

The Labour Relations Board Saskatchewan

INDUSTRIAL WOOD and ALLIED WORKERS OF CANADA, LOCAL 1-184, Applicant v. EDGEWOOD FOREST PRODUCTS INC. and C & C WOOD PRODUCTS LTD., Respondents

LRB File No. 011-12; September 11, 2012

Chairperson, Kenneth G. Love Q.C.; Members: Don Ewart and Duane Siemens

For the Applicant Union

Peter J. Barnacle

For the Respondent Employers:

Laurie M. Robson

Production of documents – Applicant applies for production of commercial documents related to purchase and sale of assets of sawmill – Board reviews factors related to pre-hearing production of documents.

Board determines that most documents not shown to be relevant and insufficiently particularized for production to be ordered – Board declines to order production of documents that are not relevant nor sufficiently particularized and in respect of which the Applicant appears to be fishing.

REASONS FOR DECISION

Background:

[1] Kenneth G. Love, Q.C., Chairperson: Industrial Wood and Allied Workers of Canada, Local 1-184, (the “Union”) made an application to the Board on January 23, 2012, claiming that there had been a transfer of obligations pursuant to s. 37 of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the “Act”) with respect to a group of employees at the Carrot River Sawmill, located at Carrot River, Saskatchewan (the “employees”).

[2] In its application, the Union alleged that it obtained the bargaining rights for the employees as the successor to the International Woodworkers of America, AFL CIO CLC., Region Number 1, Local Union Number 184, (the “IWA”) pursuant to s. 39 of the *Act*. The IWA was certified to represent *inter alia* the employees by Order of this Board dated May 2, 1977, which order named Saskatchewan Forest Products Corporation (“SFPC”) as the Employer of the employees.

[3] The application alleged that SFPC formed a partnership with MacMillan Bloedel in 1995 to operate, *inter alia*, the Carrot River Sawmill. The Union alleges that that partnership was the successor Employer to SFPC with respect to the Employees. However, no amendment to the May 2, 1977 certification Order was sought or obtained from the Board, nor was an application made to the Board under s. 37 of the *Act* with respect to the SFPC/MacMillan Bloedel Partnership.

[4] The application also alleges that in or about November, 1999, a company called Weyerhaeuser acquired MacMillan Bloedel and by virtue of that acquisition became the Employer of the employees. Again, no amendment to the May 2, 1977 certification Order was sought or obtained from the Board nor was an application made to the Board under s. 37 of the *Act* with respect to this acquisition by Weyerhaeuser.

[5] The application alleges that on February, 2004, Weyerhaeuser determined to sell the Carrot River Sawmill. No sale of the sawmill could be arranged at that time, so, in January of 2007, the sawmill was closed indefinitely by Weyerhaeuser. In April of 2008, the sawmill was permanently closed. All employees at the sawmill were terminated from their employment when the sawmill was permanently closed.

[6] The application alleges that in 2006, the Respondent C & C Wood Products Ltd. had signed a letter of intent to purchase the sawmill from Weyerhaeuser, but that the death of a key person in that company, Mr. Joe Cerasa, resulted in the intended sale not proceeding.

[7] The application alleges that in May of 2009, an Asset Purchase Agreement (the "APA") was entered into between Weyerhaeuser and C & C Wood Products Ltd. The Respondents allege that the APA was entered into between Weyerhaeuser and 101143257 Saskatchewan Ltd., which company later changed its name to Edgewood Forest Products Inc. ("Edgewood"). The Respondents have denied that C & C Wood Products Ltd. has any interest in the assets purchased from Weyerhaeuser. The transaction between Weyerhaeuser and Edgewood closed on November 4, 2009.

[8] As at February 13, 2012, the Respondents say that there were 38 hourly employees working at the sawmill. The sawmill commenced operations on January 2, 2012 and the planer operation commenced on January 30, 2012.

[9] The Respondents take the position that by virtue of the permanent closure of the sawmill by Weyerhaeuser in 2008, that all of Weyerhaeuser's union relationships and obligations were concluded.

Facts:

[10] By letter to the Board dated February 28, 2012, the Union requested that its application be amended to include a request for an order under s. 37.3 of the *Act* that Edgewood and C & C Wood Products Ltd. are associated or related businesses and/or undertakings carried on under common control or direction.

