved and adopted, and officers were elected. E.L. could not recall whether the constitution was approved by a vote, or by the members of the Association "signing off" on the document. He could also not recall whether the officers were elected before or after the constitution was approved. In any event, E.L. was elected as the first President of the Association. E.L. could not recall the contents of the constitution or the subject areas covered by the constitution. He did not recall seeing the constitution after the first year of the Association's existence. He assumed that the individual elected as

Secretary of the Association had taken possession of the document and that it was lost or misplaced sometime thereafter. Both T.K. and B.K. testified that they never recalled seeing a written constitution, and the only documentation they received when they became officers of the Association related to the Association's bank account. The Association was never certified by the Board as being entitled to act on behalf of the employee members in collective bargaining because the Association did not believe certification was necessary and did not want to incur the expense associated with becoming certified.

(d) Dues were deducted from the wages of the employees who were members of the Association and deposited into a bank account controlled by the Association. The dues were used for a variety of purposes including gifts or flowers on special occasions affecting Association members such as births, deaths or weddings. The dues were also used to finance social events for members such as summer barbeques and golf tournaments. Occasionally Association funds were provided to members who were in strained circumstances as a result of some set back or misfortune. At least two witnesses indicated that there was nothing preventing the Association's funds from being used to obtain legal advice or representation on behalf of the Association, although such advice or representation was never obtained.

(e) There was an annual election of officers for the Association conducted at a meeting of members. The votes at such elections were typically conducted by a show of hands, not by secret ballot. On one occasion, E.L. was removed as President of the Association, as a result of some dissatisfaction with respect to an expenditure of funds for one particular purpose. E.L. could not recall what process was used to remove him as President, nor whether that process was in conformity with the constitution. T.K. resigned as President of the Association in the fall of 2013. At that time the Vice-President also resigned. At the time of the hearing of these proceedings (April 30 and May 1, 2014) they had not been replaced as officers of the Association.

(f) From the time of the Association's formation, the officers of the Association would periodically undertake "representation" activities on behalf of members of the Association who required assistance in relation to their dealings with the Employer. Examples were provided of an employee who had been suspended for insubordination for 5 days. T.K. thought the suspension was overly lengthy and in his capacity as President of the Association made submissions to the Employer relating to a reduced suspension. B.K. also described his participation in disciplinary meetings. The evidence of T.K. and B.K. was consistent, and was to the effect that although the Employer would listen to their submissions relating to disciplinary

matters, if the Employer did not agree, discipline would be imposed as the Employer deemed appropriate. No grievances were ever referred to arbitration. The dismissal of one employee was mentioned in evidence, and that matter was not referred to arbitration.

(g) Collective agreements were entered into between the Association and the Employer on an annual basis. The two most recent collective agreements were marked as Exhibits 1 and 2 in these proceedings. T.K., B.K. and M.S. all commented on the collective bargaining process which has remained consistent over many years. The process typically commences in the fall of the year, and is sometimes initiated by the Association and sometimes by the Employer. The Association convenes a meeting of their members to receive their input and thereafter outlines its proposals to the Employer. The Employer then provides a written reply, responding to the Association's proposals and outlining its own proposals. The Employer representatives and the Association executive members meet to discuss the proposals. Minutes of their discussions are prepared by the Employer and provided to the Association. The Association then meets with its members again to review the points in dispute and the process continues until an agreement is reached. Once an agreement is reached, the members of the Association vote on the agreement, by a show of hands. There have been no strikes or lockouts since the Association was formed.

(h) Both T.K. and B.K. testified that the Association had little power to achieve significant change to the collective agreement through the bargaining process. The Association's usual bargaining objective was to obtain a cost of living increase for its members. Article 16 of the current collective agreement states: "There shall be no strikes or lockouts during the term of this agreement" (underlining added). A similar provision appeared in prior collective agreements. T.K. interpreted Article 16 to mean that the Association had no right to strike and therefore the Association could only succeed in achieving wage increases or other benefits for Association members, if the Employer agreed to such things.

(i) Both T.K. and B.K. stated that in their view the collective agreements, which were signed, were binding on both the Association and the Employer, and that when they signed the collective agreements they had the requisite authority to sign on behalf of the Association. They also acknowledged that during any negotiations in which they were involved, the Employer never challenged the Association's status to represent the interests of the employees.

