Saskatchewan
Labour Relations Board

CONSTRUCTION WORKERS UNION (CLAC), LOCAL 151 and WESTWOOD ELECTRIC LTD., Applicants v. NICOLE WILSON, Respondent

LRB File No. 005-13; July 31, 2013

Chairperson, Kenneth G. Love, Q.C.; Board Members: Shawna Colpitts and Greg Trew

For the Respondent:	Drew S. Plaxton
For the Applicant Union:	Richard F. Steele
For the Applicant Employer:	Larry F. Seiferling, Q.C.

Summary Dismissal – Applicant files Duty of Fair Representation complaint against Union alleging failure to properly represent her in relation to her dismissal from her employment with the Employer – In conjunction with her application, she files application alleging that Union is a "Company Dominated Organization" as defined in the Act. Respondent Union and Employer applies for summary dismissal of that allegation.

Summary Dismissal – Board considers recent previous jurisprudence as well as reformulation of test to be applied on summary dismissal – Board finds that Applicant has not plead sufficient facts, if proven, which would tend to show the Union was a "Company Dominated Organization" - Board finds the Applicant has not set out an arguable case.

Summary Dismissal – Board considers argument by Applicant that Union's failure to obtain authorization for payment of Union dues to Union shows that Union is a "Company Dominated Organization" – Board dismisses argument.

Practice and Procedure – Union alleges that Applicant did not have standing to bring application alleging the Union to be a "Company Dominated Organization" – Board reviews jurisprudence and finds that employees seeking to challenge Union's right to represent employees for collective bargaining must do so at time of certification - Board finds employee lacks standing to challenge Union's right to represent employees.

Practice and Procedure – Form of Pleadings – Board comments on manner in which pleadings were filed - Applicants pleadings were continuously amended as matters progressed and were so intertwined so as to make them extremely difficult to both read and analyse - Board cautions against this form of cascading pleadings.

Practice and Procedure – Applicant makes application to have Employer and Union produce documents and things related to the application alleging Union to be "Company Dominated Organization"– Board denies application due to the summary dismissal of the underlying application, but makes no comment regarding production requests respecting application respecting the Union's Duty of Fair Representation.

Re-litigation of Previous Decisions – Board finds that Application is an attempt to re-litigate matters previously decided by Board.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Q.C., Chairperson:** On January 14, 2013, Nicole Wilson ("Wilson or the "Applicant") filed an application with the Board alleging that the Construction Workers Union (CLAC), Local 151 (the "Union") was a "Company Dominated Organization" as that term is defined in section 2(e) of *The Trade Union Act* (the "*Act*")[1] (the "Application"). That application alleged that the Union was dominated by *inter alia* Westwood Electric Ltd. ("Westwood"). That application was subsequently amended by the Applicant on June 14, 2013.

[2] Summary Dismissal applications (the "SD applications") were made to the Board by Westwood (and others originally named in the application) to have the applications summarily dismissed. An *in camera* panel of the Board considered these applications and an Order dismissing the SD applications was made by the Board.

[3] Westwood, and the others named in the application, applied to the Board for reconsideration of that dismissal. By decision dated May 28, 2013, the Board determined that the order which had been issued was issued in error and corrected the order. At paragraphs [10] to [12], the Board stated as follows:

> *[10] When the panel of the Board considered this matter in camera, it considered firstly, if the matter was one which should be or could be conveniently dealt with in camera. The panel determined that it was not a matter which should or could conveniently be dealt with in camera. It was, therefore dismissed.*
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> *[11] Unfortunately, when the Order dismissing the application was issued, the form of order used was the form previously (i.e.: prior to the Court of Queen's Bench decision in Tercon). That is, the form referenced both s. 18(p) and (q).*

[1] R.S.S. 1978 c. T-17.

> *Given the analysis by the Board in KBR Wabi, the reference to s. 18(p) was an error made by the Board in the issuance of that Order. It will be corrected utilizing the Board's authority to correct such errors contained within s. 19(4) of the Act.*
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> *[12] Accordingly, the application for summary dismissal was dismissed, only insofar as its eligibility to be considered in camera, is not dismissed on its merits. Accordingly, as was the expectation of the Board, the matter of the Board's authority under s. 18(p) remains alive and may be considered at the outset of the viva voce hearing.*

[4] The hearing with respect to this matter convened on June 21, 2013. At that hearing, the Applicant withdrew its allegations of Company domination against all parties other than Westwood. A hearing date for the application with respect to the Applicant's claim that the Union was dominated by Westwood was set for July 2, 2013.

[5] Also set for consideration was an application by Wilson, made April 12, 2013 and amended on June 14, 2013, for an order from the Board for production of documents and things by Westwood.

[6] The Board heard these matters in Saskatoon on July 2, 2013. For the reasons that follow, the Board summarily dismisses the application made by the Applicant, Wilson. The Board further declines to make any order for production of documents and things related to LRB File No. 005-13.

[7] These reasons deal only with the issues raised in respect of LRB File No. 005-13 and are in no way determinative or reflective of the issues raised in LRB File No. 004-13.

Relevant statutory provisions:

[8] Relevant statutory provisions are as follows:

> *18. The board has, for any matter before it, the power:*
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> *(a) to require any party to provide particulars before or during a hearing;*
>
> *(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;*
>
> *. . .*
>
> *(p) to summarily dismiss a matter if there is a lack of evidence or no arguable case;*

. . .

> *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.*

Application for Summary Dismissal

Union's arguments:

[9] The Union argued that the Applicant has no standing to bring this application which alleges that the Union is a "company dominated organization". Secondly, the Union argued that the application fails to disclose an arguable case. Thirdly, the Union argued that the application was an abuse of process, and finally, it argued that the application undermines the "Rand Formula".

[10] On the issue of standing, the Union relied upon its assertion that the Applicant was a "straw man" for the real Applicant in this case, the International Brotherhood of Electrical Workers ("IBEW") which it alleged, had no standing to bring a "company dominated" application based upon the Board's decision in *University of Saskatchewan (Re).*[2] It also relied upon section 9(1) of the Board's Regulations[3] which provide that "[A]ny trade union or any employee affected may apply…". The Union also argued that the Applicant was not an employee of Westwood and therefore was not eligible, under section 9(1).