[11] On March 22, 2012, the Union requested production of documents from the Respondents. Their request was as follows:

A. *Edgewood Forest Products Inc.*

1. *Pursuant to Para. 2(2) and (3) of the Reply, a copy of any and all agreements, memoranda, correspondence and/or any other related documents between Edgewood Forest Products Inc. and C & C Wood Products Ltd. in respect to the purchase and/or operations of the Carrot River Sawmill.*
2. *Pursuant to Para. 3(a) and (b) of the Reply, a copy of any and all correspondence, memoranda and/or other related documents between Edgewood Forest Products Inc. and C & C Wood Products Ltd., in respect to the negotiation of the asset purchase agreement between Edgewood Forest Products Inc. and Weyerhaeuser Company Limited.*
3. *Pursuant to Para. 3(a) and (b) of the Reply, a copy of any and all correspondence, memoranda and/or other related documents between Edgewood Forest Products Inc. and Weyerhaeuser Company Limited in respect to the negotiation and execution of the asset purchase agreement, including a copy of the asset purchase agreement and related documents, schedules, appendices or attachments or documents referred to in same.*
4. *Pursuant to Para. 3(c) of the Reply, a copy of any and all correspondence, memoranda and/or other related documents between Edgewood Forest Products Inc. and the Government of Saskatchewan in respect to the joining of Edgewood Forest Products Inc. as a party to the Pasqula-Porcupine Forest Management Agreement.*

5. Pursuant to Para. 3(d) of the Reply, a copy of any and all documents within the possession or control of Edgewood Forest Products Inc. in respect to Weyerhaeuser Company Limited customers and products supplied to such customers by Weyerhaeuser Company Limited in respect to the Carrot River Sawmill during the period 2000-2009.
6. Pursuant to Para. 3(d) of the Reply, a copy of any and all documents identifying customers and products supplied for Edgewood Forest Products in respect to the Carrot River Sawmill since the mill commenced operations on January 2, 2012.

B. C & C Wood Products Ltd.

1. Subject to any production pursuant to Paragraph A.1 above, pursuant to Para. 2(2) of the Reply, a copy of any and all agreements, memoranda, correspondence and/or other related documents in respect of or between C & C Wood Products Ltd. and Edgewood Forest Products Inc. in respect to the purchase and/or operations of the Carrot River Sawmill.
2. Pursuant to Para. 2(3) of the Reply, a copy of any and all correspondence, memoranda, and/or other documents, including a copy of the Letter of Intent and any related documents, schedules, appendices or attachments or documents referred to in same, in respect to the negotiation of the 2006 "transaction" document between Weyerhaeuser Company Limited and C & C Wood Products.
3. Pursuant to Para. 2(3) of the Reply, a copy of any and all C & C Wood Products Ltd. correspondence, memoranda and/or other related documents, including documents provided or exchanged with Edgewood Forest Products Inc. and/or Weyerhaeuser Company Limited, in respect to the purchase and/or operations of the Carrot River Sawmill in 2009.

[12] The parties were unable to agree with respect to the production of the requested documents. On July 31, 2012, the Union requested a conference call be arranged with the Executive Officer of the Board to consider the request for production and, if appropriate, to have the executive officer make an order for production of documents.

[13] A conference call with the Executive Officer of the Board was convened on August 9, 2012. During the course of that call, the Respondents agreed to provide a redacted copy of the APA to the Union for review with the proviso that access to the APA be restricted as agreed between the parties. As the matter was set to be heard by the Board on August 22 and 23, 2012 it was also agreed that following the review of the APA by the Union that it could renew its request for production of further documents at the commencement of the hearing on August 22, 2012.

[14] At the commencement of the hearing on August 22, 2012, the Union renewed its request for production of further documents. Initially, it also took the view that the redactions to

the APA were excessive and those should be reviewed by the Board. However, after discussion between counsel, that request to review the redactions to the APA was withdrawn. Also, the Union modified its request for production as follows:

C. Production Request

6. Letter to Respondents, March 22, 2012

1. Pursuant to Para. 2(2) and (3) of the Reply, a copy of any and all agreements, memoranda, correspondence and/or any other related documents between Edgewood Forest Products Inc. and C & C Wood Products Ltd. in respect to the purchase and/or operations of the Carrot River Sawmill.

