

**Labour Relations Board  
Saskatchewan**

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2038, Applicant and  
CROFT ELECTRIC LTD., Respondent**

LRB File No. 106-05; December 3, 2007

Vice-Chairperson, James Seibel; Members: Gloria Cymbalisty and Leo Lancaster

For the Applicant:                   Bettyann Cox  
For the Respondent:               Larry LeBlanc, Q.C.

**Certification – Membership – Improper organizing tactics – Employee did not testify that statement made by union representative induced employee to sign support evidence – Statement made by union representative also not improper inducement – Board declines to reject support evidence.**

**Certification – Practice and procedure - Statement of employment – To determine who should be included on statement of employment in construction, Board looks at trade in which employee employed for majority of time for reasonably representative period of time prior to filing of application for certification – Board sets composition of statement of employment.**

**Certification – Practice and procedure - Statement of employment – Employee who became employed by another employer prior to filing of application did not maintain sufficient continuing interest in representation question or sufficiently tangible employment relationship – Board removes employee from statement of employment.**

**Certification – Employee – Individual who is employer’s eyes and ears on multiple sites at same time has much wider range of authority than site foreman – Board declines to add individual to statement of employment.**

***The Trade Union Act, ss. 5 (a), 5(b), 5(c).***

**REASONS FOR DECISION**

**Background:**

[1] International Brotherhood of Electrical Workers, Local 2038 (the “Union”) filed an application pursuant to ss. 5(a), (b) and (c) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”), to be designated as the certified bargaining agent for the standard bargaining unit of employees in

the electrical trade division of the construction industry<sup>1</sup> employed by Croft Electric Ltd. (the “Employer”) in Saskatchewan south of the 51st parallel as follows:

*all journeyman electricians, electrical apprentices, electrical workers and electrical foremen employed by Croft Electric Ltd. in Saskatchewan south of the 51st parallel.*

[2] In the application for certification the Union estimated there were ten (10) employees in the proposed bargaining unit. The statement of employment filed on behalf of the Employer listed ten (10) names, but the parties are only agreed that eight (8) of those names are properly listed, as follows: Steve Kowalchuk; Steven MacLeod; Bill Dae; Josh Graff; Patrick Schwennig; Jason Mathes; Patrick Burkholder; Scott Bloos.

[3] The Union took the position that the following two (2) names are not properly on the statement of employment and should be removed: Derek McCall; Jason Kraus.

[4] The Union also took the position that the following three (3) names ought properly to be added to the statement of employment: John Rogers; Glenn McIvor; Tyler McIvor.

[5] The composition of the statement of employment is the only issue between the parties.

**Evidence:**

[6] The application for certification was filed on June 3, 2005. Substantial testimony and argument was presented during the four days of the hearing. We have not set out the evidence in its entirety, and following is a summary of the salient points.

Stan Shearer

[7] Stan Shearer has been the business manager and financial secretary of the Union for many years. A joint council of the Union and International Brotherhood of Electrical Workers, Local 529, affiliates of the Saskatchewan Building Trades Council, has established the right to bargain collectively on behalf of the unionized employees of the unionized employers in the

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<sup>1</sup> The standard bargaining unit for the electrical trade division in the construction industry was established by the Board in *Construction and General Workers' Local Union No. 890 v. International Erectors & Riggers, a Division of Newbery Energy Ltd.*, [1979] Sept. Sask.

electrical trade division of the construction industry, respectively south and north of the 51st parallel. Other International Brotherhood of Electrical Workers locals represent workers in the trade outside the construction industry, such as public utility workers – International Brotherhood of Electrical Workers, Local 2067 represents electricians who work for SaskPower. The Union and International Brotherhood of Electrical Workers, Local 529 each operate a hiring hall dispatching members according to the rules in the provincial collective agreement for the electrical trade division in the construction industry (the “provincial electrical agreement”).<sup>2</sup>

**[8]** Mr. Shearer testified that the electrical trade is a compulsory apprenticeship trade pursuant to apprenticeship and trade certification legislation. That is, to be eligible to become licensed to perform the full range of the work of the electrical trade, one must have completed a prescribed course of technical study, training and apprenticeship, and successfully completed qualifying examinations leading to certification as a journeyman. Only persons with the following status may work in the electrical trade: those holding a journeyman electrician certificate; those indentured as an apprentice in the trade; those intending shortly to become indentured as an apprentice; and those “grandfathered” to work without certification when the trade became a compulsory apprenticeship trade in 1976.<sup>3</sup> Mr. Shearer testified that the Union’s membership comprises only persons with such status. Pursuant to electrical licensing legislation, both the contractor and the journeymen must be licensed to do electrical work. As a compulsory apprenticeship trade, there is a limit of one apprentice to one journeyman.