13. Some of the provisions of the *Act*, which are relevant to the Union's application for certification are the definitions outlined below and subsections 34(1) and 35(2)(e) of the *Act* which are also outlined below:

"**bargaining agent**" means

(a) a union which is certified to act on behalf of employees in collective bargaining, or
(b) any other union which, on behalf of employees of an employer, has entered into a collective agreement with the employer

(i) the term of which has not expired, or

(ii) in respect of which notice to bargain collectively has been given under section 61 of collective bargaining has commenced under section 63;

"**certified bargaining agent**" means a bargaining agent that has been certified under this Act and the certification of which has not been cancelled;

"**collective bargaining**" means negotiating with a view to the conclusion of a collective agreement or the renewal or revision thereof;

"**union**" means any organization of employees formed for purposes which include the regulation of relations between employers and employees, and includes a duly organized group or federation of such organizations and for the purpose of this definition an organization may be composed of only one employee;

Right to apply for certification.

34(1) A union seeking to be certified as a bargaining agent for employees in a proposed unit appropriate for collective bargaining may, subject to this Act and the regulations, apply to the board for certification as the bargaining agent for employees in the proposed unit.

Restrictions on application for certification.

35(2) Where a collective agreement in respect of the employees in a unit is in force, no application for certification as bargaining agent for employees in the unit shall be made by another union…

(e) where the collective agreement

(i) is for a term of one year, and

(ii) provides that it will continue to be effective for a further term of one year, or for successive terms of one year each, unless one of the parties thereto gives to each of the other parties thereto notice of termination thereof, or notice of a desire to bargain collectively with a view to the renewal or revision thereof or to the conclusion of a new collective agreement,

except during the three months immediately preceding the three months preceding any date on which the collective agreement may be terminated.

14. The Union's position in these proceedings is that the restrictions relating to when a Union may apply to be certified as the bargaining agent for employees in a proposed bargaining unit, as outlined in subsection 35(2) of the *Act*, do not apply in the circumstances of this case, because the Association is not a "union" and not a "bargaining agent" as those two terms are defined in the *Act.* Therefore the "collective agreement" which was signed November 27, 2013 purporting to be effective from January 1, 2014 to December 31, 2014 (Exhibit 2) is not a collective agreement within the meaning of and for the purposes of the *Act*. Accordingly, no collective agreement is in force for the purposes of subsection 35(2) of the *Act* and the restrictions outlined in that subsection are not applicable in relation to the Union's Application for certification. An essential element of the Union's argument is that in order for an organization to be recognized as a union and a bargaining agent for the purposes of the *Act*, the applicable authorities stipulate that the organization must have a constitution voted on and approved by its members and that the organization must act in a manner consistent with that constitution. The Union says that the evidence in these proceedings falls significantly short of establishing the existence of a constitution for the Association.

15. The Employer's position in these proceedings is that the Association is a "union" and "bargaining agent" within the meaning of and for the purposes of the *Act* and that the 2014 collective agreement (Exhibit 2) is a valid collective agreement in force during that period. Therefore the restrictions outlined in subsection 35(2) of the *Act* are applicable in this case, and the Union has applied for certification during a period when it is prohibited from doing so under the *Act*. The Employer also asserts that the evidence establishes that the Association did have a constitution and always acted in conformity with that constitution as the bargaining agent for the members of the Association. Finally, the Employer argues that given the representations which the Association made over the course of many years, that it was the validly constituted bargaining agent of the plant employees and the reliance which the Employer placed on those representations, the members of the Association are now estopped from taking the position that the Association was not their bargaining agent.

16. Before commenting upon the authorities relied upon by the Union, it is important to note that the *Act* does not require a union or bargaining agent to be "certified" to act on behalf of a group of employees in order to represent them in bargaining or to enter into a collective agreement on their behalf. It is also noteworthy that the definition of "Union" under the *Act* is broad and means "any organization of the employees formed for purposes which include the regulations of relations between employers and employees…". As counsel for the Employer has pointed out, the definition of "union" in the *Act* is inclusive not exclusive.

