The Labour Relations Board
Saskatchewan

SASKATCHEWAN REGIONAL COUNCIL OF CARPENTERS, DRYWALL, MILLWRIGHTS AND ALLIED WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 529, SASKATCHEWAN PROVINCIAL BUILDING TRADES COUNCIL, SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION and SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicants v. CONSTRUCTION WORKERS UNION (CLAC), LOCAL 151, Respondent Union and TERCON INDUSTRIAL WORKS LTD., Respondent Employer

- and -

SASKATCHEWAN REGIONAL COUNCIL OF CARPENTERS, DRYWALL, MILLWRIGHTS AND ALLIED WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 529, SASKATCHEWAN PROVINCIAL BUILDING TRADES COUNCIL, SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION and SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicants v. CONSTRUCTION WORKERS UNION (CLAC), LOCAL 151, Respondent Union and WESTWOOD ELECTRIC LTD., Respondent Employer

LRB File Nos. 162-10, 163-10 & 164-10; November 10, 2010
Vice-Chairperson, Steven Schiefner; Members: John McCormick and Ken Ahl

For the Carpenters/Milwrights & IBEW, Local 529:	Mr. Drew Plaxton
For RWDSU & Sask. Prov. Bldg. Trades Council:	Mr. Larry Kowalchuk
For Sask. Government and General Employees' Union:	Ms. Juliana Saxberg
For the IUBAC, Local 1:	Mr. R. Graeme Aitken
For Construction Workers Union (CLAC), Local 151:	Mr. Richard Steele
For Tercon Industrial Works Ltd. & Westwood Electric Ltd.	Mr. Larry Seiferling, Q.C.

Practice and Procedure – Particulars – Applicant trade unions file multiple applications with Board for determination that Construction Workers Union, Local 151, is a "company-dominated" organization – Executive Officer orders applicant trade unions to provide particulars of allegations – Applicant trade unions apply for review of Executive Officer's Orders - Board affirms Orders of Executive Officer that applicant trade unions must provide respondents with particulars of allegations contained in their respective applications – Board modifies Orders of Executive Officer with respect to referral for summary dismissal.

The Trade Union Act, ss. 2(e), 2(j) and 2(l)

REASONS FOR DECISION

REVIEW OF ORDERS OF EXECUTIVE OFFICER

Background:

[1] **Steven D. Schiefner, Vice-Chairperson**: The Construction Workers Union (CLAC), Local 151 (hereinafter "CLAC") applied to the Saskatchewan Labour Relations Board (the "Board") to become the certified bargaining agent pursuant to *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "*Act*") to represent various units of employees involving five (5) different employers in Saskatchewan.[1] Believing that it was not appropriate for the Board to certify CLAC to represent employees for the purpose of collective bargaining, various trade unions filed various applications with the Board. The applicant trade unions included the Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers (The United Brotherhood of Carpenters and Joiners of America, Local 1985 and United Brotherhood of Carpenters and Joiners of America, Millwrights Union, Local 1021)[2], the International Brotherhood of Electrical Workers, Local 529[3], the Saskatchewan Provincial Building Trades Council[4], Saskatchewan Joint Board, Retail, Wholesale and Department Store Union[5] and Saskatchewan Government and General Employees' Union[6].

[2] Firstly, the applicant trade unions sought standing to participate in each of the certification applications filed by CLAC. Generally speaking, the reason for seeking standing in these applications was for the applicant trade unions to assert that CLAC is not a "trade union" within the meaning of the *Act* and, thus, ineligible to represent employees for purposes of collective bargaining. As of the date of these Reasons for Decision, no determination has been made by the Board as to whether or not the applicant trade unions will be granted standing to participate in CLAC's certification applications. Secondly, the applicant trade unions filed applications seeking to have CLAC declared to be a "company-dominated" organization by the Board. If successful in such applications, CLAC would be ineligible to be certified, or could be stripped of their representative rights, by the Board on the basis that they would not satisfy the definition of a "trade union" pursuant to s.2(l) of the *Act*.

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1 See: LRB File Nos. 097-10, 098-10, 116-10, 117-10 & 134-10.
2 See: LRB File Nos. 103-10 & 104-10 filed by Carpenters/Millwrights.
3 See: LRB File Nos. 107-10 & 108-10 filed by IBEW, Local 529.
4 See: LRB File Nos. 121-10 & 124-10 filed by Building Trades Council.
5 See: LRB File Nos. 122-10 & 125-10 filed by RWDSU.
6 See: LRB File Nos. 123-10 & 126-10 filed by SGEU.