**[9]** The persons whose presence on the statement of employment is not disputed are all registered as journeyman or apprentice electricians with the Saskatchewan Apprenticeship and Trade Certification Commission (the “Trade Certification Commission”), except Mr. Macleod, who is registered as a journeyman electrician in another province, but holds an “inter-provincial red seal” and is eligible for registration in Saskatchewan.

**[10]** However, neither Mr. McCall nor Tyler McIvor is registered with the Trade Certification Commission. Referring to the timesheet respecting Mr. McCall, who was hired May 30, 2005 five days prior to the filing of the application for certification, Mr. Shearer testified that Mr. McCall appeared to have spent only 3.5 hours out of his 38.5 hour work week doing what might be electrical work described in the timesheet as “hooking up outlets” and “help hanging lights.” The

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Labour Rep. 37, LRB File No. 114-79.

<sup>2</sup> The present agreement is for the term from May 1, 2004 to April 30, 2007.

balance of Mr. McCall's time was spent on duties such as "housecleaning," "setting up shelving," "moving," "gyprocing," and the like.

**[11]** Tyler Mclvor was hired by the Employer in October 2004. He is not an indentured electrician apprentice. The Employer classifies Tyler Mclvor as a "labourer." Referring to the timesheets for Tyler Mclvor for approximately three months prior to the application being filed, Mr. Shearer testified that Tyler Mclvor appeared to have done some work related to the electrical trade that in some weeks occupied the majority of his work time but in other weeks did not.

**[12]** Glenn Mclvor is registered as a journeyman electrician with the Trade Certification Commission. However, the Employer classifies Glenn Mclvor as a "site superintendent/construction manager" responsible for overseeing multiple trades on the job and therefore not within the proposed bargaining unit description. But Mr. Shearer testified that it is custom in the construction industry that "construction superintendents" or "construction managers" manage multiple trades on construction sites – there are generally no single-trade superintendents unless the number of persons working that trade on a site exceed one hundred. Furthermore, referring to Glenn Mclvor's timesheets for approximately three months prior to the filing of the application, Mr. Shearer testified that, according to his timesheets, Glenn Mclvor did considerable electrical trade work that is not usually performed by a construction superintendent, including: demolition of existing electrical installations, running wire for and installing plugs and lights, running technical cable, planning pipe runs, loading material, troubleshooting, tying power into panels.

**[13]** Mr. Kraus was employed by the Employer as a journeyman electrician. He is listed on the statement of employment filed on behalf of the Employer. However, Mr. Shearer testified that Mr. Kraus ceased working for the Employer on May 13, 2005 and commenced employment with SaskPower on May 15, 2005, becoming a member of International Brotherhood of Electrical Workers, Local 2067.

**[14]** Mr. Dae was called to testify on behalf of the Union. He has been a journeyman electrician for over 20 years. He worked for the Employer from May 13, 2005 to June 7, 2005. He did some electrical work alongside Mr. Rogers. Mr. Dae said that Mr. Kraus was his foreman the first day that he worked but Mr. Dae never observed Mr. Rogers working for the Employer after that. Mr. Dae stated that he was never told what Glenn Mclvor's position was but Mr. Dae considered

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<sup>3</sup> The last two classifications are included under the rubric "electrical workers" in the standard bargaining unit description.

Glenn Mclvor to be a foreman because he seemed to step into Mr. Kraus's position when he left. Sometimes Mr. Dae worked with Glenn Mclvor doing hands-on electrical work.

**[15]** Mr. Rogers is a journeyman electrician and member of the Union. He was called to testify on behalf of the Union. He started working for the Employer in February 2005 as part of a back to work program for injured workers through SGI. He had worked previously for the Employer a number of years ago. He was paid entirely by SGI for the whole time he was with the Employer. He worked his way up from about two hours work per day to about five hours per day. He considered Glenn Mclvor to be a foreman and it seemed to Mr. Rogers that Glenn Mclvor had the same job as Mr. Kraus. Tyler Mclvor sometimes worked with Mr. Rogers doing electrical work. Mr. Rogers never saw Mr. McCall doing electrical work on the jobs he was on.

