

**The Labour Relations Board
Saskatchewan**

CONSTRUCTION WORKERS UNION (CLAC), LOCAL 151 v. TERCON INDUSTRIAL WORKS LTD., Respondent

– and –

CONSTRUCTION WORKERS UNION (CLAC), LOCAL 151 v. WESTWOOD ELECTRIC LTD., Respondent

LRB File Nos. 097-10 & 098-10; March 7, 2012

Chairperson, Kenneth G. Love Q.C.; Members: Mick Grainger and Jim Holmes

For Applicant Union: Mr. Richard F. Steele

For Respondent Employer: Ms. Angela Giroux

Union – Status – Applicant organization makes application to be certified to represent employees of employer – Applicant organization provides evidence of long history of representing employees both in Saskatchewan and in other Canadian jurisdictions – Applicant previously certified to represent employees in Saskatchewan, but had withdrawn from the jurisdiction as the result of the passage of *The Construction Industry Labour Relations Act, 1992* – Board hears evidence as to history of organization, its formation, constitution and activities – Board satisfied that Applicant organization is trade union.

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

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Chairperson:** On July 27, 2010, the Construction Workers Union (CLAC), Local 151 (the “Applicant”) filed two applications with the Saskatchewan Labour Relations Board (the “Board”) seeking to represent units of employees of Tercon Industrial Works Ltd. (“Tercon”) and of Westwood Electric Ltd. (“Westwood”). Neither Tercon or Westwood disputed the Applicant’s status as a trade union, however, a number of other trade unions objected to the filing of the applications and filed applications claiming that the Applicant was a “company dominated” organization. These trade unions also sought intervenor status in the within applications.

[2] The Board summarily dismissed the various company dominated applications in a decision dated February 10, 2011¹. The Applicants who filed the various company dominated applications requested a judicial review of that decision. Mr. Justice Popescul dismissed their application, upholding the decision of the Board.²

[3] The Board next considered the various applications for intervenor status filed in respect of these applications. In a decision dated January 17, 2012, the Board refused intervenor status to any of the Applicants.³ Following that decision, the Board set the certification applications for hearing on February 22, 2012.

[4] The Applicant had been previously certified to represent employees as a trade union in Saskatchewan on nine (9) occasions between October 3, 1984 and April 13, 1992⁴. In 1992, *The Construction Industry Labour Relations Act, 1992*⁵ was enacted. That Act provided for sectoral bargaining in the construction industry. Only certain unions, as designated by the Minister, were permitted to represent employees in the construction industry. The Applicant was not one of those designated unions.

[5] In 2010, *The Construction Industry Labour Relations Act, 1992* was amended by Bill 80. Those amendments provided for the ability of other unions to seek to represent employees within the construction industry.

[6] During the period from 1992 to the filing of these applications in 2010, the Applicant had not appeared before the Board nor had it sought representation rights for any employees within the Province of Saskatchewan. While the Board does not normally require evidence to establish the *bona fides* of a trade union once it has been certified to represent employees in Saskatchewan, and has thereby been determined to be a "Trade Union" for the purposes of the Act, due to the long absence of the Applicant from the province, the Board

¹ *Tercon Industrial Works Ltd., Westwood Electric Ltd., Canonbie Contracting Ltd., Wilbros Construction Services (Canada) L.P., Pyramid Corporation, et. al. v. Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers, et. al.*, [2011] 195 C.L.R.B.R. (2nd) 1, 2011 CanLII 8881, LRB File Nos.: 103-10, 104-10, 107-10, 108-10, 121-10, 122-10 to 126-10, 139-10 to 142-10, 151-10, 152-10, 173-10, 174-10, 179-10 to 181-10, 199-10 to 207-10 & 211-10 to 213-10.

² 2011 SKQB 380 (CanLII)

³ CanLII 2145 (SK LRB)

⁴ See LRB File Nos. 333-84, 033-86, 041-86, 237-87, 097-89, 187-89 & 261-91

⁵ [1992] S.S. c. C-29.11

determined that it would hear evidence from the Applicant regarding its activities during the twenty (20) year absence from the Province.

[7] The matter was heard by the Board on February 22, 2012 in Regina, Saskatchewan. The Union called Mr. Bradley Bent, the Applicant's Regional Representative.