Comment: Given the interconnections established between the two Respondents and reflecting the public statements in respect to both purchase and operation of the sawmill, the Applicant maintains it has established the foundation for its request for internal communications and related documents between Edgewood Forest Products and C & C Wood Products related to both the purchase and operation of the Carrot River Sawmill. The documents requested are arguably relevant and sufficiently specified in content and timeframe and related to both the successorship and common employer claims set out in the application as amended.

2. Pursuant to Para. 3(a) and (b) of the Reply, a copy of any and all correspondence, memoranda and/or other related documents between Edgewood Forest Products Inc. and C & C Wood Products Ltd., in respect to the negotiation of the asset purchase agreement between Edgewood Forest Products Inc. and Weyerhaeuser Company Limited.

Comment: This request is specific to the negotiation of the APA with Weyerhaeuser and meets the same merit criteria as set out in #1 above.

3. Pursuant to Para. 3(a) and (b) of the Reply, a copy of any and all correspondence, memoranda and/or other related documents between Edgewood Forest Products Inc. and Weyerhaeuser Company Limited in respect to the negotiation and execution of the asset purchase agreement, including a copy of the asset purchase agreement and related documents, schedules, appendices or attachments or documents referred to in same.

Comment: The APA, subject to resolving issues in respect to redactions, has been disclosed by direction of the Board. Given the APA reference to collective agreement and union employees the parties obviously turned their minds to union representation issues and any documents addressing such in the negotiation process are arguably relevant. The Applicant is therefore prepared to limit its request to any such documentation that refers or identify, in whole or in part, former or existing employee rights, union rights or representation, Respondent obligations to the Applicant and/or recognition/certification issues, potential or otherwise, as may arise from the purchase and operation of Carrot River Sawmill.

4. Pursuant to Para. 3(c) of the Reply, a copy of any and all correspondence, memoranda and/or other related documents between Edgewood Forest Products Inc. and the Government of Saskatchewan in respect to the joining of Edgewood

Forest Products Inc. as a party to the Pasqula-Porcupine Forest Management Agreement.

Comment: the Applicant is prepared to limit its request here to the FMA itself, which it understands is an undisclosed schedule to the APA, as arguably relevant in considering the successorship issues raised in this application as amended. The Applicant limits its request beyond the FMA itself to any documents that refer or identify, in whole or in part, former or existing employee rights, union right or representation, Respondent obligations to the Applicant and/or recognition/certification issues, potential or otherwise, in the context of the FMA discussions and outcome.

5. Pursuant to Para. 3(d) of the Reply, a copy of any and all documents within the possession or control of Edgewood Forest Products Inc. in respect to Weyerhaeuser Company Limited customers and products supplied to such customers by Weyerhaeuser Company Limited in respect to the Carrot River Sawmill during the period 2000-2009.

Comment: to the degree that such documentation is within the control of Edgewood, such are arguably relevant in considering successorship criteria.

6. Pursuant to Para. 3(d) of the Reply, a copy of any and all documents identifying customers and products supplied for Edgewood Forest Products in respect to the Carrot River Sawmill since the mill commenced operations on January 2, 2012.

Comment: this request relates to potential successorship criteria, but is also independent of any response to #5.

b. Re C & C Wood Products Ltd.

1. Subject to any production pursuant to Paragraph A.1 above, pursuant to Para. 2(2) of the Reply, a copy of any and all agreements, memoranda, correspondence and/or other related documents in respect of or between C & C Wood Products Ltd. and Edgewood Forest Products Inc. in respect to the purchase and/or operations of the Carrot River Sawmill.

Comment: this request parallels that set out in respect to Edgewood at #1 above, but documents within the control of C & C.

2. Pursuant to Para. 2(3) of the Reply, a copy of any and all correspondence, memoranda, and/or other documents, including a copy of the Letter of Intent and any related documents, schedules, appendices or attachments or documents referred to in same, in respect to the negotiation of the 2006 "transaction" document between Weyerhaeuser Company Limited and C & C Wood Products.

Comment: this request reflects the Applicant's position that the 2006 Letter of Intent discussions and content is part of the continuum of activity by the Respondents as common or related employers that eventually led to the 2009 APA with Weyerhaeuser.