[11] On the issue of the Applicant not having an arguable case, the Union argued that the question of whether or not the Union was dominated by Westwood was determined in the Board's previous decision in *Tercon Industrial Works Ltd. (Re:)*[4] (hereinafter "Tercon SLB") wherein the Board summarily dismissed an application by various trade unions to have the Union declared to be dominated by *inter alia* Westwood. The Board's decision in that case was taken

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[2] [2001] S.L.R.B.D. No. 49, 75 C.L.R.B.R. (2d) 89, LRB File No. 154-00.
[3] *Regulations and Forms, Labour Relations Board*, S.R. 163/72.
[4] [2011] S.L.R.B.D. No. 2, 195 C.L.R.B.R. (2d), 2011 CanLII 8881.

on judicial review to the Court of Queen's Bench and upheld by a decision[5] (hereinafter "Tercon QB") of Mr. Justice Popescul (as he was then). The Union argued that the facts plead by the Applicant in support of her application, apart from one additional point, were the same matters as had been raised and earlier determined by the Board and the Courts in Tercon SLB and Tercon QB.

[12] The Union also argued that the Applicant had failed to plead the fundamental elements which are required to found an arguable case that the Union was a "company dominated organization". Those elements, it argued were that:

> *(a) the employer or employer's agent has dominated or interfered with the administration of the labour organization; or*
>
> *(b) the employer or employer's agent has contributed financial or other support to the labour organization.*

[13] The Union also relied upon the Board's statement of the purpose of the provisions in the *Act* concerning company domination as set out by the Board in *Wal-Mart Canada Corp. (c.o.b. Wal-Mart) (Re),*[6] which was:

> *The purpose of the provisions regarding company dominated organizations in the Act is to prevent the subversion of the object of the Act in s. 3 as stated above to create a situation where the certified employer in fact chooses and controls the trade union with which it will bargain the terms and conditions of its own employees.*

[14] The Union also argued that the present application was a collateral attack on the prior court and Board decisions in Tercon LRB and Tercon QB and was an abuse of process. It relied upon the comments of Justice Arbour (speaking for the Court) in *Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*[7] wherein the Supreme Court enunciated the differences between issue estoppel, abuse of process and collateral attack. The Union also relied upon the Board's decisions in *Re: Metz*[8] and *Re: Lalonde.*[9]

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[5] [2011] S.J. No. 671, 2011 SKQB 380, 210 C.L.R.B.R. (2d) 35, 378 Sask. R. 82, 36 Admin. L. R. (5th) 271, 213 A.C.W.S. (3d) 1020, 2011 Carswell Sask 712.
[6] [2008] S.L.R.B.D. No. 32, 162 C.L.R.B.R. (2d) 1, LRB File Nos. 069-04, 124 – 130-04 at para. 201.
[7] [2003] 3 S.C.R. 77, [2003] S.C.J. No. 64, 2003 SCC 63.
[8] [2008] S.L.R.B.D. No. 25, 159 C.L.R.B.R. (2d) 231, LRB File Nos. 199-05 to 211-05.
[9] {2007] S.R.R.B.D. No. 10, 138 C.L.R.B.R. (2d) 63, LRB File Nos. 098-05 to 100-05.

[15] The Union argued that the current application repeats large portions of the allegations from the previous decision in Tercon LRB, all of which were found not to provide a basis for the alleged company dominance of the Union by Westwood.

[16] Finally, the Union argued that the Union's practice of agreeing to include a Rand Formula provision in its collective agreements which required that the employer deduct and remit union dues is not indicative of company dominance.

Westwood's arguments:

[17] Westwood adopted the arguments made by the Union, and also argued that the Applicant had failed to provide facts, information or particulars upon which to base her application of company dominance. It argued that there was nothing of substance raised by the Applicant in this application, or her Duty of Fair Representation complaint,[10] that provided any basis for or evidence that Westwood dominated the Union.

[18] Westwood argued that the majority of the allegations of company dominance had previously been dealt with in Tercon LRB and nothing novel had been raised in this application. It further argued that *albeit* we have a new Applicant in this case, the party behind the issue is the same party (IBEW), who was one of the Applicants in the Tercon LRB decision. Westwood argued that, as was the case in Tercon LRB, the Applicant had failed to provide sufficient facts of the alleged dominance of the Union by Westwood for the Board to find that the Union was dominated by Westwood.

[19] Westwood noted that the Applicant amended her application on June 14, 2013. They argued that this amendment added nothing more to the application, and are an attempt to confuse the issue. They argued that the issue of unauthorized deductions for union dues does not provide any evidence of company dominance, but is merely a continuation of the voluntary recognition agreement which was in place prior to the certification of Westwood.

[20] Westwood also argued that the application was a collateral attack of previous decisions rendered by the Labour Relations Board and the Court of Queen's Bench in regard to Company Dominance. In support of its position it relied upon *Canadian Iron, Steel and Industrial*

[10] LRB File No. 004-13.

Workers Union, Local #3 v. Emerald Oil Field Construction Ltd.[11] They argued that the there was a more direct attack of the Tercon LRB and Tercon QB decisions, which was that the IBEW could have taken an appeal to the Court of Appeal in respect of the Tercon QB decision.

Wilson's arguments:

[21] Wilson argued that the practice of the Employer remitting union dues on behalf of the Union showed that the Company dominated the Union. They argued that improperly deducting dues was indicative of a close relationship between the parties to engage in unlawful behavior (deduction of union dues without authorization as required by section 32 of the *Act)*.

[22] Wilson argued that she did have status to bring the application by virtue of her previous employment with the Employer and the fact that her employment was terminated. She argued that by virtue of that relationship, she was an "affected employee" under section 9(1) of the Board's Regulations. In support of that position, she relied upon the Board's decision in *Keith Peterson v. Canadian Union of Public Employees, Local 1975-01.*[12]

[23] Wilson argued that there were a number of different elements in her application from that in Tercon LRB. Those were:

> 1. *In this case we have an obvious breach of the Act in respect of the unlawful deduction of union dues;*
> 2. *The purpose for the existence of the Union is to avoid representation of employees;*
> 3. *The Union holds no membership meetings;*
> 4. *Collective Bargaining Agreements negotiated by the Union are not ratified by employees;*

[24] Wilson argued that she was not engaging in re-litigation of the Tercon LRB and Tercon QB decisions. She argued that the Board had the inherent power to reconsider and review its previous decisions. Secondly, she argued that there was sufficient "fresh" evidence in this application to take it outside of the previous decisions.