[3] All of the "company-dominated" applications filed by the applicant unions were essentially the same and contained the following allegation but did not set forth the factual basis upon which the allegation was based:

> *The applicant within alleges Construction Workers Union (CLAC), Local 151 is a company dominated organization in that it is an organization the formation or administration of which an employer or employer's agent has dominated, interfered with and/or contributed support to.*

[4] In the Replies filed by CLAC to the "company-dominated" applications filed by the applicant trade unions, CLAC asked the Board to summarily dismiss each of the said applications on the basis that, absent particularized facts, the applications failed to raise a *prima facie* case.

[5] In response to the "company-dominated" applications filed by the applicant trade unions, two (2) of the affected employers, namely Tercon Industrial Works Ltd. and Westwood Electric Ltd. (the "Respondent Employers"), sought particulars directly from the applicant unions. Not receiving such particulars, the Respondent Employers sought the assistance of the Executive Officer of the Board for an Order directing the applicant trade unions to state and particularize the facts upon which they intended to rely or, at least, the facts upon which they intended to rely with respect to the involvement of the Respondent Employers, if any, in "dominating" CLAC, as alleged by the applicant trade unions.

[6] In accordance with the Executive Officer's usual practice and the authority delegated to that Office by the Board, the Executive Officer convened a conference call with all of the above captioned parties participating through counsel. In addition, Counsel on behalf of the International Union of Bricklayers and Allied Craftworkers, Local 01 participated in the conference call with the Executive Officer.

[7] Having heard from the parties, the Executive Officer issued the following Order on September 21, 2010 with respect to the "company-dominated" applications involving Tercon Industrial Works Ltd.:

> ***THE LABOUR RELATIONS BOARD**, pursuant to Section 18(a) of The Trade Union Act, **HEREBY ORDERS:***

> *1) That the Applicants shall, on or before October 8, 2010, provide the Employer with particulars of its allegation that the Employer has engaged in the domination of the Respondent contrary to the provisions of the Trade Union Act, which allegations are set out in applications to the Board:*
>
> *a) LRB File No. 103-10, Application by Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers dated August 4, 2010;*
>
> *b) LRB File No. 108-10, Application by International Brotherhood of Electrical Workers, Local 529 dated August 6, 2010;*
>
> *c) LRB File No. 121-10, Application by Saskatchewan Provincial Building Trades Council dated August 20, 2010;*
>
> *d) LRB File No. 122-10, Application by Saskatchewan Joint Board, Retail, Wholesale and Department Store Union dated August 20, 2010;*
>
> *e) LRB File No. 123-10, Application by Saskatchewan Government and General Employees Union dated August 20, 2010;*
>
> *2) Particulars shall include all facts within the knowledge of the Applicants which shall include times, dates, places and the manner in which the Employer has engaged in domination of the Respondent. The particulars shall also provide specifics of the matters or events that lead the Applicants to the conclusion that the Employer has engaged in domination of the Respondent in contravention of the Trade Union Act.*
>
> *3) Upon particulars being provided, the Employer shall have until October 22, 2010 to file its Reply to the within applications.*
>
> *4) Further, upon particulars having been provided, the Respondent shall have until October 22, 2010 to file an Amended Reply to the within applications.*
>
> *5) Failing provision of particulars as ordered, or in the event that the particulars provided are inadequate, the Board Registrar is hereby directed to refer the applications to an in camera panel of the Board for a summary dismissal of the applications pursuant to ss. 18(p) and (q) of the Trade Union Act.*

[8] Similarly, the Executive Officer issued the following Order dated September 21, 2010 with respect to the "company-dominated" applications involving Westwood Electric Ltd.:

> ***THE LABOUR RELATIONS BOARD**, pursuant to Section 18(a) of The Trade Union Act, **HEREBY ORDERS:***
>
> *1) That the Applicants shall, on or before October 8, 2010, provide the Employer with particulars of its allegation that the Employer has engaged in the domination of the Respondent contrary to the provisions of the Trade Union Act, which allegations are set out in applications to the Board:*
>
> *a) LRB File No. 104-10, Application by Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers dated August 4, 2010;*
>
> *b) LRB File No. 107-10, Application by International Brotherhood of Electrical Workers, Local 529 dated August 6, 2010;*
>
> *c) LRB File No. 124-10, Application by Saskatchewan Provincial Building Trades Council dated August 20, 2010;*

