

Canada Industrial Relations Board permits employer communications regarding representation vote – no undue influence or irreparable harm

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A recent decision of the Canada Industrial Relations Board (“Board”) provides guidance to aviation organizations regarding their conduct during a representation vote. In [WestJet, an Alberta Partnership](#), (July, 2015), the issue before the Board was whether WestJet should be prohibited from communicating with pilots regarding an organizing campaign and representation vote initiated by the union, the WestJet Professional Pilots Association. The union alleged that communications by WestJet would have undue influence over pilots affected by the vote and impact the outcome of the vote. It sought an interim order under section 19.1 of the *Canada Labour Code* (“Code”) prohibiting such communications. The employer argued that all of its communications were permissible and that none of them would have a chilling effect on the pilots’ right to exercise their freedom of choice.

The Board set out the following factors that are considered in determining whether an order should be issued:

- whether the complaint raises a serious issue;
- whether there is likely to be irreparable harm;
- the balance of convenience; and
- the broader considerations of labour management practices.

In applying these factors, the Board found that the employees that would be affected by the vote were well aware of the various venues to obtain information regarding the vote. These venues included a union website and twitter account, as well as communications from the union to the personal e-mail addresses of the pilots. The Board found that there was no evidence to suggest that the pilots were not free to access those venues. In terms of the communications by WestJet, the Board found that these were in line with past communications and would not cause undue influence over the pilots. Since there was no basis to conclude that there would be irreparable harm, the Board dismissed the union’s requests.

As the *WestJet* decision indicates, employers may communicate with employees regarding a representation vote. However, given the potential for an unfair labour practice complaint, and the significant remedies should the complaint be found to have merit, employers must exercise caution when making such communications. Employers must ensure that their conduct does not:

- inhibit or prohibit employees’ access to information relating to the vote, including information made available by the union;

- have a “chilling effect” on, or cause undue influence over, the exercise by employees of their freedom of choice; or
- directly and negatively impact the union’s organizing activities.

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