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[11] [1995] 132 Sask. R. 260 at paras 24-27.
[12] [2009] CanLII 13052, LRB File No. 156-08.

Analysis:

[25] The Union and Westwood have raised an issue with respect to the Applicant's standing to bring this application. They argue she is not an "employee affected" under section 9(1) of the Board's Regulations and, therefore, not entitled to make application that the Board should declare a trade union to be a "company dominated organization".

Is the Applicant an "Affected Employee"?

[26] In *University of Saskatchewan (Re),*[13] the Board determined that the time for seeking an order from the Board that a Union was company dominated was at the time of certification of the Employer alleged to be dominating the Union. At paragraphs 22 & 23 of that decision, the Board says:

> *[22] At the time of certification, there are significant public interest grounds for permitting another trade union or labour body to intervene and assert that the applying organization is company dominated. As indicated by the British Columbia Industrial Relations Council, without the intervention of "friends of the Board," so to speak, employer domination may not come to the attention of the Board panel hearing a case.*
>
> *[23] However, as time passes, the membership of the labour organization are surely the real judge of the bona fides of a trade union. ASPA has many members who are well educated and quite capable of organizing a campaign to decertify ASPA or to replace it with a different trade union. They are the ones who now hold a real and direct interest in the status of ASPA as a trade union. In our view, CUPE's entitlement to claim a public interest ground for its application has elapsed since the issuing of ASPA's certification Order*.

[27] These words are apt in respect of this application as well. The Union was certified to represent employees of Westwood on March 13, 2012. Opposition to that certification was dealt with through the Tercon decision and in that determination, the Union was found not to be a company dominated organization insofar as Tercon (and other employers, including Westwood) was concerned. In that case, the application for certification was made on July 27, 2010. The representation vote was held on August 27, 2012. At that vote, there were 17 employees eligible to vote, 12 employees voted, all in favour of being represented by the Union.

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[13] [2001] S.L.R.B.D. No. 49, 75 C.L.R.B.R. (2^{d}) 89, LRB File No. 154-00.

[28] The Applicant was hired and terminated by Westwood in the period between the application being filed with the Board and the time the vote was finally conducted by the Board. At no time did she make any objection to the certification application, nor was she an employee eligible to vote on August 27, 2012. Neither she, nor anyone on her behalf, sought to have her name placed on the voter's list or be considered as an employee for the purposes of the vote.

[29] The Applicant was not a "person affected" for the purposes of section 9(1) of the Board's Regulations. Apart from any claim she may have had related to her termination, she was not a person eligible to vote on the certification application. Only those employees who were employed on the date of the application and who remained employed as of the date of the vote where eligible to vote on the representation question. She was not one of those.

[30] As noted in *University of Saskatchewan (Re), supra,* the *Act* provides the methodology whereby employees who are dissatisfied with their representation may seek to either dismiss their bargaining representative and negotiate the terms and conditions of their employment without the assistance of a bargaining agent, or, alternatively to seek to replace that bargaining representative with another. The employees of any organization are the ones who are entitled to exercise the rights granted to them in section 3 of the *Act* to choose a bargaining agent of their choice.

[31] As was the case in *University of Saskatchewan (Re), supra,* neither the Applicant, nor the International Brotherhood of Electrical Workers, have any direct or material interest in the representational issue at this stage. That is up to the current employees of Westwood. It is those employees who have the right to choose a bargaining representative and change that representative if they are dissatisfied with the representation they are receiving.

[32] The Applicant relied upon the Board's decision in *Keith Peterson v. Canadian Union of Public Employees, Local 1975-01*[14]. That case dealt with a former employee of the University of Saskatchewan who brought applications against his union claiming a failure to provide proper representation under section 25.1 of the *Act*. In response to the argument made by the union in that case, that the Applicant was not an appropriate party to bring an application, the Board said at paragraph [31]:

> *Having dismissed the Applicant's complaints for other reasons, the Board is not prepared to rule on this ground other than to note that the Board has held in the past that there might be circumstances under which a trade union would have continuing obligations to employees, even though the employment status of such persons may been terminated. See: Kenneth Wilson and Richard Fefchuk v. Saskatchewan Abilities Council Regina Transportation Employee' Union and Access Transit Ltd., [1992] 4th Quarter Sask. Labour Report 127, LRB File No. 223-92. Nonetheless, the volume of time that has lapsed in this case clearly undermines any effort by the Applicant to claim a violation of s. 25.1.*

[33] In appropriate circumstances, for example, when an employee is discharged due to the exercise of their rights under the *Act*, the Board will have jurisdiction to inquire and rule into the circumstances surrounding their dismissal. Such employee(s) would be "affected employee(s)". Such was not the case here. The Applicant did not seek to be represented or involved in the prior determinations and was not an employee at any of the material times when the determination was made by the Board to certify Westwood.

[34] For these reasons, we find that the Applicant lacks standing to bring this application, not being a "person affected" under section 9(1) of the Board's Regulations.

Does the Application Disclose an Arguable Case?

[35] The Board recently restated the test for summary dismissal in *International Union of Operating Engineers, Hoisting & Portable & Stationary, Local 529 et al. v. KBR Wabi Ltd. et al.*[15] (hereinafter "KBR Wabi"). The test was restated in response to concerns voiced by Mr. Justice Popescul in Tercon QB.

[36] The test, as restated, brings the test more into conformity with the test utilized by the courts for applications to strike pleadings as disclosing no arguable case. At paragraph [79] of the KBR Wabi decision, the Board says:

> *Taking all of this into consideration, we adopt the following as the test to be applied by the Board on the exercise of its authority under s. 18(p) of the Act.*
>
> *1. In determining whether a claim should be struck as disclosing no arguable case, the test is whether, assuming the applicant proves everything alleged in his claim, there is no reasonable chance of success. The Board should exercise its jurisdiction to*

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[14] [2009] CanLII 13052, LRB File No. 156-08.
[15] LRB File Nos. 188-12, 191-12 to 193-12, 198-12 to 201-12.