The Applicant is prepared to limit its request to a copy of the Letter of Intent itself as well as any and all documents from the negotiation process that refer or identify, in whole or in part, former or existing employee rights, union rights or representation, Respondent obligations to the Applicant and/or union recognition/certification issues, potential or otherwise, as may arise from the purchase and operation of Carrot River Sawmill.

3. Pursuant to Para. 2(3) of the Reply, a copy of any and all C & C Wood Products Ltd. correspondence, memoranda and/or other related documents, including documents provided or exchanged with Edgewood Forest Products Inc. and/or Weyerhaeuser Company Limited, in respect to the purchase and/or operations of the Carrot River Sawmill in 2009.

Comment: the Applicant maintains this request is arguably relevant given the relationship between the Respondents and the continuum of activity from the 2006 Letter of Intent to the 2009 APA, but limits its request to such documentation as may refer or identify, in whole or in part, former or existing employee rights, union rights or representation, Respondent obligations to the Applicant and/or recognition/certification issues, potential or otherwise, as may arise from the purchase and operation of Carrot River Sawmill.

Relevant statutory provision:

[15] Relevant statutory provisions are as follows:

18. The board has, for any matter before it, the power:

...

(b) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing;

Union's arguments:

[16] The Union relied upon the Saskatchewan Court of Appeal decision in *Wal-Mart Canada Corp. v. Saskatchewan Labour Relations Board*¹ and the Board's decision in *SEIUWEST & SGEU & CUPE v. SAHO et al.*² The Union argued that there was considerable overlap in the ownership of both of the Respondents and considerable uncertainty as to their respective roles in the purchase of the assets from Weyerhaeuser that production of the requested documents was necessary to determine who the true employer of the employees was.

[17] The Union argued that it was necessary that they be provided the documents requested so as to be able to know who was involved in the purchase from Weyerhaeuser and their respective roles in the purchase. They argued that the documents were relevant to the application and should be produced.

¹ [2004] SKCA 154, [2005] 11 W.W.R. 252, 257 Sask. R. 12, 22 Admin L.R. (4th) 285, 247 D.L.R. (4th) 30

² 2012 CanLII 18139 (SK LRB), LRB File Nos. 092-10, 099-10 & 105-10

Employer's arguments:

[18] The Employer argued that the documents requested were not relevant to the application. The Employer also argued that the Union was on a "fishing expedition" insofar as the requested documents were concerned. They also argued that the documents requested regarding the C & C Wood Products Ltd. aborted purchase were irrelevant as that purchase was not concluded. They argued that C & C Wood Products Ltd. and Edgewood Forest Products Ltd, did not have common ownership or direction as alleged.

[19] The Employer concurred that the cases cited by the Union were the governing cases.

Analysis & Decision:

[20] The Court of Appeal decision in *Wal-Mart, supra*, preceded the amendments to the *Act* which inserted s. 18(b). That provision granted the Board the express authority to order pre-hearing production of documents. The issue before the Court of Appeal in the *Wal-Mart* case, *supra*, was whether the Board had the authority to order production of documents under the authority of *The Public Inquiries Act*.³ The Court supported the Board's authority to compel production of documents under that authority.

[21] The *SEIUWEST* case, *supra*, dealt with document production during the course of a hearing. In outlining the Board's Practices and Procedures Regarding Production of Documents,⁴ the Board made general comments concerning the Board's procedure regarding pre-hearing production of documents.

[22] A more direct approach regarding pre-hearing disclosure of documents was taken by the Board in *International Brotherhood of Electrical Workers, Local 2038, Applicant v. Sun Electric (1975) Ltd., Alliance Energy Limited and Mancon Holdings Ltd.*⁵ That case adopted the factors set out by the Canada Industrial Relations Board in *Air Canada Pilots Association v. Air Canada et al.*,⁶ [1999] C.I.R.B.D. No. 3 at para. [28] as follows:

1. *Requests for production are not automatic and must be assessed in each case;*

³ R.S.S. 1978 c. P-38

⁴ *Supra* footnote 2 beginning at paragraph [37] et seq.

⁵ [2002] Sask. L.R.B.R. 362, LRB File No. 216-01.