**[16]** Mr. McCall was called to testify on behalf of the Employer. He worked for the Employer for only five days prior to the filing of the application having been hired effective May 30, 2005. Mr. McCall said he was hired by the Employer as a labourer at a rate of \$7.00 per hour, the then minimum wage. However, in reality, he started work with the Employer as part of a "youth internship program" through the M.A. Riffel Home and School Association pursuant to which the Employer was not required to pay Mr. McCall any wages for the first 160 hours worked and the next 640 hours of work would be cost shared 50-50 between Human Resources Development Canada and the Employer. Mr. McCall said his goal was to become an electrician. He said he gave the Employer the blank apprenticeship forms the first day he started but understood that he would have to work for some time before the Employer might decide to accept him as an indentured apprentice.

**[17]** Glenn Mclvor was called to testify on behalf of the Employer. He started working for the Employer in October 2003. He had been a journeyman electrician for about three years at that time. He has been in charge of directing up to nine workers – he said he "oversaw the guys." He felt that the Employer was preparing him for management and he would not be working "on the tools" at some time in the future. Only he and the Employer's principal did the estimating for jobs. Glenn Mclvor said he had the authority to let people go if he was not satisfied with their work and that he could approve days off. When employees called in sick, they called him. At the time the present application was filed, Glenn Mclvor had been paid one dollar an hour more than some of the other journeymen electricians for about one month. Glenn Mclvor did not know what the other journeymen were being paid.

**[18]** Dan Crofts is the Employer's principal. The Employer is mainly engaged in commercial construction. Mr. Crofts confirmed that Mr. Kraus left the Employer's employ effective May 16, 2005 but said he listed Mr. Kraus on the statement of employment because Mr. Crofts understood that Mr. Kraus would come back to do some remedial work if the Employer required it. Mr. Crofts said that Glenn Mclvor has gradually been taking more responsibility but could not say when he started to consider Glenn Mclvor as "management." Mr. Crofts said Glenn Mclvor was paid the same as Mr. Kraus whom Mr. Crofts called a foreman. Glenn Mclvor does not do any hiring.

**[19]** A number of the employees filed replies to the application for certification which were dated June 23 or 24, 2005 purporting, in essence, to withdraw their support for the application or to advise that they did not support it at all. The documents were rife with deficiencies – some did not identify the "union," while others were not declared before a commissioner for oaths as required by the Regulations under the *Act* -- and for those reasons were rejected. In accordance with Board policy, however, we also declined to consider the documents or allow the employees to testify as the ostensible replies were essentially attempts to withdraw evidence of support after the fact of the filing of the application and all were filed outside the time period set by the Regulations.

**[20]** The exception was the reply filed by Mr. MacLeod in which he alleged that he felt he "was taken advantage of" and it "did not sit right with [him]" that a representative of the Union, Doug McCallum, had allegedly told Mr. MacLeod that the Union would waive his membership arrears (that had accrued when he was working outside of the province) if he signed in support of the application for certification.

**[21]** Mr. McCallum was called to testify on behalf of the Union. Mr. McCallum said that he in fact told Mr. MacLeod that Mr. MacLeod would have to pay the back dues but that, if the Employer was certified by the Union, the Union would not make a reassessment of monies owing. Mr. McCallum said that this was the usual practice of the Union and not unique to this instance because it assists in organizing and the Union's constitution provides for waiver of back dues. Mr. McCallum also explained that an application for membership in the Union is separate from a request that the Union represent a worker – union membership is not a guaranteed right and there are certain eligibility requirements. Mr. McCallum's recollection was that it was while Mr. MacLeod

was signing the representation document that Mr. McCallum advised Mr. MacLeod of the above and Mr. MacLeod never indicated to Mr. McCallum that he would not otherwise sign.

**Arguments:**

**[22]** Counsel for the parties made lengthy arguments and we have reviewed same as well as the authorities filed in support of their arguments. Following is a brief summary of the arguments.