> *strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.*
>
> *2. In making its determination, the Board may consider only the application, any particulars furnished pursuant to demand and any document referred to in the application upon which the applicant relies to establish his claim.*

[37] In determining whether or not the Applicant has made out an arguable case, the Board looks to the pleadings to determine if those pleadings disclose all of the constituent elements necessary for a finding of the alleged violation. In *Wal-Mart Canada Corp. (c.o.b. Wal-Mart) (Re),*[16], as noted in paragraph 14 above, the Board confirmed that the purpose for the provisions in the *Act* concerning "company dominated organizations" is "*to prevent the subversion of the object of the Act in s. 3 as stated above to create a situation where the certified employer in fact chooses and controls the trade union with which it will bargain the terms and conditions of its own employees".*

[38] The *Act* establishes two criteria for the determination of whether a labour organization is a company dominated organization. They are:

> *(a) the employer or employer's agent has dominated or interfered with the administration of the labour organization; or*
>
> *(b) the employer or employer's agent has contributed financial or other support to the labour organization.*

[39] We must, therefore, examine the application made by the Applicant to determine if, assuming the Applicant proves everything in the application, there is a reasonable chance of success.

The Application(s)

[40] On June 14, 2003, counsel for the Applicant filed an amended application with the Board. This application alleged the following facts:

> *(a) The applicant is concurrently filing an application alleging a breach of the duty of fair representation dated 10 January 2013. The applicant reiterates and adopts the facts related therein as part of this application.*
>
> *(b) The applicant further relies on such further or other facts as may be relevant and proven at the hearing hereof.*

[16] [2008] S.L.R.B.D. No. 32, 162 C.L.R.B.R. (2d) 1, LRB File Nos. 069-04, 124-04 to 130-04 at para. 201.

> *(c) Such further and other grounds as counsel may advise and this Honourable Board allow.*
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> *(d) The applicant says as a result of the above-noted facts, CLAC is an organization, the formation or administration of which the employer(s) or employer(s)' agents have dominated or interfered with. Further, the said employer(s) and I or employer(s)' agents have contributed financial or other support to CLAC other than that permitted by The Trade Union Act, including without limiting the generality of same by deducting from employees earnings and remitting to CLAC union dues, sums equivalent to union dues and/or other monies without authorization.*
>
> *(e) If required, the applicant will provide further particulars of company domination as well as the identity and contact information for those corporations which dominate CLAC.*
>
> *(f) Since filing the original application in the within matter. the applicant has filed particulars re company dominated organization application, response to reply company dominated organization application and a reply to applications for summary dismissal. The applicant refers to and specifically incorporates. adopts and relies upon the facts and matters set forth in these said documents and any amendments to same as well as any further pleadings and proceedings had and taken in the matter within. Further. the applicant specifically refers to and incorporates, adopts and relies upon all pleadings and proceedings and amendments to same made in her application concerning an alleged violation of s. 25.1 of the Act (the duty of fair representation application) presently before the Board and any further pleadings and proceedings to be filed in relation to same.*

[41] There are no alleged facts set out in the application apart from the assertion in paragraph (d) that deduction of union dues by Westwood provides financial support to the Union. Paragraph (a) purports to incorporate by reference the facts alleged on LRB File No. 004-13. Paragraphs (b) and (c) are not statements of fact, but pleading to incorporate future facts as allowed. Then based on paragraphs (a), (b) and (c), we are invited to find that the Union is company dominated.

[42] The alleged facts, related to the issue of company dominance, which are incorporated by reference from LRB File 004-13 are as follows:

> *(t) The applicant believes CLAC generally and Local 151 specifically is in reality an organization, the primary purpose of which is not to represent and promote members' interests in dealing with employers or securing improvements in terms and conditions of employment, but its primary purpose is to assist employers in avoiding representation of employees by bona fide trade unions.*

[43] This is a statement of belief by the Applicant, not an allegation of fact which tends to show that the Union is dominated by Westwood. It is a general statement which does not

engage Westwood in any way. Furthermore, comments like this one were considered, and rejected, by the Board and the Court in Tercon LRB and Tercon QB.

> *(u) To the applicant's knowledge, CLAC works closely with a number of anti-union or open shop employers' organizations, including the Progressive Contractors Association of Canada (hereinafter "PCAC") in an effort to prevent bona fide trade unions from organizing employees of PCAC's members by entering into collective agreements and I or obtaining certification orders to block bona fide unions' organizing efforts. To the applicant's knowledge, Westwood Electric Ltd. is a member of PCAC.*

[44] This is a statement of belief by the Applicant, not an allegation of fact which tends to show that the Union is dominated by Westwood. It is a general statement which does not engage Westwood in any way. Furthermore, comments like this one were considered, and rejected, by the Board and the Court in Tercon LRB and Tercon QB.

> *(v) To the applicant's knowledge CLAC collaborated with a number of employers in an effort to avoid open periods (thereby preventing bona fide trade unions from applying for certification orders). Further, it appears there has been at least one instance where an employer has voluntary closed down operations to avoid CLAC being vulnerable to an open period and possible representation applications by bona fide trade unions, particulars of these matters are set forth in particulars provided by IBEW Local 529 and the Carpenter I Millwright filed in LRB File Nos 104-10, 107-10, 124-10, 125-10, and 126-10). The applicant adopts the particulars set forth therein as part of this application.*

[45] This is a statement of belief by the Applicant, not an allegation of fact which tends to show that the Union is dominated by Westwood. It is a general statement which does not engage Westwood in any way. Furthermore, comments like this one were considered, and rejected, by the Board and the Court in Tercon LRB and Tercon QB.

> *(w) The applicant is further aware of an instance where an employer assisted in providing unlawful support to CLAC in an organizing drive in a matter before the Alberta Labour Relations Board, involving Aramark Remote Workplace Services Ltd.*

[46] Clause 4(w) was not alleged in Tercon LRB. However, there is nothing to show that Westwood is in any way connected with Aramark Remote Workplace Services Ltd., and even if this were proven, it has no relationship to the current issue as between the Union and Westwood.

> *(x) To date, despite requests for same, CLAC has not provided the applicant with a copy of a collective bargaining agreement between it and Westwood Electric Ltd. The applicant was able through her solicitors to obtain a copy of a document purporting to be a collective agreement between Westwood Electric and CLAC from Labour Relations and Mediation Branch, Ministry of Labour Relations and Workplace Safety. This document is dated the 29th of October, 2012 and from the stamp on the front of same, appears to have been filed with the Ministry of Labour on the 3rd of December, 2012. The applicant is unaware of any collective agreements in place prior to this document, if this document is indeed a collective agreement. If this collective agreement was negotiated, it appears the same was done without any meaningful input from the membership and not subject to any meaningful ratification process. The applicant received no notice of any negotiations or ratification meetings concerning this or any other collective agreements.*

[47] This allegation suggests that the Union has not supplied the Applicant with a copy of the collective agreement. That failure is not normally cause to bring the Union and the Employer to the Board alleging company dominance. The document is filed publicly and was obtained by the Applicant from that source. We cannot see how this failure, notwithstanding the argument that this results from an improper negotiation process, is other than pure assumption without any foundation.