⁶ [1999] C.I.R.B.D. No. 3 at para. [28]

2. *The information requested must be arguably relevant to the issue to be decided;*
3. *The request must be sufficiently particularized so that the person on whom it is served can readily determine the nature of the request, the documents sought, the relevant time-frame and the content;*
4. *The production must not be in the nature of a fishing expedition; that is, the production must assist a complainant in uncovering something to support its existing case;*
5. *The applicant must demonstrate a probative nexus between its positions in the dispute and the material being requested;*
6. The prejudicial aspect of introducing the evidence must not outweigh the probative value of the evidence itself, regardless of any possible “confidential” aspect of the document.

[23] The Board in the *Sun Electric* case, *supra*, concluded that while there may be other considerations which arise in any matter, the list above represented an excellent starting point in assessing requests for discovery and production of documents. This approach was also taken by the Canada Board in the *Air Canada*, *supra*, case. In *Air Canada*, the Canada Board adopted a “pragmatic approach to the production of documents based on the balance of interests to be struck in these matters.”⁷ In paragraph 29, the Canada Board went on to say:

While it is recognized that there will always be some “discovering” in material produced as a result of a summons, this should not be interpreted as a bottomless well, which can be accessed without restraint. ... The Board will assess the competing interests of the parties against the proper disposition of the case. In evaluating the competing interests, the Board will be inspired by the principles set out above. It will be particularly mindful of the prejudice that may be caused by ordering the wholesale production of sensitive business records and weigh the probative value of the production against the labour relations interest in disposing of the case. Even if the business records are to be admitted on a confidential basis, the applicant still has the onus of establishing a prima facie case that the material has some bearing on the case it seeks to put forward and that its value outweighs the prejudice to the respondent. Absent this probative value, these documents will not be ordered disclosed

[24] In *Sun Electric*, *supra*, the Board had under consideration s. 18.1(c) of *The Construction Industry Labour Relations Act*⁸ (“CILRA”), the wording of which is similar to s.

⁷ At paragraph 29

⁸ S.S. 1992 c. C-29.11

18(b) of the *Act*.⁹ Those factors identified by the Canada Board and as adopted by the Board, have “logical appeal” and are illustrative of “some of the principles that ought to be considered”.¹⁰

[25] The first determination is whether or not the documents requested are arguably relevant. The Applicant has requested a broad range of documents which might be voluminous in nature. We will deal with each request in turn.

[26] The Applicant has made six (6) requests for production from Edgewood Forest Products Inc. For the reasons which follow, we decline to order any production other than the Forest Management Agreement requested in the fourth request below.

The First Documents Requested

[27] The first request is for “a copy of any and all agreements, memoranda, correspondence and/or any other related documents between Edgewood Forest Products and C & C Wood Products Ltd. in respect to the purchase and/or operation of the Carrot River Sawmill”. In the comment included with the amended request for documents produced by the Union at the hearing on August 22, 2012, the Applicant argues that it has established the foundation for production of these documents. The Applicant bases this argument on the various corporate searches filed showing some commonality in the directors of the various corporations involved and based upon press releases and newspaper articles which identify C & C Wood Products Ltd. as the purchaser of the sawmill in 2009 as well as being the abortive purchaser in 2006. This, the Applicants submit, is sufficient to show the requested documents are arguably relevant.

[28] Even if we agree with the Applicants in this regard, the request must fail when considered in light of the other *Air Canada, supra*, criteria. The Applicant has taken a “shot gun” approach to the identification of the documents requested. There is no particularization of the documents such as would allow them to be readily determined by either the Respondents or the Board. Reference is made simply to “any and all documents ... in respect to the purchase and/or operation of the Carrot River Sawmill”. A request of this nature constitute nothing more than a fishing expedition hoping that by dangling the hook, a fish (or document in this case) may become impaled upon it.

⁹ See the comments of Popescul J. in *Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers et al v. Saskatchewan Labour Relations Board et al.* [2011] SKQB 380 (CanLII), [2012]CLRBR 35 at paragraph 143.

[29] As noted in the criteria, particularity is necessary to identify both the documents being sought. When particularized, that particularization can also assist the Board in determining if such a document may be relevant. An example of the particularization which would be expected is a description of documents in a manner as was the case in *Air Canada, supra*. In that case, one of the documents being requested was the minutes of the Human Resources and Compensation Sub-Committee meetings. Not to provide particularization of the documents being sought, and in this case, the time frame for which they are being sought brings to the request the inescapable conclusion that the Applicants are simply fishing for information.