> *d) LRB File No. 125-10, Application by Saskatchewan Joint Board, Retail, Wholesale and Department Store Union dated August 20, 2010;*
>
> *e) LRB File No. 126-10, Application by Saskatchewan Government and General Employees Union dated August 20, 2010;*
>
> *2) Particulars shall include all facts within the knowledge of the Applicants which shall include times, dates, places and the manner in which the Employer has engaged in domination of the Respondent. The particulars shall also provide specifics of the matters or events that lead the Applicants to the conclusion that the Employer has engaged in domination of the Respondent in contravention of the Trade Union Act.*
>
> *3) Upon particulars being provided, the Employer shall have until October 22, 2010 to file its Reply to the within applications.*
>
> *4) Further, upon particulars having been provided, the Respondent shall have until October 22, 2010 to file an Amended Reply to the within applications.*
>
> *5) Failing provision of particulars as ordered, or in the event that the particulars provided are inadequate, the Board Registrar is hereby directed to refer the applications to an in camera panel of the Board for a summary dismissal of the applications pursuant to ss. 18(p) and (q) of the Trade Union Act.*

[9] In response to the Executive Officer's Orders, two (2) things happened. Firstly, particulars were produced by some of the applicant trade unions. For example, one (1) set of particulars was produced concurrently by the Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers (The United Brotherhood of Carpenters and Joiners of America, Local 1985 and United Brotherhood of Carpenters and Joiners of America, Millwrights Union, Local 1021) and the International Brotherhood of Electrical Workers, Local 529. Similarly, another set of particulars was produced concurrently by the Saskatchewan Provincial Building Trades Council and the Saskatchewan Joint Board, Retail, Wholesale and Department Store Union.

[10] Secondly, all of the applicant trade unions made application to the Board to review and set aside the Orders of the Executive Officer. The applications to review the Executive Officer's Orders were joined and heard on October 26, 2010 in Regina, Saskatchewan. These Reasons for Decision relate solely to the applications to review the impugned Orders of the Executive Officer.

Position of the Parties:

[11] Mr. Plaxton, counsel on behalf of the Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers (The United Brotherhood of Carpenters and Joiners of America, Local 1985 and United Brotherhood of Carpenters and Joiners of America,

Millwrights Union, Local 1021) and the International Brotherhood of Electrical Workers, Local 529, argued that the Executive Officer's Orders ought to be set aside, either in whole or in part. Counsel argued that the impugned Orders were premature, excessive and inappropriate (beyond the jurisdiction of the Executive Officer).

[12] Mr. Plaxton argued in the first instance that the impugned Orders of the Executive Officer ought to be set aside on the basis that no particulars should be required from the applicant unions. Counsel argued that, in the scheme of certification under the *Act*, the onus was on CLAC to demonstrate that it was a "trade union" and, thus, not a "company-dominated organization". As a consequence, counsel argued that no onus ought to be placed on the applicant trade unions to particularize the facts upon which they intended to rely, as to do so would be to reverse the burden of proof anticipated by the scheme of the *Act*. In the alternative, if particulars were required by the Board, then counsel argued that no particulars ought to be required of the applicant unions for matters or events within the knowledge of CLAC or the Respondent Employers.

[13] Finally, Mr. Plaxton argued that, in any event, paragraph 5 of the impugned Orders exceeded the jurisdiction of the Executive Office and ought to be struck. Counsel argued that the language in paragraph 5 of the impugned Orders did not appear to be describing a procedure wherein the affected trade unions would be permitted to make representations as to the summary dismissal of their respective applications and thus violated the principle of procedural fairness. Furthermore, the language in the impugned paragraph appeared to be directing a particular outcome from an *in camera* panel (dismissal), something that was clearly beyond the jurisdiction of the Executive Officer and inappropriate, in any event.

[14] Mr. Plaxton relied upon the decisions of this Board in *Amalgamated Transit Union, Local 615 v. Abilities Council*, [1998] Sask. L.R.B.R. 156, LRB File No. 335-97; *Canadian Union of Public Employees v. Prairie Bus Services (1983) Ltd.,* [1998] Sask. L.R.B.R. 434, LRB File No. 083-98; and *Charles Hunt v. Government of Saskatchewan*, [1999] Sask. L.R.B.R. 452, LRB File No. 110-99, for the definition of the general principles related to the provision of particulars in proceedings before the Board. In addition, counsel relied upon the decision of this Board in *United Brotherhood of Carpenters and Joiners of America, Local 1985 v. Graham Construction and Engineering Ltd., et. al.,* [1999] Sask. L.R.B.R. 220, LRB File No. 014-98, for the propositions that a party need not particularize facts within the obvious knowledge and control of

an opposing party and that a plaintiff (in civil proceedings) need not provide particulars until after discovery and production of documents have concluded.