17. Nonetheless, the Union submitted several authorities from this jurisdiction and other jurisdictions which establish that provincial labour relations boards, including this Board, recognize that a minimal requirement for recognizing an organization as a union is that it be bound by a valid constitution. (See for example, *Regional Aviation Employees' Association and Air West Airlines Ltd. and Teamsters Local Union No. 231 [1980] 2 Can LRBR 197* and *UFCW International Union, Local 111 and Springhill Farms Limited and Springhill Farms Employees Union [1987] MLBD No. 18 Case No. 110/87 LRA)*.

18. The above-noted authorities and several others, emphasize that the constitution is all important because it sets the rules under which the organization will operate. One of the critical elements of a constitution is that it should set forth the objects and purposes of the organization. In the case of an organization which seeks to demonstrate it is a union, that organization must establish that it is an organization of employees, that it was formed for purposes that include labour relations and that it is a viable entity for collective bargaining purposes. In *Canadian Association of Trades and Technicians (Applicant) and Treasury Board (Employer) and Federal Government Dockyard Trades and Labour Council East, Intervener) [1991] C.P.S.S.R.B. No. 42,* in the context of an application for certification by a particular union, the Canada Public Service Staff Relations Board stated:

> The long standing jurisprudence concerning applications for certification such as the one at issue here has established that before a Board will certify an organization it must be satisfied that it falls within the definition of "employee organization" or "trade union" as set out in the relevant statute. Thus, the relevant jurisprudence of the Canada Labour Relations Board, Ontario Labour Relations Board and this Board has found that an applicant wishing to establish its status as a trade union or employee organization within the meaning of the relevant statute must meet certain criteria: it must establish that it is an organization of employees, that it was formed for purposes that include labour relations and that it is a viable entity for collective bargaining purposes.
> Each case must be decided on its own merits. However, in general the jurisprudence of the above cited Boards has established that applications for certification have been granted when the employee organization demonstrated

> that it had a written document (constitution, charter or by-laws, etc.) which at least defines how membership is obtained and which provides for officers or persons to be elected with authority to act on behalf of the organization. It must provide as well for the calling of membership meetings and contain a statement of purpose which includes the regulating of relations between employees and employers. Furthermore, the document must be approved by the employees. However, the employees must be admitted to membership in accordance with the terms of the document or confirmed afterwards as members if they join the organization before the document is adopted. The members must ratify the document and the officers or persons who act for the organization must be elected in accordance with the document: …. .
>
> In conclusion, the Board must be satisfied that the applicant is more than just an informal joining together of individuals. The Board requires that the applicant be an employee organization whose members have united and joined themselves together on the basis of specific terms for purposes that include the regulation of relations between employees and employers…. .

19. The Union argues that the evidence falls significantly short of establishing that the Association had a constitution. T.K. and B.K. were officers of the Association for significant periods of time, and B.K. was Vice-President of the Association at a relatively early stage of the Association's existence. However, neither B.K. nor T.K. ever saw a written constitution and never referred to such a document. The Association functioned for many years, but not pursuant to a set of rules and by-laws, but rather by simply doing things in the way that they had always been done. The Union acknowledged that E.L. testified that a constitution existed and that he had participated in drafting it. However, he could not explain why it was important and could not recall its specific provisions. Counsel for the Union argued in his final submission that the "faulty memory of a retired gentleman is not enough to establish a valid constitution".

20. The Employer did not dispute that a constitution is a prerequisite for being a union, but argued that the evidence in these proceedings establishes that the Association did in fact have a constitution. The Employer asserted that E.L.'s evidence was sufficient to establish that a constitution was drafted and adopted and the evidence in its entirety proved that dues were paid, employees were admitted into membership, officers were elected, the Association's funds were expended for the betterment of its members, and the Association engaged in labour relations activities for a period in excess of 25 years. The most important labour relations activities in which the Association engaged were the negotiation of successive collective agreements on an annual basis, and the periodic representation of individual employees involved in discipline matters.

21. It is undoubtedly true that the Association was not a particularly robust defender or advocate of individual or collective employee rights. No grievances were ever filed by the Association. The former officers of the Association who testified seemed unaware of the Association's right to strike upon the expiry of a "collective agreement" and therefore never utilized the possibility of a strike as a bargaining strategy when negotiating wages and benefits with the Employer on an annual basis. However, the strength and effectiveness of the Association cannot be used to determine the Union's application for certification in these proceedings.