**[23]** Ms. Cox, counsel for the Union, argued that there was no evidence that Mr. MacLeod's support for the application was improperly obtained. Neither in his reply nor in his testimony did Mr. MacLeod allege that the Union had been deceitful or had intimidated him but he only said that, in hindsight, it "did not sit well with him." Mr. MacLeod also did not say that he was induced to sign by the representation he alleged was made by Mr. McCallum. Counsel referred, *inter alia*, to the decision of the Alberta Labour Relations Board in *United Brotherhood of Carpenters and Joiners of America, Local 2103 v. A.V. Concrete Forming Systems Ltd.*, [1988] Alta. L.R.B.R. 23 where, in considering the validity of membership evidence where the union had agreed to reduce initiation fees and waive dues arrears, the Alberta Labour Relations Board held that these were not inducements and did not constitute undue influence that interfered with the free choice of employees.

**[24]** Regarding the issues surrounding the statement of employment, counsel for the Union submitted that the relevant factors to be considered by the Board include: status under trade certification legislation, the nature of the work performed during an appropriate representative period prior to the filing of the application for certification, whether an employee is a casual worker and whether an employee was employed on the date the application was filed. In support of these arguments, counsel referred to the decisions of the Board in *United Brotherhood of Carpenters and Joiners of America (Millwrights Union, Local 1021) v. Daycon Mechanical Systems Ltd.*, [1999] Sask. L.R.B.R. 127, LRB File No. 338-97; *United Brotherhood of Carpenters and Joiners of America, Local 1985 v. Dominion Bridge Inc.*, [1998] Sask. L.R.B.R. 365, LRB File No. 302-97; *International Union of Operating Engineers, Hoisting, Portable and Stationary, Local 870 v. K.A.C.R. (A Joint Venture)*, [1983] Sept. Sask. Labour Rep. 37, LRB File No. 106-83; *International Union of Painters and Allied Trades, Local 739 v. L.C.M. Sandblasting and Painting Ltd.* [2001] Sask. L.R.B.R. 854, LRB File No. 152-01; *Operative Plasterers and Cement Masons, Local 442 v. Vector Construction Ltd.*, [1992] 2<sup>nd</sup> Quarter Sask. Labour Rep. 82, LRB File No. 307-91; *United Association of Journeymen and*

*Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada v. Ram Technical Services Ltd.*, [1996] Sask. L.R.B.R. 773, LRB File No. 188-96.

**[25]** With respect to disputed individuals, counsel for the Union asserted that it was clear that Mr. Kraus ceased to be employed by the Employer well before the application was filed and should not be included on the statement of employment for the purposes of determining the level of support in respect of the representation issue. Mr. McCall only started work a few days before the application was filed and the vast majority of his work during that time was that of a labourer and he should not be included on the statement of employment. As the electrical trade is a compulsory apprenticeship trade, the standard bargaining unit for the electrical trade division does not include “helpers” and, in any event, the Employer did not then have a sufficient number of journeymen to meet the 1:1 journeyman to apprentice ratio that would be required to have Mr. McCall as an apprentice.

**[26]** Counsel for the Union argued that Tyler McIvor should be added to the statement of employment because the majority of the work he performed was work associated with the electrical trade. The fact that he was not registered as an apprentice is not unusual and Mr. Shearer testified that Tyler McIvor would receive credit for the hours worked when he did apply for registration. While Mr. Crofts testified that Tyler McIvor did not indicate to him that he intended to register as an apprentice, he had Mr. McIvor doing electrical work the majority of his time.

**[27]** With respect to Glenn McIvor, counsel submitted that his name should be added to the statement of employment because he is a registered journeyman, works “on the tools” and, while he is a foreman, he is not a manager. Construction “managers” are uncommon on such small jobs. Foremen in the trade commonly discipline and fire unsuitable employees.

**[28]** With respect to Mr. Rogers, counsel for the Union submitted that he should be added to the statement of employment. While the Employer did not pay him for his work, the Employer directed and controlled his work and obtained a benefit from it. Counsel referred to the following decisions where an employer’s workers performing bargaining unit work were paid by external sources (not by the employer) and were held to be employees and members of the bargaining unit: *Manitoba Government Employees’ Association v. The Winnipeg Art Gallery*, [1990] M.L.B.D. No. 23 (Manitoba Labour Relations Board); *Re: Social Planning Council of Metropolitan Toronto and Canadian Union of Public Employees*, Local 1777 (1980), 28 L.A.C. (2d) 134 (Knopf);