> *(y) This document does not provide for mandatory union membership. Further, although this document does not provide for the deduction of union dues, it does provide for the deduction from employees' pay cheques of "the amount equal to union dues .... ". It further provides for payment of monies to CLAC. It does not provide for nor reference any authorization for deductions to be given by the employee.*

[48] These allegations are of little assistance to us with respect to the issue of company dominance. How or what a particular union negotiates with an employer are not within the supervisory jurisdiction of the Board. Those matters are between the parties. If employees are dissatisfied with the terms of a collective agreement, they have the right to change their bargaining representative.

> *(z) This document further discriminates against probationary employees providing employees will have a three month probationary period and discharge or layoff of a probationary employee will not be subject of a grievance or arbitration.*

[49] As noted above, what is negotiated between the parties is of no significance to the Board. Counsel for Westwood noted that he was aware of a similar provision in another collective agreement. After the close of the hearing, counsel for the Applicant provided the

Board with an arbitration decision which held that a similar provision had been interpreted as not to deny discharged employee access to the arbitration process. The Board leaves the interpretation of collective agreements to arbitrators chosen in accordance with the terms agreed by the parties. We would continue to do so.

> *(aa) The applicant believes CLAC is not a properly democratic organization and believes it has staff members appointed without election by the membership and the staff members are allowed to vote on matters and otherwise be involved in CLAC's affairs. From the applicant's dealings with CLAC, Local 151 may not have membership meetings at all.*

[50] Again, this is a statement of belief, without any factual basis alleged. These matters would be matters which would presumably be governed by the constitution of the union. Nothing in this allegation suggests that Westwood was responsible for these provisions in the union constitution, or that by virtue of them, they in any way dominated the Union.

> *(bb) CLAC has and continues to refuse to fulfill its obligations to the applicant, including: providing her information concerning dues deductions authorizations; applications for union membership; ongoing matters concerning collective agreement negotiations; collective agreement administration; in addition to wholly failing and refusing to address any issues on her behalf with the employer or otherwise.*

[51] This provision is, we believe, more directed to the issue of representation under section 25.1 of the *Act* rather than the issue of company dominance. This has nothing to do with Westwood.

> *(cc) Upon the above, the applicant says CLAC has and continues to wholly fail to represent her and other members of CLAC, in both the administration and negotiation of any collective or other agreements with the employer and has wholly failed to represent her in relation to any grievance or other proceedings.*

[52] This provision is also, we believe, more directed to the issue of representation under section 25.1 of the *Act* rather than the issue of company dominance. It has nothing to do with Westwood.

> *(dd) The applicant believes CLAC's failure and refusal to properly represent her and other members of CLAC is part of CLAC's overriding purpose to assist employers in avoiding representation of employees by bona fide trade unions, who will properly represent their members' interests. Further, CLAC's failure to properly represent its members will assist employers in conducting business without regard to employees' rights and benefits.*

[53] This provision is also, we believe, more directed to the issue of representation under section 25.1 of the *Act* rather than the issue of company dominance. There are comments, which are not directed to Westwood, regarding the failure to properly represent employees being for the benefit of employers generally, but, Westwood is not alleged to have required or interfered with the Union to benefit these unnamed employers.

> *(ee) The applicant says CLAC and its representatives have and continue to act in an arbitrary, discriminatory manner and have and continue to act in bad faith.*

[54] This provision is directed to the issue of representation under section 25.1 of the *Act* rather than the issue of company dominance.

> *(ff) The applicant seeks such order and orders as may be necessary to ensure CLAC fulfils its duty of representation to her and other members of the collective bargaining unit.*
>
> *(gg) The applicant further relies on such further or other facts as may be relevant and proven at the hearing hereof.*
>
> *(hh) The applicant seeks such orders as may be necessary to ensure CLAC properly represents her interests, including: providing the information referred to above; representing her interests on an ongoing basis; and providing information concerning membership meetings, whether they be for ratification of collective agreements or otherwise.*

[55] These provisions are the Applicant's plea for relief.

> *(kk) Since filing the original application in the within matter, the applicant has filed response to reply and amendments to same. The applicant refers to and specifically incorporates, adopts and relies upon the facts and matters set forth in these said documents and any amendments to same as well as any further pleadings and proceedings had and taken in the matter within. Further, the applicant specifically refers to and incorporates, adopts and relies upon all pleadings and proceedings and amendments to same made in her application concerning company dominated organization application presently before the Board and any further pleadings and proceedings to be filed in relation to same.*

[56] This final clause was the provision added to both sets of pleadings by the June 14, 2013 amendment to the applications. By amended applications in LRB File Nos. 004-13 and 005-13, the Applicant sought to include (within her application), additional matters not plead in the original application and which arose out of replies filed by Westwood or the Union or which

were matters later plead by the Applicant, but referred to as being particulars of the application, none of which were sought or requested by Westwood or the Union.

[57] To consider all documents which have been filed, including replies from the parties, replies filed by the Applicant to those replies, the particulars filed by the Applicant without request, and as the Applicant requests, "any further pleadings and proceedings to be filed in relation to same" cannot be allowed. To attempt to discern what the Applicant alleges cannot be dependent upon what stage of the proceedings the matter is at. The application for summary dismissal is, as noted above, determined from what the Applicant has alleged in her initial pleadings, as well as any particulars which the Respondents may have requested in clarification of the initial position.

[58] An applicant must make its claim at the outset, with sufficient particularity that a determination may be made as to whether an arguable case has been made out. To do that, it must plead sufficient facts, if proven at the hearing of the matter to establish an arguable case. Those facts must, of course, be directed to the essential elements which the Applicant must prove to establish its case.

[59] Of the above noted allegations, the issue raised concerning the lack of authorization for deduction of Union dues fits within the allegations contained in this case. Additionally, clauses 4(t), (u), (v), (aa) & (dd) could also be considered as being addressed not to the issue of proper representation under section 25.1 of the *Act*, but rather to the Applicant's allegations concerning the Union being dominated by Westwood.