[15] Mr. Kowalchuk, counsel on behalf of the Saskatchewan Provincial Building Trades Council and the Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, also argued that the Executive Officer's Orders ought to be set aside, either in whole or in part. Counsel similarly argued that the impugned Orders were premature, excessive and inappropriate (beyond the jurisdiction of the Executive Officer); albeit for somewhat different reasons.

[16] Mr. Kowalchuk further argued that the Executive Officer erred in ordering the provision of particulars from the applicant trade unions with respect to their "company-dominated" applications because these applications can not, as a matter of law, be processed by the Board until such time as the Board has certified CLAC (i.e.: the organization that is the subject matter of that application) to represent a unit of employees pursuant to the *Act*. Counsel relied on the decision of the Saskatchewan Court of Appeal in *Dad's Cookies Employee Assn. v. Saskatchewan Joint Board, Retail, Wholesale and Department Store* Union, [1977] 3 W.W.R. 193, 77 CLLC 251, for the proposition that "company-dominated" applications are used for the purpose of stripping collective bargaining rights from an organization that has already been certified by the Board. To which end, Mr. Kowalchuk argued that the processing of the "company-dominated" applications of the applicant trade unions ought to have been delayed until after the CLAC's certification applications had been determined by the Board. As such, counsel argued that the Executive Officer was premature in ordering particulars with respect to the "company-dominated" applications. Furthermore, Mr. Kowalchuk argued that compelling the applicant trade unions to provide particulars prejudiced their ability to challenge CLAC's certification applications.

[17] Mr. Kowalchuk argued that the real issue in these proceedings was the right of the applicant trade unions to challenge CLAC's status as a trade union and that the Board erred in not already granted standing to the applicant trade unions in CLAC's certification applications. Counsel took the position that CLAC is historically anti-union, generally anti-democratic and ideologically not a trade union within the meaning of the *Act*. Relying on the decision of this Board in *Canadian Union of Public Employees v. University of Saskatchewan, et. al.,* [2001] Sask. L.R.B.R. 475, LRB File No. 154-00, counsel argued that there are significant and

recognized public interest grounds for permitting the applicant trade unions to intervene in the CLAC's certification application.

[18] To which end, Mr. Kowalchuk strenuously argued that the Board ought to convene a pre-hearing meeting with respect to CLAC's certification applications, wherein the parties (including the applicant trade unions) can determine the appropriate process to challenge CLAC's status as a trade union before the Board. Counsel argued that the Executive Officer's Order directing particulars, coupled with the Board's failure delay in adding the applicant trade unions as parties to CLAC's certification application, raised a reasonable apprehension of bias that the applicant trade unions would not be granted a fair, independent and objective hearing by the Board. Similarly, Mr. Kowalchuk ruminated that paragraph 5 of the impugned Order was akin to a threat of dismissal, without fair hearing, and thus a violation of the *Act*. In any event, counsel argued that the Executive Officer had no authority to refer any of the matters to an *in camera* panel of the Board for summary dismissal.

[19] Ms. Saxberg, counsel on behalf of the Saskatchewan Government and General Employees' Union, also took the position that the Executive Officer's Orders ought to be set aside, either in whole or in part, and advanced many of the same arguments as Mr. Plaxton and Mr. Kowalchuk. Mr. Aitken, counsel on behalf of the International Union of Bricklayers and Allied Craftworkers, argued in support of the position advanced by the applicant trade union.

[20] Mr. Seiferling, counsel on behalf of Tercon Industrial Works Ltd. and Westwood Electric Ltd., took the position that the impugned Executive Officer's Orders were reasonable and appropriate under the circumstances. Counsel argued that the applicant trade unions, in their "company-dominated" applications, alleged that Tercon Industrial Works Ltd. and Westwood Electric Ltd. were dominating CLAC but did not provide any factual basis for these assertions. Mr. Seiferling took the position that his client required particulars to file its reply and noted that he sought particulars from the applicant trade unions directly but that no particulars were voluntarily provided. As a consequence, counsel sought the assistance of the Executive Officer resulting in the previously mentioned conference call.