**[29]** Mr. LeBlanc, counsel for the Employer, argued that, in making the statements to Mr. MacLeod regarding waiver of dues arrears and initiation fees, the Union had made improper financial enticements to secure Mr. MacLeod's support for the application. In Mr. MacLeod's testimony he did not agree that he was told this after he had signed the documents. The fact that the practice is allowed by the Union's constitution is irrelevant and does not confer validity to the action. In this regard, counsel referred to the decision of the Ontario Labour Relations Board in *Leon's Furniture Ltd.*, [1982] O.L.R.B. 404 where it was held that, if it was established that a full-time union organizer had made a statement to general meetings of many employees, it would be "sufficiently coercive and distracting to the reasonable employees that a representation vote should be directed to eliminate any doubt over the true wishes of the employees." In the end, however, the Ontario Labour Relations Board held that it was not established that the statement had been made nor that one of the complaining employees that testified was actually induced to join the union for that reason.

**[30]** With respect to Mr. Rogers, counsel for the Employer submitted that he was not an "employee" of the Employer because he was not paid for his work by the Employer and the arrangement could be terminated at any time. The Employer did not care how much Mr. Rogers worked or whether he worked at all. He should not be added to the statement of employment.

**[31]** With respect to Tyler Mclvor, counsel submitted that he does not meet the criteria to fit into the "electrical worker" classification in the proposed bargaining unit and should not be added to the statement of employment. Tyler Mclvor was hired as a labourer. He expressed no interest in becoming an apprentice to the Employer nor did he take any steps to do so. He was in fact a "helper" which is not part of the trade. In support of his arguments, counsel referred to the decisions of the Board in *International Brotherhood of Electrical Workers, Local 2038 v. Tesco Electric Ltd.*, [2002] Sask. L.R.B.R. 512, LRB File No. 135-02, and *International Brotherhood of Electrical Workers, Local 2038 v. Prairie Control Services Ltd.*, [2002] Sask. L.R.B.R. 413, LRB File No. 087-02.

**[32]** With respect to Glenn Mclvor, counsel argued that he should not be included on the statement of employment because he is a manager responsible for multiple sites and crews while,

as a foreman, Mr. Kraus had been responsible for only one site. The amount of hands on work Glenn McIvor performs is limited and he exercises classic authorities exercised by managers.

**[33]** With respect to Mr. McCall, counsel submitted that he should remain on the statement of employment because he met the criteria for an “electrical worker” in that he had a declared intention to apprentice.

**[34]** With respect to Mr. Kraus, counsel said there was no formal termination of his employment relationship and the issue is whether he maintained a sufficiently tangible employment relationship on the date the application was filed.

### **Analysis and Decision:**

**[35]** The following findings of fact, conclusions of law and determinations regarding credibility are based upon review and consideration of the evidence adduced, observation of the demeanor of the witnesses, with consideration given for reasonable probability, and consideration of the arguments made and authorities cited by counsel. Where witnesses have testified in contradiction to the findings in these Reasons for Decision, we have discredited their testimony as either being in conflict with credited documentary or testimonial evidence or because it was inherently incredible and unworthy of belief.

**[36]** In the present case, the Union has applied to be certified as bargaining agent for the standard bargaining unit for electricians working for the Employer in the construction industry. The issues are whether the evidence of support of Mr. MacLeod should be rejected (and, if not, the nature of the consequences flowing therefrom) and the constitution of the statement of employment.

**[37]** With respect to Mr. MacLeod, we determine that on all of the evidence there is no sufficient basis upon which to find that he signed in support of the application in circumstances that were improper such that the evidence of support is tainted so that it may not be considered. Mr. MacLeod did not testify that he was in fact induced to sign for that reason or even partly for that reason. According to Mr. McCallum, Mr. MacLeod was in the process of signing the documents when Mr. McCallum said he made the statement to Mr. MacLeod and Mr. MacLeod did not testify that he would not have signed but for the statement being made to him. In any event, as in *A.V.*

*Concrete Forming Systems Ltd.*, *supra*, in all of the circumstances we find that the statement made was not an improper inducement and the evidence of Mr. MacLeod's support is not rejected.