22. The determinative issue in these proceedings is whether or not the Association had a constitution and whether or not it acted in accordance with such a constitution. No constitution was produced and entered into evidence in these proceedings, because whatever written document may have once existed was apparently lost many years ago. The lack of a formal written document is a fundamental problem, not because the lack of such a document proves that a constitution never existed or has ceased to exist, but because the lack of a formal written document means that it is very difficult to prove what the substantive provisions of the constitution were or are, including what objects and purposes, if any, were contained in the constitution. As the authorities previously referred to establish, the objects and purposes of a purported constitution are fundamentally important in establishing whether an organization or association will be considered a "union" for the purposes of the *Act*. Without knowing what the objects and purposes of the Association were, it is impossible to determine whether those objects and purposes include the "regulation of relations between employers and employees", as the definition of "union" in the *Act* requires.

23. E.L. was the only witness in these proceedings who testified as to the existence of a constitution. However, he was unsure of its purpose or importance. He and two colleagues drafted it based on a precedent because they had been advised to do so by a lawyer. He provided no information as to whether the constitution contained an "objects" or "purpose" clause and if so what such a clause contained. He had no recollection of any of the specific provisions of the constitution. He could not recall whether his own removal as President of the Association on one occasion was done in accordance with the terms of the constitution. Therefore, although his evidence may establish that a constitution once existed, his evidence is of no assistance in establishing the actual provisions of the constitution and proving that one of the purposes of the association was the regulation of relations between the Employer and its plant employees.

24. In this context, it is important to remember that in many workplaces there are informal employee committees or organizations, which perform valuable functions, but which are

clearly not "unions" within the meaning of and for the purposes of the *Act*. In some workplaces, such employee committees or organizations perform purely social or benevolent functions. In others they may perform consultative roles, such as acting as a sounding board with respect to changes contemplated by management. In some situations, such committees or organizations may meet with the employer to discuss and agree upon workplace rules and regulations, the contents of an employee manual, or even the terms and conditions of employment which will become the terms and conditions of employment of individual employees or groups of employees.

25. A constitution is a critically important instrument in helping to determine whether an organization is a "union" within the meaning of and for the purposes of the *Act*, or an informal employee committee or organization such as described in the immediately preceding paragraph.

26. The Board has considered whether it can infer that one of the purposes of the association must have been the regulation of relations between the Employer and employees, on the basis that the Employer recognized the Association as the bargaining agent of the Employer's plant employees and the Association bargained annually with the Employer and entered into successive collective agreements with the Employer outlining the terms and conditions of employment for the plant employees. However as noted above, an informal employee organization, which is not a union, may participate in discussions or negotiations with respect to the terms and conditions of employment of individual employees or groups of employees. Moreover, in one of the authorities relied upon by the Union, it was specifically held that the fact that an association had negotiated collective agreements with an employer, did not create a constitution and did not constitute a bar to an application for certification by another Union. (See *Canadian Brotherhood of Railway Transport and General Workers (applicant) and Capital Coachlines Ltd. (employer) and Travelways Maple Leaf Garage Employees' Association [1980]to Can L.R.B.R.407)*.

27. In this case, there is another important factor indicating that the objects and purposes of the Association may <u>not</u> relate to the regulation of relations between the employer and the employees, namely the expenditure of the Association's funds. Those funds were primarily expended on social or benevolent activities, not labour relations purposes. Association funds were <u>not</u> expended on obtaining legal advice or representation either in relation to representing individual employees or in relation to obtaining advice during annual bargaining. The Board recognizes that the Association likely could have chosen to expend its funds for those purposes, but nonetheless did not do so. The manner in which an organization spends its money is a powerful indicator of the nature and character of an organization. The fact that the Association did not spend its money on labour relations

activities raises doubts about whether one of the Association's purposes was and remained the regulation of relations with the Employer.

28. The Employer argues that if the Board grants the Union's application for certification in this case, effectively ruling that the Association is not and never has been a union, the Board will be ignoring 26 years of bargaining history between the Employer and the Association, which will in turn raise issues about the validity and enforceability of the past collective agreements between the Employer and the Association. The Board does not accept that argument. As noted above, in some circumstances, informal employee organizations, which are not "unions" within the meaning of and for the purposes of the *Act*, are able to discuss and agree upon terms and conditions of employment which bind individual employees or groups of employees. The effect of a ruling by this Board that the Association is not a union, and therefore not a bargaining agent is that the 2014 "collective agreement" is not a collective agreement within the meaning of the *Act*, and the restrictions outlined in subsection 35(2) of the *Act* do not apply.