[21] In reviewing the Executive Officer's Orders, Mr. Seiferling asked the Board to note that all of the "company-dominated" applications filed by the applicant trade unions contained only bare allegations and failed to provide any particulars in support thereof. Counsel took the

position that, as the applicant trade unions have brought “company-dominated” applications, the onus rests on them to prove their respective cases and the Respondent Employers have the right to know the particulars of the allegations which are being made against them before being called upon to file a Reply.

[22] Furthermore, Mr. Seiferling reminded the Board that, for the applicant trade unions to be successful in their arguments that CLAC is a company dominated organization, they must satisfy the definition set forth in s.2(e) of the *Act*. Counsel cautioned that the applicant trade unions appeared to be advancing an argument that CLAC was an “inferior” trade union, which is not the test set forth in the *Act*. To which end, counsel argued that, for the applicant trade unions to satisfy their requirement to provide particulars, they should set out sufficient allegations of fact which, if accepted as true, would establish that the relevant provision in the *Act* applied. Counsel argued that this Board’s jurisprudence does not permit the applicant trade unions to merely recite the applicable section and argue that the impugned parties know when, how and by whom, they violated the *Act*.

[23] Mr. Seiferling relied upon the decision of this Board in *United Food and Commercial Workers, Local 1400 v. P.A. Bottlers Ltd.*, [1997] Sask. L.R.B.R. 249, LRB File No. 017-97 for the proposition that the Board has the right to dismiss any application wherein the applicant has failed to provide reasonable particulars when requested to do so. Counsel argued that the Executive Officer’s Orders were reasonable and consistent with this Board’s jurisprudence, including paragraph 5, which was little more than a reflection of the requirements imposed by this Board in *P.A. Bottlers, supra*.

[24] Mr. Seiferling argued that there is no presumption that the applicant trade unions have the right to intervene in CLAC’s certification applications. Furthermore, the Respondent Employers were opposed to any of the applicant trade unions being granted intervenor or any standing in these proceedings. Counsel argued that the Respondent Employers should not be dragged into a protracted legal process unless the applicant trade unions can at least establish a *prima face* case involving his client. To which end, irrespective of whether the applicant trade unions wish to intervene in CLAC’s certification applications or they bring their own “company-dominated” applications, Mr. Seiferling argued that they are required to provide reasonable particulars in support of their allegations or risk having their applications summarily dismissed by the Board.

[25] Mr. Seiferling asked the Board to affirm the two (2) impugned Orders of the Executive Officer. In doing so, counsel relied upon the decisions of this Board in *P.A. Bottlers Ltd., supra; Service Employees' International Union, Local 333 v. Calgarian Retirement Group Ltd.,* [1997] Sask. L.R.B.R. 351, LRB File No. 006-97; and *Graham Construction and Engineering Ltd., supra*. In addition, counsel also relied upon the decisions of the Alberta Labour Relations Board, including that board's decision in *United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry of the United States and Canada, Local Union 488 v. Vikon Technical Services, Ltd., et. al.*, Alberta L.R.B. File Nos. L.R. 174-F-11, 174-V-6 and 174-W-19.

[26] On behalf of CLAC, Mr. Steele advanced many of the same arguments as advanced by Mr. Seiferling and relied on many of the same authorities. Counsel argued that the real issue in these proceedings was the necessity and ability of CLAC to defend itself against spurious allegations lacking particulars. To which end, counsel observed that CLAC has already been found to be a "trade union" within the meaning of the *Act* and has already been certified by the Board to represent employees in the Province of Saskatchewan. See: *Construction Workers Association (CLAC), Local 151 v. Salem Industries Canada Limited and Construction and General Workers Union, Local 180*, [1986] June Sask. Labour Rep. 69, LRB File Nos. 033-86 & 044-86.

[27] Mr. Steele reminded the Board that the provision of particulars is fundamental to the rules of natural justice, as they permit the party against whom a claim has been made to know that case that has been brought against them and to have a fair opportunity to reply. CLAC took the position that the Executive Officer recognized the defect in the applicant trade unions applications and merely applied this Board's procedural requirements regarding the provision of particulars; requirements intended to avoid the mischief caused by defective pleadings. To which end, CLAC asked the Board to affirm the impugned Orders of the Executive Officer and renewed its request for the summary dismissal of the "company-dominated" applications filed by the applicant trade unions.