[30] In *Air Canada, supra*, in relation to the much better particularized request for documents, the Canada Board says at paragraph 34:

...To reiterate arbitrator Picher in Bell Canada, supra, production is not intended to enable a complainant to determine whether it has a case or that it might uncover something to support its allegations, but to support the case it has set before the Board. It seems that at this late stage, the applicant should have already gathered the evidence necessary to complete its case. The further requests for unedited material from the minutes of the meetings of the Board of Directors and the Human Resources and Compensation Sub-Committee cannot be sustained.

[31] This case involves the allegation by the Union that Edgewood Forest Products Ltd. has acquired the business formerly operated by SFPC at the Carrot River Sawmill and as such, is the successor Employer of the employees in accordance with s. 37 of the *Act*. Additionally, out of an abundance of caution, the Applicants also allege that C & C Wood Products may be an associated or related Employer in accordance with s. 37.3 of the *Act*.

[32] The Applicant should have had a good idea of the factual basis for its application at the time the application was filed. While there may have been some gaps in the knowledge which it possessed, which gaps could be filled by documents in the control of the Respondents, the Applicant must identify those gaps and identify what documents, if any, the Respondents may have that would assist in the proof of its case.

[33] Document production must be sufficiently focused to what the Applicant needs from the Respondent to assist with the proof of its case. It is not appropriate to simply cast your

¹⁰ Supra footnote 9 at paragraph 144

net and ask for production of many irrelevant documents in the hopes that there may be something there to support your case.

[34] The Applicant is represented by able and competent counsel who is well aware of the facts and matters it needs to bring to the Board to support its contention that the Respondents, one of them, or both of them, are the Employer of the employees and should be required to continue to bargain collectively with the Union.

The Second Documents Requested

[35] The second request is for “a copy of any and all correspondence, memoranda and/or other related documents between Edgewood Forest Products Inc. and C & C Wood Products Ltd. in respect of the negotiation of the Asset Purchase Agreement...”. We are strained to find any relevance to the documents respecting the negotiation of the Asset Purchase Agreement. The APA has been concluded and speaks for itself. A copy of that agreement (redacted, but in a form satisfactory to the Applicant) has been provided to the Applicant. We are unable to see how the documents regarding the negotiation of the agreement can be relevant when they have been superseded by the actual APA which sets out the terms and conditions between the parties related to the purchase. This is especially true when the involvement of C & C Wood Products Ltd. in the agreement appears to relate to provision of a guarantee, a copy of which the Applicants have as a part of the APA.

[36] Similarly, this request is no better particularized than the first request and also fails on that ground for the reasons set out above.

The Third Documents Requested

[37] The third request is for “a copy of any and all correspondence, memoranda and/or other related documents between Edgewood Forest Products Inc. and Weyerhaeuser Company Limited in respect of the negotiation of the Asset Purchase Agreement...”. This request also included a request for production of the Asset Purchase Agreement which was produced following the conference call with the Executive Officer. In its comment, the Applicant limited its production request to “any such documents that refers or identify, in whole or in part, former or existing employee rights, union rights or representation, Respondent obligations to the Applicant

and/or recognition/certification issues, potential or otherwise as may arise from the purchase and operation of Carrot River Sawmill”.

[38] As noted above, the APA has superseded any and all negotiations between the parties. The Applicant also notes in its comment that “[G]iven the APA reference to collective agreement and union employees the parties obviously turned their minds to union representation issues and any documents addressing such in the negotiation process are arguably relevant”.

[39] With respect, we do not agree. The Applicant has the benefit of the APA, a document which the Board has not seen. However, notwithstanding that deficiency, we cannot see (apart from the Applicant’s bold assertion that, based upon his review of that document, the negotiations leading to the conclusion of the APA are relevant), that documents related to the negotiation of the APA have any such relevancy.

[40] What may have been the subject of negotiations may have been extremely broad and wide ranging, but what was agreed between the parties is as stated in the APA. How discussions or negotiations that did not come to fruition are relevant has not been established by the Applicants.

The Fourth Documents Requested

[41] The fourth request is for “a copy of any and all correspondence, memoranda and/or other related documents between Edgewood Forest Products Inc. and the Government of Saskatchewan in respect to the joining of Edgewood Forest Products Inc. as a party to the Pasqula-Porcupine Forest Management Agreement”.