[60] As an aside to this matter, and for the assistance of the labour relations community particularly, we would strongly discourage pleadings in this fashion before the Board. With the ability to "copy and paste" using word processors, there is no need, in this day and age, to incorporate pleadings from one application to another with the result that we are left with the task of trying to sort out what pleadings belong in which application. Counsel in this case is, we think, being deliberately abstruse in his pleadings.

[61] Of the matters set out in the applications on either LRB File No. 004-13 or 005-13, the only issue that has not been dealt with above is the issue of unauthorized deduction of union dues. That allegation will be further dealt with below.

Is the Application an Attempt to Re-litigate Matters Previously Dealt with by the Board?

[62] The Board dealt with general pleadings such as those contained within clauses 4(t), (u), (v), (aa), & (dd) in its decision in Tercon LRB.

[63] Clause 4(t) in this application is the same allegation dealt with by the Board in Tercon (The "Plaxton Particulars") as clause 9(a) of the particulars provided by the International Brotherhood of Electrical Workers. The only difference in this case is that the last sentence of clause 9(a) of the Plaxton Particulars has been deleted. In the Tercon LRB decision, at paragraph [189] the Board said:

> *Paragraph 9(a) is an assertion on behalf of Mr. Plaxton's clients. The only fact contained in that paragraph is that "CLAC appears to be active in a number of different sectors, including the construction industry."*

In this case, however, even the allegation that the Union appears to be active in a number of different sectors has been deleted.

[64] Clause 4(u) is similar to clause 9(j), in the Plaxton Particulars which was also dealt with by the Board in Tercon LRB. In Tercon LRB, the Board said with respect to this allegation at paragraph [198]:

> *Paragraph 9(j) alleges that the Applicant Employers are members of the Progressive Contractor's Association of Canada. It also alleges that CLAC has been "a sponsor and/or participant at a number of open shop conferences". Even if proven to be true, these statements do not support a finding that the Applicant Employers dominate CLAC.*

[65] Clause 4(v) is similar to clause 9(n) in the Plaxton Particulars which was also dealt with by the Board in Tercon LRB. In Tercon LRB, the Board said with respect to this allegation at paragraph [201]:

> *Paragraphs 9(n) & (o) refers to alleged misconduct on the part of CLAC and an unnamed employer or employers in an Alberta case cited as Firestone Energy Corp.*[17] *That case involved a re-assessment by the Alberta Labour Relations Board of its previous jurisprudence which allowed that parties could, in appropriate circumstances, negotiate away the statutory open period. In re-assessing its previous jurisprudence, the Alberta Board determined that there*

[17] [2009] Alberta LRBR. 134.

> *was a public interest in stable, certain, publicly known open period and the competition for bargaining rights during these open periods supported the finding that the parties cannot, by negotiation, close the statutory open period.*

[66] Clause (aa) is similar to arguments advance by Mr. Kowalchuk on behalf of his clients in Tercon LRB. Again, in that decision, those arguments were found to be wanting. At paragraph [169] to [174], *et seq.* the Board said:

> *[169] The underlying thesis of their arguments was that CLAC was not a proper trade union. That is, it did not subscribe to the basis principles of trade unionism which, in their view, demonstrated that they were either an "inferior union" or were a "sweetheart union" to the Applicant Employers in this case.*
>
> *[170] The Overview of CLAC's History and Philosophy which Mr. Kowalchuk and Ms Saxberg provided as a part of their particulars is illuminating. No author for this paper is noted, however, it is purported to have been prepared by the Canadian Labour Congress in February of 2008. It is subtitled "An Overview of an "Employer-Accommodating Pseudo Union".*
>
> *[171] The paper provides background with respect to the formation and growth of CLAC. It notes, based on figures provided by Human Resources and Skills Canada (HRSDC) from 2006, that claims made by CLAC that it is the fastest growing union in Canada is a "plausible" claim. It notes as well that CLAC has experienced a 150% increase in membership over the 9 years between 1997 and 2006.*
>
> *[172[It notes that CLAC has membership in British Columbia, Alberta, Ontario, Manitoba, and the Northwest Territories. It states that CLAC has members in the "construction, transportation, and health care sectors, with smaller, but increasing membership in hospitality manufacturing and food services." It also says that CLAC is a national organization made up of affiliated locals serviced from regional offices.*
>
> *[173] It notes that CLAC has a different philosophy to that taken by what might be termed more traditional trade unions (or as Mr. Kowalchuk referred to them as "socially democratic" trade unions). The author notes that CLAC "openly advocates an 'alternative approach' to labour relations and has been railing against 'traditional trade unions' for decades".*
>
> *[174] The paper argues that CLAC is "undemocratic" and not a "real" trade union. This analysis, however, is bereft of factual analysis and relies mainly on arguments on how CLAC operates versus how other traditional trade unions operate.*

[67] Clause 4(dd) is a repetition of the allegations contained in clause 4(t). and have been dealt with above.

[68] The allegations repeat most of the matters which have previously been litigated in Tercon LRB, which decision was upheld in Tercon QB. In this regard, the arguments made by

the Union and Westwood are compelling insofar as this application appears to be nothing more than a veiled attempt to re-litigate the decision in Tercon LRB and Tercon QB.

[69] In *Re: Metz*[18] and *Re: Lalonde,*[19] the Board dealt with matters which were *res judicata.* In Metz, the Board concluded at paragraph 47. that a hearing on the merits of 13 applications would be time consuming and expensive for the parties. The Board went on to say that as a matter of policy, "parties should not be allowed to re-litigate decisions that are final and binding." Apart from the issue related to deduction of union dues, which will be dealt with subsequently, the issues raised by the Applicant in this case have been fully litigated in the Tercon LRB and Tercon QB decision. The Queen's Bench decision by Mr. Justice Popescul (as he was then) is final and has not been appealed. The issues which the Applicant seeks to have the Board determined are the same as those decided in that case, and the parties are the same.

[70] In *International Brotherhood of Electrical Workers, Local 529 et al v. Construction Workers Union (CLAC) Local 151 et al,*[20] Mr. Justice Zarzeczny dealt with a similar matter in which the IBEW sought to re-litigate issues which had been determined by the Board and the Courts in Tercon LRB, Tercon QB and what he termed as J.V.D. #1[21] and J.V.D. #2.[22] At paragraph [27]:

> *When one examines the materials filed upon the current application before the court one is left with no other conclusion but that this application reflects a skillful attempt at re-framing and re-characterizing the issues which have now been considered by the Board and this Court upon judicial review in the J. VD. #1 and #2 and Tercon cases. The Applicant continues to seek intervention to raise issues and positions that have been extensively considered and conclusively decided by the Board and this Court. The applicant simply seems not prepared to accept the results in those decisions.*

[71] These comments are equally apt in this case. This application can be viewed, and was viewed by the Union and Westwood as a thinly veiled attempt to relegate what had already been decided by both the Board and the Courts in Tercon LRB and Tercon QB. We agree with the Union and Westwood in that regard.

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[18] [2008] S.L.R.B.D. No. 25, 159 C.L.R.B.R. (2d) 231, LRB File Nos. 199-05 to 211-05.
[19] {2007] S.R.R.B.D. No. 10, 138 C.L.R.B.R. (2d) 63, LRB File Nos. 098-05 to 100-05.
[20] [2013] SKQB 273, Decision dated July 15, 2013.
[21] [2010] 199 C.L.R.B.R. (2d) 228, LRB File No. 087-10.
[22] [2011] 192 C.L.R.B.R. (2d) 1, LRB File No. 087-10.

[72] In addition to the Tercon LRB decision, this Board has determined other application which alleged that CLAC was a "company dominated" organization.[23]. In that case, at p. 70 the Board said:

> *Counsel for the intervenor submits that CLAC is a company dominated organization because the employer negotiated the terms and conditions of a collective bargaining agreement with CLAC before voluntarily recognizing it, and because the employer told the Iron Workers Union that it would likely be supplying iron workers for the project.*
>
> *The Board has no hesitation in finding that those circumstances do not justify a finding that CLAC is a company dominated organization. CLAC's status as a trade union within the meaning of the Trade Union Act was first accepted by the Board on October 3, 1984 when it was certified to represent employees of Monad Contractors Ltd. (see LRB File No. 333-84). By negotiating a collective agreement with the employer, securing voluntary recognition, dispatching its members to the project, and applying for certification CLAC did nothing that the intervenor would not have done, and precisely what the Iron Workers Union attempted to do to secure work for their members. Voluntary recognition is the accepted norm in the construction industry.*

[73] The Board also considered another application by the International Association of Bridge, Structural and Ornamental Iron Workers, Local 771.[24] In that case, the Iron Workers again alleged that CLAC was a "company dominated' organization. At p. 43, the Board dismissed this argument in the following manner:

> *In the Board's view, CLAC was not a company dominated organization within the meaning of The Trade Union Act when that question was argued on LRB Files 033-86 and 044-86 and Mr. Heighes statement did not transform it into one. Although CLAC is a relative new-comer to this Province, it has operated as a trade union in other provinces for a number of years and there is no basis for finding that Mr. Heighes' statement could have altered CLAC's ability to represent its members in their relations with the employer, or to conduct its own affairs in any way it sees fit. It is for the same reason that although the Ironworkers Union received employer "support" when its business representative was permitted to gather membership cards from the employees on company time and in company premises, that support did not make the Ironworkers Union a company dominated organization because obviously it did not affect its ability to properly represent and to independently conduct its own affairs.*

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[23] *Construction Workers Association (CLAC), Local 151 and Salem Industries Canada Limited and Construction and General Workers Union Local 180* Sask. Labour Rep. June, 1986, LRB File No. 033-86 & 044-86.

[24] *International Association of Bridge, Structural and Ornamental Iron Workers, Local 771 and Construction Workers Association (CLAC), Local 151 and Salem Industries Canada Ltd*. Sask Labour Rep. July, 1986 40, LRB File No. 038-86 & 042-86.

[74] In Tercon LRB, the Board found that there was no arguable case made out by the parties that the Union was a ”company dominated organization”. Mr. Justice Popescul (as he was then) concurred in this result at paragraph 132 of his decision.

[75] For these reasons, we would also dismiss the application as being an abuse of process by the Applicant attempting to re-litigate matters which have already been dealt with by the Board and the Courts.

Does the Unauthorized Deduction of Dues Disclose an Arguable Case?

[76] As noted above, the Applicant must disclose an arguable case to avoid the Board summarily dismissing her application. The only matter of evidence alleged in the application, which has not been dealt with above, is the evidence dealing with unauthorized deduction of union dues by Westwood and the remittance of those dues to the Union.

[77] The time period for which this alleged unauthorized deduction of dues took place is from the summer of 2011, when the Applicant was hired by Westwood, to her termination on October 6, 2011. During that period of time, the Union was not the certified bargaining agent for Westwood’s employees. The Board certified the Union to represent those employees on March 13, 2012.

[78] During that period of time, the *Act* did not govern the parties. Neither section 32, which provides that an employer must deduct and remit dues upon written request of the employee; did not apply, nor did section 36 which provided for union security. What was in place between the Union and Westwood, assuming there was an agreement, was a voluntary recognition of the Union by Westwood. The deduction of dues and the remittance of those dues was supported, in the case of a voluntary recognition by the *Report on the Task Force on Labour Relations,*[25] which says:

> *We recommend that the compulsory irrevocable check-off or regular and reasonable union dues be available to a certified union as of right upon the negotiation of its initial collective agreement and thereafter, and that this right be extended to a union recognized voluntarily by the employer.*

[25] Ottawa Privy Counsel Office, December 1968 (the “Woods Report”) at para. 483.

[79] The requirement that all persons represented by a Union pay regular and reasonable dues has long been recognized in labour relations jurisprudence. It is based upon what is referred to as the "Rand Formula", named after former Supreme Court Justice Rand, who formulated that rule. It should be no surprise, therefore, that where there is a voluntary recognition as occurred here prior to the issuance of the certification order, that regular and reasonable dues would be deducted and paid over to the Union.

[80] The Applicant made much of this unauthorized deduction claiming that it was contrary to the provisions of *The Labour Standards Act.*[26] If such is the case, the Board has no jurisdiction with respect to such matters. Complaints of a breach of the *Labour Standards Act* must be dealt with pursuant to that *Act.*

[81] Any monies deducted from employee's wages and remitted to the Union cannot be a financial contribution by Westwood to the Union. The monies deducted and remitted are not the monies of Westwood, but are those of its employees, deducted from their wages. If they are improperly deducted and remitted, that is a matter between the Union and the employees who may, if they see fit, seek the return of any monies improperly deducted.