**[38]** In *Daycon Mechanical Systems Ltd.*, *supra*, the union applied to certify a millwrights' bargaining unit. It estimated there were 30 employees in the proposed unit on the date the application was filed. The employer filed a statement of employment purporting to list 47 employees in the proposed unit. The millwright trade is not a "compulsory" or "mandatory" apprenticeship trade but the union had the authority to represent the persons doing the work in the designated trade division. The Board described the factors it would consider in determining the issue of the composition of the statement of employment, as follows, at 134-35:

*The second issue is to determine which of the employees fall within the bargaining unit. In making this determination, the Board will have reference to a number of factors including the following:*

*-status under The Apprenticeship and Trades Qualification Act: see A.V. Concrete Forming Systems Ltd., *supra*;*

*-work performed by employees for a majority of their time during a relatively representative period prior to the application: see K.A.C.R., *supra*; Vector Construction Ltd., *supra*; International Union of Operating Engineers, Hoisting and Portable and Stationary, Local 870 v. Flynn Bros. Construction Inc., [1999] Sask. L.R.B.R. ---, LRB File No. 182-98; and*

*-"helpers" will not be included in bargaining units involving mandatory trades, but may be included in non-mandatory trades: see United Association of Plumbers and Pipefitters of America, Local 179 v. Comfort Mechanical Ltd., [1998] Sask. L.R.B.R. 422, LRB File No. 082-98 and Alberta Insulation Supply and Services Ltd., *supra*.*

**[39]** In cases involving a compulsory apprenticeship trade the element of trade certification status becomes much more important than in other cases because there are strict requirements in order to be eligible to become licensed to perform the full range of the activities of the trade.

**[40]** Whether one is in fact primarily working in a trade is also an important factor. In *K.A.C.R.*, *supra*, the Board established the standard it employed to determine who should be on the statement of employment: the trade in which they are employed for the majority of their time for a reasonably representative period of time prior to the filing of the application for certification

determines their status. The “reasonably representative period of time” is not rigidly established, but depends on the circumstances of each case. Specifically, the Board stated as follows at 45:

*Where employees are engaged in the work of different crafts the Board will characterize the craft in which they were employed for a majority of their time as the one governing their status on an application for certification. In determining which type of work employees were employed at “for a majority of their time” the Board will look not to the date of the making of the application but, rather to the period of time leading up to the date of the application. Just how far back in time the Board will go depends on the particular circumstances of the individual case. See Teamster Local Union No. 230 et al v. Johnson-Keiwit Subway Corporation, 66 C.L.L.C. 16,091 at page 912, and Chauffeurs, Teamsters & Helpers, Local 395 v. Western Caissons (Sask.) Limited, 67 C.L.L.C. 16,015 at page 983.*

*The Board will attempt to review actual job duties over a reasonably representative period of time and will not permit either the union or the employer to confine the review to an arbitrarily established time frame which is not indicative of normal responsibilities. In this case, it was inappropriate to take a two week “window” immediately prior to the date of the filing of the application which was, of course, during the winter shutdown, in order to determine what work the employees involved were performing the majority of their time.*

**[41]** In *K.A.C.R.*, the Board panel did not say what the “reasonably representative period” was in the circumstances of the case but simply said that, after considering all of the evidence, they determined that certain persons were employed the majority of their time doing the work of operating engineers (at 45). As in *K.A.C.R.*, in its decision in *Daycon Mechanical Systems Ltd.*, *supra*, the Board did not identify the reasonably representative period of time that it used to determine the work being done by individual employees but determined that certain employees were doing millwrights’ work as deduced from union records, hiring sheets, payroll records and certain testimony.

**[42]** With respect to both Mr. McCall and Tyler McIvor, we have determined that neither of them should properly be on the statement of employment. Mr. McCall had worked for only a few days, had not done electrical trade work before and his timesheets indicate that he spent less than ten percent of his time doing so. Even if we were to accept that he had sufficiently declared an intention to apprentice in the trade, in our opinion, given the compulsory apprenticeship nature of the trade (at least in part for important reasons of public safety), to be included in the classification of “electrical worker” one must in fact also be primarily engaged in the work of the trade with appropriate supervision. We will not, however, comment on the apparent fact that there are an insufficient number of journeymen to legally oversee the work so performed. With respect to Tyler

Mclvor, while he may have been primarily engaged in the work of the trade, we accept that he had not made a sufficient declaration of an intention to become indentured as an apprentice to be included as an “electrical worker.”