[42] Forest Management Agreements are defined on the Saskatchewan Ministry of the Environment web site as being “a 20-year agreement, typically with a larger forest company, conferring long-term harvesting rights for a specific volume of timber from a defined area, as well as responsibilities for long-term sustainable forest management.” Forest Management Agreements are entered into between the Crown and persons wishing to harvest wood from Saskatchewan forests and are governed by *The Forest Resources Management Act*.¹¹

¹¹ S.S. 1996 c. F-19.1

[43] Such agreements, when concluded are, presumably, public documents which may be obtained through the Freedom of Information provisions of *The Freedom of Information and Protection of Privacy Act*.¹² If they are not public documents, then they there may be some claim of Crown privilege, which would be claimed if they were ordered produced by this panel.

[44] The Forest Management Agreement is, we agree, arguably relevant to this matter since one cannot operate a sawmill without trees to cut into lumber. However, we cannot see that the commercial terms of this agreement are necessary to this case and may result in a competitive disadvantage to the Respondents if released. Additionally, the Crown may claim privilege on the document. We therefore order that the Pasqula-Porcupine Forest Management Agreement be produced. Such agreement may be redacted by the Respondents to remove any sensitive commercial information from the agreement. Six (6) copies of the agreement shall be provided to the Board for its examination at the commencement of the hearing of this matter on September 27, 2012. The Applicant shall give notice to the Crown of the Board's Order for production of a redacted copy of the Pasqula-Porcupine Forest Management Agreement. The Board will hear from the Crown on September 27, 2012 respecting any claim of privilege with respect to the production of that agreement.

[45] With respect to the other documents sought by this request, their relevance is at issue, they are poorly particularized, if at all. Again, the Forest Management Agreement will supersede any negotiations or discussions and should speak for itself insofar as this application is concerned.

[46] Before the Board can consider the relevance of any documents which may "refer or identify, in whole or in part, former or existing employee rights, union rights or representation, Respondent obligations to the Applicant and/or recognition/certification issues, potential or otherwise, in the context of the FMA discussions and outcome", it would be necessary for the Board to know what provisions, if any, make any reference to such matters in the FMA. Absent that agreement, the Board has no backdrop by which to judge the relevance of any of these requested documents.

¹² S.S. 1990-91 c. F-22.01

The Fifth Documents Requested

[47] The fifth request calls for production of “any and all documents within the possession or control of Edgewood Forest Products Inc. in respect to Weyerhaeuser Company Limited customers and products supplied to such customers by Weyerhaeuser Company Limited in respect to the Carrot River Sawmill during the period 2000 – 2009”.

[48] This request is well particularized and deals with a stated time period. It could be relevant with respect to the alleged transfer of business if customer lists were included in the Asset sale to Edgewood Forest Products Inc.

[49] In the Reply filed by Mr. Hayman on behalf of Edgewood Forest Products Inc., he specifically denies that Edgewood received any “customer lists” or “accounts receivable or existing customer work contracts”.¹³ Also, at paragraph 3(e) of the Reply, Mr. Hayman expressly states that “Edgewood did not assume any customer work contracts from Weyerhaeuser or take over any operations previously conducted by Weyerhaeuser”. Furthermore, if any such assets were included in the sale, the APA would disclose that fact. The Applicants have a copy of the APA and should, therefore have knowledge of the assets which were sold to Edgewood by Weyerhaeuser.

[50] Mr. Hayman also makes the following comment at paragraph 2 (e) of the Reply:

(e) *With reference to paragraph 14 of the Application:*

Comment: Edgewood is producing such products as required for its customers, none of whom were customers received from Weyerhaeuser as part of the asset purchase transaction. Edgewood has no information on the products Weyerhaeuser produced to fulfill Weyerhaeuser customer orders. Edgewood cannot comment on any comparison between its customer product orders and those filled by Weyerhaeuser for its customers.

[51] Based upon the evidence before the Board at this time, it appears that the Applicants either do not believe Mr. Hayman, but have provided no evidence to the contrary, or are engaged in a fishing expedition. Undoubtedly, the Applicant will have the ability to cross-examine Mr. Hayman regarding the statements in his reply. We therefore decline to order production of these documents.