[8] After hearing the evidence provided by Mr. Bent and submissions from the parties, the Board determined that the Applicant was a "labour organization" and had standing as a "trade union" to represent the employees of Tercon and Westwood. These are the Board's Reasons for that determination.

Facts:

[9] The Applicant is a local of the Christian Labour Association of Canada ("CLAC"). CLAC was organized in Ontario in 1952 and first became certified to represent employees in Ontario in 1963. It is also certified by other provincial Labour Relations Boards in British Columbia, Alberta, Manitoba, and the Federal jurisdiction. As noted above, it was first certified in Saskatchewan in 1984. The Applicant's evidence was that it was a long-standing trade union representing employees across Canada in a variety of sectors.

[10] In Saskatchewan, it was originally certified under the name "Construction Workers Association (CLAC), Local 151". Mr. Bent testified that in 2010, the organizing group in Saskatchewan met and passed a resolution changing the name of the organization to "Construction Workers Union (CLAC), Local 151". Following that change of name, on June 29, 2010, the Applicant applied for and received from its parent organization, CLAC, a revised Certificate of Affiliation in its revised name.

[11] Mr. Bent testified that across Canada, CLAC represents approximately 50,000 employees. In Saskatchewan, he testified that Local 151 had just under 800 members. He testified that CLAC administers approximately 500 current collective agreements throughout Canada and that the various locals of CLAC have negotiated thousands of collective agreements since its formation in 1952.

[12] A copy of the Applicant's Constitution was provided to the Board. Article 3 of that document sets forth the Purpose of the Organization, as being "to organize workers in order to

establish justice in the workplace and to promote the interests of workers through collective bargaining and other means of mutual aid or protection". In addition, Articles 9, 11, & 12 of that document also sets forth the Applicant's governance model and internal structures, including its National Board and Local affiliates

[13] Mr. Bent provided the Board with numerous pieces of literature which outlined the various services and benefits available through the union and which were negotiated with employers, including life and disability insurance, pension and RSP plans, training courses, training incentives and apprenticeship programs, and dental programs.

[14] Prior to the hearing, a vote was conducted to determine the wishes of the members of the bargaining unit. However, the ballots were not tabulated. Rather, the ballot box was sealed pending further direction from the Board.

Relevant Statutory Provisions:

[15] The relevant provisions of *The Trade Union Act*, R.S.S. 1978, c.T-17, are as follows:

2 *In 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;

CILRA:

4(2) *Nothing in this Act:*

(a) precludes a trade union from seeking an order pursuant to clause 5(a), (b) or (c) of The Trade Union Act for an appropriate unit consisting of:

- (i) employees of an employer in more than one trade or craft; or
- (ii) all employees of an employer; or

(b) limits the right to obtain an order pursuant to clause 5(a), (b) or (c) of The Trade Union Act in the construction industry to those trade unions that are referred to in a determination made by the minister pursuant to section 9.

(3) *In exercising its powers pursuant to clause 5(a) of The Trade Union Act, the board shall make no presumption that a craft unit is a more appropriate unit in the construction industry than any other form of appropriate unit.*

...

7 *If a trade union applies pursuant to The Trade Union Act for certification as the bargaining agent of the employees of an employer in the construction industry, the board shall determine the appropriate unit of employees by reference to whatever factors the board considers relevant to the application, including:*

- (a) the geographical jurisdiction of the trade union making the application; and*
- (b) whether the appropriate unit should or should not be confined to a particular project.*

Issues:

- [16]** There are three (3) issues to be determined in the present application. These are:
1. Is the Applicant a “labour organization” within the meaning of the *Act*?
 2. Is the Applicant a “trade union” within the meaning of the *Act*?
 3. Is the unit of employees applied for by the Applicant an “appropriate unit” for the purposes of collective bargaining?