[28] Mr. Steele filed a brief of law on behalf of the Construction Workers Union, Local 151, which we have read and for which we are thankful.

Relevant Statutory Provisions:

[29] The relevant provisions of *The Trade Union Act* are as follows:

> *2 In this Act:*
>
> *(e) "**company dominated organization**" means a labour organization, the formation or administration of which an employer or employer's agent has dominated or interfered with or to which an employer or employer's agent has contributed financial or other support, except as permitted by this Act;*
>
> *. . .*
>
> *(j) **"labour organization"** means an organization of employees, not necessarily employees of one employer, that has bargaining collectively among its purposes;*
>
> *. . .*
>
> *(l) "**trade union**" means a labour organization that is not a company dominated organization.*

Standard of Review:

[30] The parties argued, and this Board agrees, that the standard to be utilized by the Board in reviewing the orders of the Executive Officer exercising the delegated authorities of that Office is correctness. As found by this Board in *P.C.L. Construction, supra*, the accepted procedure for reviewing the Orders of the Executive Officer, including the impugned Orders described herein, is for the reviewing panel to review all questions relating to the application that was before the Executive Officer afresh.

Analysis and Conclusion:

[31] For the reasons that follow, the Executive Officer's Orders requiring the applicant trade unions to provide particulars shall remain in force, with the exception that the words "*or in the event the particulars provided are inadequate,"* shall be deleted from paragraph 5 and an explicit reference to the procedure for summary dismissal established by this Board in *Beverly Soles v. Canadian Union of Public Employees,* Local 4777, [2006] Sask. L.R.B.R. 413, LRB File No. 085-06 should be added to that paragraph.

[32] In several previous decisions, this Board has considered the approach to be taken to requests for particulars in the context of our proceedings. In *Saskatchewan Joint Board,*

Retail, Wholesale and Department Store Union v. WaterGroup Companies Inc., [1993] 1st Quarter Sask. Labour Rep. 252, LRB File No. 009-93, the Board made the following comments, at 257:

> *To this statement of the Board's long-standing practice on this issue, the Board would like to add that the need for particulars in the originating document is especially important before tribunals like the Labour Relations Board, which employ a summary procedure that does not provide for examinations for discovery or pre-hearing disclosure of documents, and that permits relatively little time to prepare a defence. If the Board's hearings are to be conducted in accordance with the basic requirements of natural justice, a respondent is entitled to, and the Board must require, reasonable clarity and particularity in the originating documents.*
>
> *Failure to provide reasonable particulars in the initial application would justify the Board in dismissing the application, adjourning the application pending the provision of particulars, or proceeding with any part of the application which has been particularized and refusing to proceed with the remainder. It is absolutely no answer for an applicant to argue that the respondent 'knows what the case is about.' As part of a fair hearing, the respondent is entitled to have the allegations against it particularized in writing. It should not be forced to guess which of its interactions with the applicant are the subject of the application.*

[33] In *P.A. Bottlers Ltd.,* supra, the Board alluded to its earlier comments in the *WaterGroup* case, *supra,* and placed those comments in the context of other factors which must also be considered by the Board, at 251:

> *The Board has thus made it clear that it is necessary for an applicant to state with some precision the nature of the accusations which are being made, both in terms of the specific events or instances of conduct which are considered objectionable, and of the provisions of the Ad which have allegedly been violated. The Board has linked this requirement with the capacity to provide a fair hearing to a respondent.*
>
> *On the other hand, the Board must balance the requirement for a fair hearing with other values which are also of pressing importance to the Board, including those of expedition in the hearing of applications, and maintaining relative informality in Board proceedings. Whatever might be the case in a civil court, the nature of the proceedings before this Board cannot accommodate extensive pre-hearing or discovery processes without running the risk that the ability to respond in a flexible and timely way to issues which arise in the time-sensitive context of industrial relations will be seriously impaired.*
>
> We do not interpret the requirement for the provision of sufficient particulars, in any case, to contemplate a complete rehearsal of evidence and argument in the exchange between the parties prior to a hearing. What is necessary is that an applicant make it clear what conduct of the respondent is the subject of their complaint, and how this conduct, in the view of the applicant, falls foul of the Act. In assessing the degree to which an applicant has met this requirement, the Board must be guided not only by our desire to ensure a fair hearing, but by the

> demands placed upon us by the objectives of efficacy and timeliness in our proceedings.