[82] There is nothing in the allegations made by the Applicant regarding deduction of union dues by Westwood and the remittance of those dues to the Union which engage any of the requirements which must be shown for the Board to declare a Union to be company dominated. As noted by the Board in *Wal-Mart Canada Corp. (c.o.b. Wal-Mart) (Re),*[27] which was:

> *The purpose of the provisions regarding company dominated organizations in the Act is to prevent the subversion of the object of the Act in s. 3 as stated above to create a situation where the certified employer in fact chooses and controls the trade union with which it will bargain the terms and conditions of its own employees.*

[83] The deduction and remittance of dues to the Union does not impair the fitness of the Union to represent employees for the purposes of bargaining collectively nor does it show that the Union was under the domination, or control of Westwood, who could, by virtue of the deduction and remittance of the dues, in effect, be in control of the bargaining process, either by the management of Westwood or by Westwood's management personnel. There is nothing in

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[26] R.S.S. 1978 c.L-1.

the allegations made here that would subvert of impair the right of employees to choose a bargaining agent. Nor is there anything to suggest that Westwood in fact chooses and controls the trade union with which it will bargain the terms and conditions of its own employees.

[84] Also, it would, we think, come as a great surprise to many unions who may have inadvertently failed to obtain authorization for dues checkoff, to find that as a result of that failure, they would be considered by the Board to be a company dominated organization and therefore not a trade union who could represent employees for collective bargaining.

[85] For these reasons, we find that the unauthorized deduction of union dues allegations do not support or disclose an arguable case that Westwood dominates the Union so as to make it a company dominated organization.

The Rand Formula Issue

[86] We have dealt with this issue above. Nothing further, in our opinion needs to be said on this issue.

Decision:

[87] The application is summarily dismissed. Nothing in the pleadings as noted above indicates or shows an arguable case that :

> *(a) the employer or employer's agent has dominated or interfered with the administration of the labour organization; or*
>
> *(b) the employer or employer's agent has contributed financial or other support to the labour organization.*

[88] An appropriate order shall accompany these reasons.

Application for Production of Documents and Things

[89] Because the application on this file has been dismissed, there is no application in respect of which we need to order production of documents and things as requested by the Applicant. Accordingly, that application is dismissed.

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[27] [2008] S.L.R.B.D. No. 32, 162 C.L.R.B.R. (2d) 1, LRB File Nos. 069-04, 124-04 to 130-04 at para. 201.

[90] As noted above, the dismissal of this application is only insofar as LRB File No. 005-13 is concerned. The Application for production was filed in respect of both LRB File Nos. 004-13 and 005-13. No determination or order is made insofar as LRB File No. 004-13 is concerned.

DATED at Regina, Saskatchewan, this **31st** day of **July, 2013.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson

Dissent

Member, Shawna Colpitts, dissents for the following reasons:

[91] With respect, I cannot concur on the issue of standing.

[92] It is clear that the Applicant filed two applications before the Board on the same date; the current application identified as LRB File No. 005-13 and LRB File No. 004-13, under section 25.1 of the *Act*, which is a duty of fair representation complaint against the Construction Workers Union (CLAC), Local 151.

[93] The Applicant is a person who was dismissed from her employment, whose dismissal is the subject of a proceeding before the Board (under LRB File No. 004-13) and based upon this she can bring an application to declare a labour organization a company dominated organization under Section 9(1) of the *Regulations and Forms* to *The Trade Union Act*, as 'any employee affected'. As acknowledged, in both Section 7 and 8 of the *Regulations and Forms*, a former employee is included within the definition of 'any employee affected'. Further, I see no contradiction with the *University of Saskatchewan (Re)* decision cited by counsel.

[94] Finally, the information provided by counsel for Westwood, confirmed that the Applicant's complaint against the employer to the Occupational Health and Safety division, was well-founded. This should be considered in the context of the issue of the Applicant's standing.

[95] On the issue of whether the application discloses an arguable case, and in accordance with the two criteria for the determination of whether a labour organization is a company dominated organization (outlined at paragraph 38 of the majority decision), I would argue that it is conceivable that the allegations, if proven, might satisfy the Board that either or both:

- The employer or employer's agent has dominated or interfered with the administration of the labour organization; or
- The employer or employer's agent has contributed financial or other support to the labour organization.

[96] In the *SEIU-West v. Samaritan Place* decision, it is acknowledged that the threshold of demonstrating an arguable case exists is not a high threshold. Similarly, in the present case the applicant should be afforded the opportunity to prove the many allegations set out in her application.

[97] There were a number of decisions cited by counsel including *United Food and Commercial Workers, Local 1400 v. PA Bottlers Ltd.* wherein the Board determined that it is necessary for the applicant to state clearly the nature of the allegations being made. In the present case, the Chairperson inquired and counsel acknowledged that neither had made a request for particulars from the Applicant. They argue that the Board should summarily dismiss the application on the grounds that it fails to provide facts, information or particulars, yet they have not sought them.

[98] As outlined in the majority decision, there are a number of allegations being made against the Respondent CLAC that have nothing to do with Westwood and relate more directly to the issue of representation under section 25.1 of the *Act*. While I agree that such accusations, if proven, may not relate to the finding of company domination, I do not agree that this equates with the conclusion that LRB File No. 005-13 does not disclose a case to be argued.

[99] Finally, on the issue of the *Tercon* decision, and the argument presented by the Respondents as to abuse of process or collateral attack, the decision of Justice Popescul confirmed that it was reasonable for the Board to find that the facts of *Tercon* were insufficient to found a 'company dominated' case. At the hearing, Mr. Seiferling acknowledged that there were new facts put forward by the Applicant, although he advanced these were more relative to the DFR complaint. These new and additional facts ought to have afforded the Applicant to a full hearing in the context of the within application and might have, if proven, lent to a decision on whether the fitness of the Union to represent the employee in the present circumstance was impaired.

[100] Counsel on behalf of the Applicant, Mr. Plaxton, referred to a number of prior decisions in support of a dismissal of the application for summary dismissal including the Federal Court of Canada decision (*Adar v. Canada*) where it was acknowledged that a prior denial of leave application was not a final decision. Similarly, in the present case Justice Popescul upheld the decision of the Board to grant summary dismissal of the company dominated application.

[101] With respect, I cannot support the denial of the Applicant, at this juncture, from proceeding with her right to a full hearing on the basis of the rationale set out in the majority decision. I would dismiss the applications for summary dismissal.

Shawna Colpitts, Board Member