**[43]** With respect to Mr. Kraus, we find that he should not be included on the statement of employment. In construction, the workforce commonly fluctuates and the Board has developed certain standards to determine whether one is considered an employee for the purposes of determining the representation issue. *International Union of Operating Engineers, Hoisting, Portable and Stationary, Local 870 v. Little Rock Construction*, [1995] 4<sup>th</sup> Quarter Sask. Labour Rep. 102, LRB File No. 190-95 established that, in construction, the test for inclusion on the statement of employment for the purposes of certification is whether there is a significant continuing interest in the representation question or a continuing and substantial connection with the workplace. The case concerned the status of one individual, an employee off work due to injury. The employee in question was hired on June 27. There was a dispute as to whether when he was hired he was told the work would last for two years or be completed by November 1 of the same year (i.e., in approximately four months). The employee sustained a serious injury about one week into his job on July 5 and did not work again. The union filed the certification application on July 17. In determining that the employee should not be listed on the statement of employment, the Board made certain observations about the general nature of the process The Board stated as follows at pp. 104-05:

*The Statement of Employment which an employer is required to file with this Board following the submission of an application for certification is meant to identify those employees who are included within the bargaining unit for which the trade union seeks to obtain representation rights. The completion of the Statement of Employment reveals any discrepancy in the relative understanding of the trade union and the employer concerning the composition of the proposed bargaining unit, and permits the Board to assess the evidence of support submitted with the application for certification.*

*The information set out in the Statement of Employment shows the composition of the proposed bargaining unit as of the date on which the application for certification is filed. An employer is obliged to include the names of all those who were employed on that date.*

*What is meant by being an employee as of the date the application for certification is filed has in some instances been a matter for debate. In deciding who should be regarded as an employee for the purpose of having a voice in the question of whether a group of employees should be represented by a trade union, the Board must consider the implications of drawing the boundaries of the franchise too narrowly or too broadly.*

*On the one hand, to require that an employee actually be at work on the date the application is filed in order to be included in the Statement of Employment would be clearly unfair to employees who are by any reasonable standard regular employees, and who are for some reason absent on that arbitrarily chosen date. An employee who is away on sick leave or maternity leave has a legitimate and obvious interest in the outcome of the representational question.*

*At the other end of the spectrum, allowing the inclusion of a large number of persons whose current connection with the employer is tenuous may give a disproportionate voice in the representation question to persons whose stake in the terms and conditions of employment in the workplace may be minimal.*

**[44]** In our opinion, Mr. Kraus did not maintain a sufficient continuing interest in the representation question or a sufficiently tangible employment relationship after he became employed by another unionized employer on May 13, 2005. His name shall be removed from the statement of employment.

**[45]** With respect to Mr. Rogers, we have determined that he also did not have a sufficient interest in the representation question to be added to the statement of employment. While we understand that the Employer was receiving a benefit from Mr. Roger's work, he was not required to work by the Employer and his interest in doing so was to maintain his right to continue receiving insurance payments. His position is distinguished from that of the employees in question in the cases cited by counsel for the Union. Had the Employer been unionized, because Mr. Rogers was performing bargaining unit work, the decision might be otherwise.

**[46]** With respect to Glenn Mclvor, we have determined that he should not be added to the statement of employment on the basis that, as a manager, he is not an "employee" for the purposes of the Act. In the situation where a site foreman is considered part of the bargaining unit even though he or she exercises certain authority that may include the power to summarily terminate an employee, such authority is usually limited to serious safety concerns or egregious behaviour. In Glenn Mclvor's case, the situation is different. We are convinced that he has a much wider range of authority such that he is, in fact, the Employer's "eyes and ears" on multiple sites at the same time. We will not comment as to whether he could continue to work on the tools if the Employer was unionized.

**Conclusion:**

**[47]** With respect to the statement of employment, the names of Mr. McCall and Mr. Kraus shall be removed. No names shall be added. The Union has not filed evidence of support from a majority of employees but it has filed evidence of support from at least twenty-five percent of the employees.

**[48]** We direct that the Board Registrar shall inquire of the Union as to whether it wishes that the Board should conduct a representation vote. In the event that the Union desires that a vote be held, we retain jurisdiction to so order and to resolve any issues regarding a voters' list.

**DATED** at Regina, Saskatchewan, this **3rd** day of **December, 2007**.

**LABOUR RELATIONS BOARD**

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James Seibel,  
Chairperson