Analysis and Conclusions:

1. Is the Applicant a “labour organization” within the meaning of the *Act*?

[17] The jurisprudence of this Board has been that an applicant seeking to represent a group of employees that has not previously been certified in this Province, must establish its status and, in particular, its standing to be certified to represent employees for the purpose of collective bargaining. These principles are also applicable in the present case where the Board is seeking to insure that the Applicant continues to be a labour organization qualified to represent employees following a lengthy absence from the jurisdiction. The Board has recently reviewed its jurisprudence⁶. As noted in that decision, at paragraph 11:

⁶ *Canadian Staff Union v. Canadian Union of Public Employees*, 2011 CanLII 61200 (SK LRB)

Simply put, an applicant organization must satisfy the Board that it is a trade union with the meaning of The Trade Union Act. In this regard, it should be noted that this is not an enquiry into the relative strength or tenacity of the applicant organization in terms of achieving particular collective bargaining goals or its adherence to particular ideological beliefs. In this exercise, the Board is simply concerned with whether or not the organization is dedicated to advancing the interests of its members by means of collective bargaining and that its internal structure possesses certain hallmarks of organizational legitimacy associated with a trade union. See: Board of Education Administrative Personnel Union v. Board of Education and Regina Collegiate Institute, [1978] June Sask. Labour Rep. 44, LRB File No. 380-77. See also: Regina Musicians Association, Local 446 v. Saskatchewan Gaming Corporation, [1997] Sask. L.R.B.R. 273, LRB File No. 012-97.

[18] It was clear from the evidence presented in these proceedings that the Applicant had a long history of collective bargaining throughout Canada and in Saskatchewan. The Applicant's Constitution defines among its purposes the promotion of worker's interests through collective bargaining. In our opinion, the Applicant's history of labour relations, including the numerous collective agreements it has negotiated, together with the Applicant's Constitution, unequivocally demonstrated that collective bargaining is among its purposes.

[19] Furthermore, the Applicant's internal structures appeared to be transparent, democratic and membership-driven. These structures operate at both a national and regional level. The Applicant has been granted the whole of the province as its jurisdiction within the Applicant's organization structure. The Constitution also ensures that members within Saskatchewan can have a voice at both the local and national level through a variety of means, including the election of officers and attendance at national conventions. In our opinion, the Applicant demonstrated the requisite hallmarks of organizational legitimacy anticipated by this Board. For the foregoing reasons, we were satisfied that the applicant organization was a labour organization within the meaning of *The Trade Union Act*.

2. Is the Applicant a "trade union" within the meaning of the Act?

[20] At the hearing, there was no allegation or any evidence that the Applicant was not a *bona fide* trade union because of company domination. Those applications which alleged company domination, as noted above, were summarily dismissed by the Board, which decision was upheld on review by the Court of Queen's Bench of Saskatchewan. As a consequence, having reviewed the evidence presented in these proceedings, we were satisfied that the

Applicant had standing to be certified as a trade union in the Province of Saskatchewan pursuant to *The Trade Union Act*.

3. Is the unit of employees applied for by the Applicant an “appropriate unit” for the purposes of collective bargaining?

[21] The Board has recently dealt with the amendments to *The Construction Industry Labour Relations Act, 1992*.⁷ (“CILRA”) In the *J.V.D. Mill Services Inc.* decision, *supra*, the Board analyzed the amendments to the CILRA made by Bill 80 and their impact upon the collective bargaining scheme specified in the CILRA.

[22] Commencing at paragraph 103 of that decision, the Board discussed and reviewed its jurisprudence with respect to determination of an appropriate unit and how that jurisprudence was impacted by the amendments to the CILRA. At paragraph 139, it concluded:

Following the rationale of the B.C. Council in Cicuto, and upon review of the amendments to the CILRA, we conclude that an “all employee” unit is an appropriate unit within the construction industry in Saskatchewan.

[23] The units sought in this case are units similar to those being considered by the Board in *J.V.D. Mill Services Inc.* They are equally appropriate for collective bargaining in this situation.

[24] Also, the Applicant, as was the case in the *J.V.D. Mill Services Inc.* case, *supra*, has sought a province wide geographic scope for the bargaining unit. Again, for the reasons cited in *J.V.D.*, *supra*, we find that a province wide bargaining unit, which is the norm in the construction industry, is appropriate.

⁷ *Communications, Energy and Paperworkers Union of Canada v. J.V.D. Mill Services* [2011] S.L.R.B.D. 1, 192 C.L.R.B.R. (2d) 1, CanLII 2589, LRB File No. 087-10

Conclusion:

[25] Having come to above determination, the Board directs that the ballot boxes, which were sealed following the representation vote, be unsealed and that the ballots within each box be counted separately. Following the tabulation of ballots, the Board Agent shall report the results of the representation votes to an *in camera* panel of the Board for appropriate orders based upon the results of that vote.

DATED at Regina, Saskatchewan, this 7th day of **March, 2012.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson