The Labour Relations Board
Saskatchewan

UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES & CANADA, LOCAL 179, Applicant v. MONAD INDUSTRIAL CONSTRUCTORS INC., Respondent Employer and CONSTRUCTION WORKERS UNION (CLAC), LOCAL NO. 151, Respondent Union

LRB File No. 132-12; November 29, 2012
Chairperson, Kenneth G. Love, Q.C.; Members: Gloria Cymbalisty and Don Ewart

For the Applicant Union:	Crystal l. Norbeck & Heather L. Robertson
For the Respondent Union:	Richard F. Steele & David A. deGroot
For the Respondent Employer:	Larry Seiferling, Q.C.

Certification – Union applies for certification for group of employees of Employer not known to the Board – Respondent Union objects to Union's certification application claiming prior bargaining rights under previous board Order issued respecting another Employer – Respondent Union and Employer claim that Employer that Union seeks to certify is a successor to previously certified employer.

Practice and Procedure – Respondent Union and Employer assert that Union has no standing to bring certification application to Board in respect of Employer which has been acknowledged by Respondent Union and Employer to be a successor to Employer previously certified by the Board – Board determines that it requires evidence to be adduced to determine the fundamental question between the parties – Board determines both Respondent Union and Union have standing to determine fundamental question of representational rights.

REASONS FOR DECISION

Facts:

[1] **Kenneth G. Love, Q.C., Chairperson:** The United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 179, (the "Applicant Union") applied on July 20, 2012 to be certified as the bargaining agent for:

> *all journeyperson & apprentice plumbers, steamfitters, pipefitters, gas-fitters, refrigeration mechanics, instrumentation mechanics, sprinkler-fitters, welders, foremen and general foremen employed by Monad Industrial Constructors Inc. operating under the likes and styles of PCL*

> *Monad; Monad Construction; Monad Industrial; Monad; Monad Constructors; Monad Contractors Ltd.*

[2] The Construction Workers Union, Local 151 (the "Respondent Union") filed a Reply on July 30, 2012 in which they claimed to hold a prior certificate from the Board dated October 3, 1984 in respect of "all employees of Monad Contractors Ltd., employed within the Province of Saskatchewan, except the general manager, office manager, office and sales staff and foremen."

[3] In its Reply, the Respondent Employer claimed that the application by the Applicant Union constituted a "raid" and had not been filed either within the open period in relation to the Board's Order of October 3, 1984, or the anniversary date of the effective date of the collective agreement that had been entered into between the Respondent Union and the Respondent Employer. The Respondent Employer also argued that the application was a "carve out", that is, the application was for a single craft unit to be created from an existing all employee unit.

[4] On August 3, 2012, the Applicant Union filed an amended application for certification. In that application, the Applicant Union struck all references to entities other than Monad Industrial Constructors Inc. It also noted that:

> *To the best of my [Bill Steeves on behalf of the Applicant Union] knowledge, CLAC has never been certified to represent employees of the within employer. Instead, CLAC previously held collective bargaining rights only respecting a defunct corporation with a similar name to the present employer. CLAC subsequently abandoned those rights within the meaning of section 6.1 of the Construction Industry Labour Relations Act, 1992.*

[5] In its Amended Reply, the Respondent Union denied any abandonment "of its bargaining rights or that it held its bargaining rights with another employer that is now defunct". The Respondent Union also claimed that Monad Industrial Constructors Inc. (the "Respondent Employer") was the successor to Monad Contractors Ltd. In that respect, it said;

> *Monad [previously defined in the reply as being Monad Industrial Contractors Inc.] is the successor to Monad Contractors Ltd. Neither Monad nor Monad Contractors Ltd. conducted business in Saskatchewan for a period of time, but upon Monad's resuming business in Saskatchewan, Local 151 exerted its rights as bargaining agent. At that time, Monad admitted that it was the successor to Monad Contractors Ltd. Attached as Exhibit "C" is a true copy of a letter from*

> *Monad acknowledging that it is the successor to Monad Contractors Ltd. Thereafter, Local 151 and Monad negotiated the collective agreement attached to this Amended Reply as Exhibit B. The issues of successorship and abandonment are matters to which the applicant is a stranger. The Applicant has no standing to challenge whether Local 151 abandoned its bargaining rights or whether Monad is the successor to Monad Contractors Ltd.*

[6] The Respondent Employer also filed an Amended Reply expressly denying the statement set out in paragraph 4 above "insofar as it relates to the successorship issue".

Relevant statutory provision:

[7] Relevant statutory provisions are as follows:

> *5 The board may make orders:*
>
> *(a) determining whether the appropriate unit of employees for the purpose of bargaining collectively shall be an employer unit, craft unit, plant unit or a subdivision thereof or some other unit;*
>
> *(b) determining what trade union, if any, represents a majority of employees in an appropriate unit of employees, but no order under this clause shall be made in respect of an application made within a period of six months from the date of the dismissal of an application for certification by the same trade union in respect of the same or a substantially similar unit of employees, unless the board, on the application of that trade union, considers it advisable to abridge that period;*
>
> *(c) requiring an employer or a trade union representing the majority of employees in an appropriate unit to bargain collectively;*
>
> *. . .*
>
> *(j) amending an order of the board if:*
>
> *(i) the employer and the trade union agree to the amendment; or*
>
> *(ii) in the opinion of the board, the amendment is necessary;*
>
> *. . .*
>
> *37(1) Where a business or part thereof is sold, leased, transferred or otherwise disposed of, the person acquiring the business or part thereof shall be bound by all orders of the board and all proceedings had and taken before the board before the acquisition, and the orders and proceedings shall continue as if the business or part thereof had not been disposed of, and, without limiting the generality of the foregoing, if before the disposal a trade union was determined by an order of the board as representing, for the purpose of bargaining collectively, any of the employees affected by the disposal or any collective bargaining agreement affecting any of such employees was in force the terms of that order or agreement, as the case may be, shall, unless the board otherwise orders, be deemed to apply to the*

person acquiring the business or part thereof to the same extent as if the order had originally applied to him or the agreement had been signed by him.

37(2) On the application of any trade union, employer or employee directly affected by a disposition described in this section, the board may make orders doing any of the following:

(a) determining whether the disposition or proposed disposition relates to a business or part of it;

(b) determining whether, on the completion of the disposition of a business, or of part of the business, the employees constitute one or more units appropriate for collective bargaining and whether the appropriate unit or units will be:

(i) an employee unit;
(ii) a craft unit;
(iii) a plant unit;
(iv) a subdivision of an employee unit, craft unit or plant unit; or
(v) some other unit;

(c) determining what trade union, if any, represents a majority of employees in the unit determined to be an appropriate unit pursuant to clause (b);

(d) directing a vote to be taken among all employees eligible to vote in a unit determined to be an appropriate unit pursuant to clause (b);

(e) amending, to the extent that the board considers necessary or advisable, an order made pursuant to clause 5(a), (b) or (c) or the description of a unit contained in a collective bargaining agreement;

(f) giving any directions that the board considers necessary or advisable as to the application of a collective bargaining agreement affecting the employees in a unit determined to be an appropriate unit pursuant to clause (b).

. . .

42. The board shall exercise such powers and perform such duties as are conferred or imposed on it by this Act, or as may be incidental to the attainment of the objects of this Act including, without limiting the generality of the foregoing, the making of orders requiring compliance with the provisions of this Act, with any regulations made under this Act or with any decision in respect of any matter before the board.

Respondent Employer's arguments:

[8] The Respondent Employer filed a written Brief which we have reviewed and found helpful. The Respondent Employer argued that Monad Industrial Constructors Inc. was the successor to Monad Contractors Ltd. It argued that a successorship occurred by "operation of

law" under Section 37(1) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the *"Act*") and is therefore automatic without the necessity of any Board Order or application.

[9] The Respondent Employer also argued that the Applicant Union should not be permitted to challenge a prior existing Order and require the party holding the Order (in this case, the Respondent Union) to prove that a successorship had occurred. It argued that such a requirement was contrary to good labour relations policy.

[10] The Respondent Employer also challenged the standing of the Applicant Union to challenge the claim of the Respondent Union that it was entitled to represent the employees of the Respondent Employer. It argued that the Applicant Union was not directly affected by the disposition of the business and therefore had no standing to challenge the successorship.

Respondent Union's arguments:

[11] The Respondent Union also raised concerns about the status of the Applicant Union to bring the within application. It echoed the arguments of the Respondent Employer with respect to successorship being automatic in Saskatchewan without any necessity for Board involvement.

[12] The Respondent Union argued that the Applicant Union should have no better status now than they would have had at the time the successorship occurred. As a result, they argued the Applicant Union was a stranger to these proceedings and should have no status to attack a successorship that occurred many years prior.

[13] The Respondent Union also argued that the application for certification constituted a raid by the Applicant Union and as such, argued that it was outside the "open period" provided for in Section 5(k) of the *Act*.

Applicant Union's arguments:

[14] The Applicant Union also filed a written Brief which we have reviewed and found helpful. The Applicant Union argued that the issue should not be framed as the Respondents suggest, that is as an attempt by the Applicant Union to dislodge or attack bargaining rights given to the Respondent Union in respect of Monad Contractors Ltd., and in respect of which the

Respondent Union was the successor. Instead, they argued that they had filed an application for certification for an Employer not known by or certified by the Board.

[15] The Applicant Union argued that the Board should be dealing with its certification application and not issues related to successorship, except as necessary to determine if, in fact, a proper successorship had occurred. The Applicant Union argued that, as the Applicant in the certification application, it certainly had standing to bring that application. Insofar as the Respondent Union's claim to successorship was concerned, it noted that that issue was collateral to the certification application, having been raised by the Respondents in Reply to the certification application.

[16] It argued that the Board should adjudicate the issue of whether a successorship occurred for three reasons. Firstly, that determination of whether a successorship has occurred is consistent with the purpose for which the Board was established, that is, to adjudicate disputes regarding bargaining rights between unions. Secondly, it is the Board's jurisdiction to determine which units of employees are appropriate for collective bargaining purposes. Finally, if no successorship order exists, there is no public record for third parties to be aware of whether or not representational rights exist as between a trade union and an employer.

[17] The Applicant Union also argued against a determination which would allow employers and unions to jointly agree that a successorship has occurred without any sanction from the Board. It argued that in such circumstances, it would be difficult, if not impossible, for the Board to be effective in its role in regulating and reducing industrial conflict and to be aware of when such successorships had been brought into existence. Furthermore, they argued that it is the Board's role to make orders under Sections 5(a) and (c) of the *Act* to create collective bargaining obligations. They argued that the Respondents were effectively telling the Board to "mind its own business" and not to become embroiled in successorships, notwithstanding the Board's explicit powers to determine successorships and the bargaining relationship that flows therefrom.

[18] The Applicant Union also argued that if the Board is not involved in successorship determinations, the rights of employees to choose a trade union to represent them would be undermined. Similarly, in circumstances where a successorship is determined by the agreement

of the parties, there is the potential for employer interference in the selection of the bargaining agent or for company domination to occur.

[19] The Applicant Union argued that if there was no successorship, in fact, then the collective agreement and recognition by the Employer was nothing more than a voluntary recognition which could be challenged by another union outside the “open period”.

Analysis & Decision:

[20] The Respondents in this matter urge the Board to resolve this issue on the basis that a successorship exists between Monad Industrial Constructors Inc. and the formerly certified, Monad Contractors Ltd. Their arguments were predicated upon the Board’s acceptance of this relationship based upon their arguments that successorship, under the *Act* occurred by operation of law and furthermore, that the successorship had been acknowledged between the Respondent Employer and the Respondent Union, who had negotiated and signed a collective bargaining agreement based upon that accepted relationship.

[21] On the other hand, the Applicant Union urges the Board to determine this matter based upon the application before it, which is a certification application for an Employer who is not known to the Board through any existing Order.

[22] There are two possible scenarios in this dispute.

1. *It may be found that Monad Industrial Constructors Inc. is not a successor to Monad Contractors Ltd.; and*

2. *It may be found that Monad Industrial Constructors Inc, is a successor to Monad Contractors Ltd.*

[23] Different consequences flow from the determination of whether or not a successorship has, in fact, occurred. If there is no successorship, then the Applicant Union’s application to certify a group of employees can proceed since the recognition by the Respondents of a collective bargaining relationship is nothing more than a voluntary

recognition.[1] In the case of a finding of no successorship, the Board would then proceed to hear and determine the certification application in the normal manner.

[24] If, however, it is found that Monad Industrial Constructors Inc. is a successor to Monad Contractors Ltd. then a different result would pertain. Bargaining rights for the unit described in the Board's order of dated October 3, 1984 in respect of "all employees of Monad Contractors Ltd., employed within the Province of Saskatchewan, except the general manager, office manager, office and sales staff and foremen" would remain vested in the Respondent Union and the Respondent Employer would be required to bargain collectively with respect to those described employees. The Applicant Union's application would be a "raid" and would be outside of the open period.

[25] Much, therefore, depends upon the resolution of the issue of whether or not Monad Contractors Ltd. is a defunct corporation as alleged by the Applicant Union or whether its business was continued in successorship by Monad Industrial Constructors Inc.

[26] The Respondents took the position that the Board should be loath to become involved in investigating successorships years after they had occurred and to allow other parties to raise objections related to those successorships. With respect, we do not agree.

[27] The Respondent's argument is fundamentally flawed. It supposes that the Board has no other purpose in respect of successorships than to determine if one has occurred in those instances where successorship is denied by an employer and an affected union must come to the Board to assert its rights.

[28] The scheme of the *Act* makes it clear that bargaining rights are bestowed by the Board through the procedures set out in the *Act*. Unfortunately, when changes occur in the makeup of the parties in respect of which the Board has made Orders, the Board is often the last to hear of such changes and parties fail to amend or update their certificates.

[29] The *Act* provides ample opportunity for parties to amend or update their certificates. Often those changes are a simple name change resultant from either a change by

[1] See *Re: Inconvenience Productions* [2001] S.L.R.B.R. No. 24

the employer or the union. Similarly, a successorship can occur under Section 37 in respect of a business certified by the Board, or under Section 39 in respect of a transfer of bargaining rights. The *Act* also provides parties with the opportunity to address amendments to the Board's Order by agreement in section 5(j)(i).

[30] It would have been a simple matter for the Respondents to have applied to the Board to update the certificate either upon the occurrence of the alleged successorship, or upon the return of Monad Industrial Constructors Inc. to the Province after its lengthy absence. This failure to maintain and update the Board's records can have serious consequences for the parties.

[31] Again, to repeat, the fundamental issue in this case is to connect the dots between Monad Contractors Ltd., the Employer named in the Board's certification Order and Monad Industrial Constructors Inc. If, indeed Monad Industrial Constructors Inc. is the successor to Monad Contractors Ltd., then the Board's records and the certificate establishing this bargaining relationship should be updated.

[32] In this case, the Applicant Union has presented an application for certification for an Employer not known to the Board. Prudently, the Registrar, pursuant to Section 16 of *The Regulations and Forms, Labour Relations Board*[2] gave notice to the Respondent Union since the initial application to the Board by the Applicant Union noted that the Respondent Union may have an interest in the application.

[33] On the question of standing in either the certification issue or the successorship issue, it is clear that both parties have a direct interest in the outcome of the determination as to whether Monad Industrial Constructors Inc. is a new Employer or whether, as alleged by the Respondents, it is the successor Employer to Monad Contractors Ltd. Collective Bargaining rights for either party are dependent upon the outcome of that determination.

[34] Absent any direct evidence from the parties, the Board cannot come to any conclusion as to the status of the bargaining rights for the affected employees.

---

[2] Saskatchewan Regulations 163/72

[35] For these reasons, the Board will allow the Applicant Union and the Respondents to address this fundamental question at the commencement of the hearing of this matter on December 19, 2012. Because the Respondent Employer is undoubtedly the best source of evidence in this matter, they shall proceed to provide evidence first. The Respondent Union may provide any evidence second, and the Applicant Union shall go last.

DATED at Regina, Saskatchewan, this **29th** day of **November, 2012.**

LABOUR RELATIONS BOARD

Kenneth G. Love Q.C.
Chairperson