29. In the unusual circumstances of this case, the Board has concluded that in the absence of evidence establishing the specific provisions of the Association's constitution, the Association was not a "union" or a "bargaining agent" within the meaning and for the purposes of the *Act* when it entered into the 2014 "collective agreement". Therefore the restrictions outlined in subsection 35(2) of the *Act* do not apply. In the result, the Union's application for certification dated January 23, 2014, which is the subject of these proceedings is timely.

30. In reaching this conclusion, the Board has been mindful of its own Rules of Procedure. Rule 7(1)(c), which applies to every union, whether certified or not, stipulates that:

Information to be filed by union

Rule 7(1) Upon or prior to the filing of its first application or intervention with the board, every union shall file with the board…

(c) if the union is an organization that is an association of employees, other than that described in clause (a) or (b), a copy of the minutes of its originating meeting together with a copy of its constitution and by-laws; and

Rule 7(1)(c) and its requirement for the filing of a written constitution is not a mere technicality, but a substantive requirement which must be fulfilled before an organization will be determined to be a union for certain purposes under the *Act*. The Board is unable to conclude that the Association is a union within the meaning of and for the purposes of the *Act,* given that the Association is unable to fulfill the requirements set forth in Rule 7(1)(c).

31. The Employer also advanced an estoppel argument on the basis of the repeated representations of the Association and its members, that the Association was the properly constituted bargaining agent of the plant employees. The Employer argues that it relied to its detriment on those representations, and that the detriment which it will have suffered, is the loss of the benefit of the 2014 collective agreement. While the board recognizes the basis for the Employer's reliance on the doctrine of estoppel, the short answer to the Employer's argument is that the doctrine of estoppel, as a matter of law, cannot negate statutory rights. In that regard the Board refers to its decision in:

M.G.E.U. (applicant) and Government of Manitoba, Manitoba Ombudsman (employer) 210 C.L.R.B.R. 130, wherein it was stated that:

(i) The Board accepts that the principle of estoppel cannot be relied upon to prevent the exercise of a statutory right or to release a party from a statutory obligation. Moreover, the Board concurs with the position taken by Chairperson Krindle, as she then was, in *Gateway Construction Co. and C.J.A., Local.* 343, [1977] 2 Can LRBR 23, [1977] M.L.B.D. No. 9, where at p. 25 Can LRBR, para. 15, she stated:

> [W]here the rights of third parties, namely the employees, may be detrimentally affected by the employer's conduct in signing the agreement at the time he did, we cannot accept the argument of estoppel.

32. The Board, having regard to all of the above, has **DETERMINED** to its satisfaction that:

(a) The Applicant is a Union within the meaning of the *Act*;

(b) the bargaining unit agreed to by the parties, and hereinafter described, is a unit appropriate for collective bargaining;

(c) no allegations of impropriety pursuant to Section 45 of the *Act* have been raised; and

a. at the time the application was filed, sixty-five percent (65%) or more of the employees in the unit found to be appropriate for collective bargaining wished to have the Applicant Union represent them as their bargaining agent.

Accordingly, the Board **HEREBY ORDERS** certification to issue.

T H E R E F O R E

The Manitoba Labour Board **HEREBY CERTIFIES** to all parties concerned that the United Food and Commercial Workers Union, Local No. 832, is the properly chosen bargaining agent for a bargaining unit described as:

> ***"All employees of Instabox Winnipeg Ltd. in the Province of Manitoba, save and except Receptionist, Accountant, Office Manager, Sales Staff, Quality Control, Production Manager, Plant Manager, Die Room Supervisor and those excluded by the Act."***

and such bargaining agent and Employer are entitled to exercise the rights conferred upon them and subject to the provisions of the Act.

DATED at **WINNIPEG**, **Manitoba** this 24th day of July, 2014, and signed on behalf of the Manitoba Labour Board by

"Original signed by"
A. B. Graham, Vice-Chairperson

"Original signed by"
C. Lorenc, Board Member

"Original signed by"
I. Giesbrecht, Board Member

ABG/BJG/tj/lo-s