¹³ See Reply at paragraph 3(b)(ii) and (v)

The Sixth Documents Requested

[52] The sixth request for documents calls for production of documents identifying “customers and products supplied for Edgewood Forest Products in respect to the Carrot River Sawmill since the mill commenced operations on January 2, 2012”.

[53] We are uncertain what is actually being requested here, but have taken the request to require production of a list of customers and the products supplied to them by Edgewood Forest Products Ltd. since it commenced operation of the Carrot River Sawmill on January 2, 2012.

[54] This request is well particularized and deals with a stated time period. It would be relevant with respect to the alleged transfer of business if customer lists had been included in the Asset sale to Edgewood Forest Products Inc.

[55] The products produced at the Carrot River Sawmill are not shrouded with secrecy and it should not be difficult for anyone to determine what is being produced at the sawmill. Similarly, it should not be difficult to provide evidence as to what products were being produced at the sawmill prior to the time it was shut down by Weyerhaeuser.

[56] As to the issue of who those products were sold to by Edgewood Forest Products Inc. we are again faced with the denial in the Reply that says that Edgewood did not obtain any customer lists from Weyerhaeuser. No evidence to dispute that evidence has been provided. We therefore decline to require the production of customer lists since Edgewood began production on January 2, 2012.

Requests for Production of Documents from C & C Wood Products Ltd.

[57] The Applicant has made three (3) requests for production from C & C Wood Products Ltd. For the reasons which follow, we decline to order any production from C & C Wood Products Ltd.

The First Documents Requested

[58] The first request for documents from C & C Wood Products Ltd., as noted by the Applicant in their written submission, “parallels that set out in respect to Edgewood at #1 above, but [requests] documents within the control of C & C”. For the reasons set out above with respect to the first documents requested from Edgewood Forest Products Inc, we decline to make the requested order.

The Second Documents Requested

[59] The second request is for production of “any and all correspondence, memoranda, and/or documents, including a copy of the Letter of Intent and any related documents, schedules, appendices, or attachments or documents referred to in same, in respect to the negotiation of the 2006 “transaction” document between Weyerhaeuser Company Limited and C & C Wood Products”.

[60] We fail to see how the uncompleted transaction between C & C Wood Products Ltd. and Weyerhaeuser has any relevance to the current application. There has been no evidence or suggestion that the final transaction between Edgewood and Weyerhaeuser arose, for example, as a result of a transfer of rights contained in the Letter of Intent as between Edgewood and C & C. The Applicant has not established any logical connection between the two transactions or connected them in any way. We therefore decline to order production of these documents. Nor are the requests well particularized and appear to be a fishing expedition by the Applicants.

The Third Documents Requested

[61] The final documents requested has been limited to “such documents as may refer or identify, in whole or in part, former or existing employee rights, union rights or representation, Respondent obligations to the Applicant and/or recognition/certification issues, potential or otherwise, as may arise from the purchase and operation of Carrot River Sawmill”. This request for documents parallels the third request made in respect of documents from Edgewood Forest Products Inc. above. For the reasons set out above with respect to these documents, we decline to order production of the requested documents.

[62] It should be noted that there is no document discovery process allowed for in the Board's procedure similar to that utilized by the Courts. As noted by the Board *in SEIUWEST*,¹⁴ pre-hearing discovery of documents is only one of the ways in which documents held by the other party may be obtained. Documents may also come before the Board pursuant to a *Subpoena Duces Tecum* or as a result of discovery of the existence of relevant documents during examination of a witness.

[63] The Board orders as follows:

1. that the Pasqula-Porcupine Forest Management Agreement be produced by the Respondents to the Board at the commencement of the hearing of this matter in Saskatoon, Saskatchewan on September 27, 2012; and
2. Such agreement may be redacted by the Respondents to remove any sensitive commercial information from the agreement. Six copies of the agreement shall be provided to the Board for its examination at the commencement of the hearing of this matter on September 27, 2012; and
3. The Applicant shall give notice to the Crown of the Board's order for production of a redacted copy of the Pasqula-Porcupine Forest Management Agreement. The Board will hear from the Crown on September 27, 2012 respecting any claim of privilege with respect to the production of that agreement.

DATED at Regina, Saskatchewan, this **11th** day of **September, 2012**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson

¹⁴ 2012 CanLII 18139 (SK LRB), LRB File Nos. 092-10, 099-10 & 105-10