[34] In addition, the Alberta Labour Relations Board, in the case of *Vikon Technical Services, supra*, articulated a helpful policy explanation for the need for an applicant to provide reasonable particulars in support of his/her application:

> Before turning to the particulars given in this case it is useful to make some general observations on the need for particulars in applications, before this Board. When a party commences an application or complaint before us they must give particulars of what they are applying for, or why they are complaining. What this means is that in their initial correspondence they should set out in plain English a set of allegations of fact which, if accepted as true, would establish that the section of the Act in question may apply, or have been violated. They are not required to prove their allegations in the initial application, they must just make them. It is not enough to recite the section in question and then say some other person has violated it. The Board, when reading a complaint, should get a clear understanding of when, how, and by whom, the Act was violated. When receiving an application the Board should get a clear understanding of how the facts alleged justify the use of the section of the Act referred to, and justify the granting of the order or remedy sought.
>
> This requirement for particulars is not a request for a "legalistic" approach. A layman, reading a complaint or application should be able to get a clear understanding of what the matter is about and why the Board is being asked to use its powers. Most sections in the Labour Relations Act are not complex. The particulars should make it clear why the facts referred to make the section or sections of the Act applicable. This is not an onerous task. Applications that lack these basic particulars will not be accepted initially, and will not be processed further.
>
> We insist on particulars in order to ensure fairness to all parties. We have broad powers given to us by the Legislature. The exercise of these powers may cause major inconvenience to the party complained against. Answers must be given, officer's investigations cooperated with, records that would otherwise be confidential disclosed, hearings attended, and lawyers sometimes retained. We will only enter into or continue this process when there is an allegation that, if true, would lead us to believe that the legislation might apply or have been violated. If an applicant cannot even allege facts that would, if proven, result in a Board order or remedy, then there is no justification for the process being started.

[35] We agree with the positions advanced by both the Respondent Employers and CLAC that the “company-dominated” applications filed by the applicant trade unions cry out for particulars. They contain little more than a bare allegation and no supporting facts. As such they are in violation of the procedural expectations of this Board and stand vulnerable to an application for summary dismissal. The requirement for particulars is not an onerous task but it is a necessary procedural requirement of proceedings before the Board. A party against whom a complaint or application is made should be able to ready the applicant’s pleadings and get a

clear understanding of when, how and by whom, the *Act* was alleged to have been violated and why the Board is being asked to exercise its powers.

[36] If an applicant is unable to allege facts that could, if proven, result in a Board Order or remedy, then there is little (arguably no) justification or utility in an application proceeding further. It is on this basis that defective applications stand vulnerable to summary dismissal and the procedures described by this Board in *Beverly Soles, supra*, may be utilized to dispose of such applications without the necessity of a formal hearing. This is not to say that the so called *Soles* procedure does not include procedural safeguards. Under the *Soles* procedure, applicants have the opportunity to cure the defects in their applications and/or to provide written submissions to the Board as to why their application(s) should not be summarily dismissed.

[37] In our opinion, it is no defense for the applicant trade unions to assert that they bear no onus to prove their allegations and that the onus of proof rests on CLAC. Firstly, until such time as the applicant trade unions are granted standing by the Board to participate in CLAC's certification applications, they are strangers to those applications and have no standing, enjoy no rights and may make no claim to any particular procedure before the Board. Secondly, the "company-dominated" applications filed by the applicant trade unions are independent applications and they call upon this Board to exercise powers that we have been delegated under the *Act*. The applicant trade unions bear the onus of pleading facts that, if proven, would satisfy the provision(s) of the *Act* upon which they rely. There is no reverse onus in a "company-dominated" application. CLAC need not prove that it is not a "company-dominated" organization merely because the applicant trade unions have filed applications making that allegation, any more than CLAC has the right to file a "company-dominated" application against the applicant trade unions and drag them into a protracted legal battle to justify their continued existence as trade unions without something more than bare allegations.

[38] In the face of what they believed to be defective pleadings by the applicant trade unions, the Respondent Employers and CLAC each embarked upon differing strategies. The Respondent Employers, through counsel, sought particulars from the applicant trade unions (which was their right to do). Failing receipt of particulars on a voluntarily basis from the applicant trade unions, the Respondent Employers sought the assistance of the Executive Officer (which was also their right to do) and a conference call between the parties and the Executive Officer ensued. CLAC, on the other hand, sought summary dismissal on the basis

that the "company-dominated" applications failed to establish a *prima facie* case (which CLAC had the right to do). CLAC's request for summary dismissal was before the Executive Officer, together with the Respondent Employers' request for particulars, during the aforementioned conference call.

[39] In our opinion, the requirement of the Executive Officer that the applicant trade unions provide particulars was an appropriate and reasonable exercise of the delegated authority of this Board and this aspect of the impugned Orders is affirmed. CLAC is entitled to know, with reasonable clarity and particularity, the basis upon which the applicant trade unions assert that it is a "company-dominated" organization. Similar, the Respondent Employer each have the right to know which of their interactions, if any, form the basis of the applicant trade unions' assertions against CLAC.

[40] For the foregoing reasons, we have no difficulty endorsing the Orders of the Executive Officer with respect to the requirement for particulars. However, considering the matter afresh, we would have modified paragraph 5 of the impugned Orders.

[41] Both Mr. Plaxton and Mr. Kowalchuk argued, on behalf of their respective clients, that the inclusion of paragraph 5 was inappropriate and beyond the jurisdiction of the Executive Officer. With all due respect, paragraph 5 must be read in light of circumstances upon which it was issued, including CLAC's request for summary dismissal of the "company-dominated" applications on the basis that, absent particulars, they failed to raise a *prima facie* case. In this regard, paragraph 5 is, for the most part, merely an articulation of the accepted practices of the Board; that being, failing the provision of particulars, the "company-dominated" applications stand vulnerable to an application for summary dismissal in accordance with the procedures accepted by this Board pursuant to *Beverley Soles, supra*. As the *Soles* procedure is the only procedure utilized by this Board for summary dismissal of applications before the Board, it was arguably redundant for the Executive Officer to reference same. However, considering the matter afresh and for purposes of clarity in light of the concerns expressed by the applicant trade unions, a reference to the *Soles* procedure ought to be included in the Order.

[42] There is one (1) other aspect of paragraph 5 that we would modify; that being the inclusion of the words "*or in the event the particulars provided are inadequate,*". In our opinion, the Executive Officer erred in directing a remedy with respect to the potential that an applicant

trade union would provide “inadequate” particulars in response to his Orders. In our opinion, an application seeking this remedy was not properly before the Executive Officer. CLAC’s application for summary dismissal was based on defective pleadings because of an “absence” of particulars; not because of the “inadequacy” of the particulars (that, at that point in time, had not yet been provided). While it may be argued that this aspect of the Executive Officer’s Orders was reasonably anticipatory, we would not have included these words.

[43] Every respondent to an application has the right to seek summary dismissal if they believe a fundamental defect exists in that application but, in doing so, they must specify in writing the basis upon which summary dismissal is being sought from the Board (i.e.: no particulars, failure to disclose a *prima facie* case, breach of prescribed or other time limits, etc.). If, after reviewing the particulars provided by the applicant trade unions in response to the Executive Officer’s Orders, a respondent believes that a fundamental defect exists (or continues to exist) in one or more of the “company-dominated” applications, then that party has the right to request summary dismissal but must do so in writing and must identify the particular defect they believe to exist in the impugned applications at that time. Absent such action, there is no basis for a referral (i.e.: to an *in camera* panel) of any of the “company-dominated” applications for which particulars are provided in response to the Executive Officer’s Orders. If, on the other hand, after reviewing the particulars provided by the applicant trade unions, a respondent believes that further particulars are required, then they may request further or better particulars. However, absent such a request, not only is there no basis for the referral of any of the “company-dominated” applications (for which particulars have been provided), but it must first be determined (by either the Executive Officer or a panel of the Board) whether or not further or better particulars are required.

[44] For the foregoing reasons, the Executive Officer’s Orders requiring the applicant trade unions to provide particulars shall remain in force with the exception that paragraph 5 therein shall be deleted and the following substituted therefore:

> *Failing provision of particulars as ordered, the Board registrar is hereby directed to refer the application to an in camera panel of the Board for determination as to whether or not the option exists for summary dismissal pursuant to ss. 18(p) and (q) of The Trade Union Act in accordance with the procedure established by this Board in Beverly Soles v. Canadian Union of Public Employees, Local 4777, [2006] Sask. L.R.B.R. 413, LRB File No. 085-06.”*

DATED at Regina, Saskatchewan, this 10th day of **November, 2010.**

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson