



INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 529, Applicant v. WESTERN ELECTRICAL MANAGEMENT LTD. and MERICK CONTRACTORS INC, Respondents

LRB File Nos. 096-13, 097-13, 109-13, 152-13, 180-13 & 181-13; August 27, 2013
Chairperson, Kenneth G. Love, Q.C.; Members: Joan White and Maurice Werezak

For the Applicant Union: Drew Plaxton
For the Respondent Western: Meghan McCreary
For the Respondent Merick: Susan Barber, Q.C.

Practice and Procedure - Review of decision of Executive Officer by Board – Board considers questions de novo – Review of Executive Officer order by panel which includes Executive Officer permitted.

Practice and Procedure – Production of Documents and Things – Redacted Documents – Board reviews production requests by Union related to Common Employer allegations.

Summary Dismissal – Board considers timeliness of application for Summary Dismissal – Finds that Summary Dismissal may be applied for either as an in camera process or as a preliminary application.

Summary Dismissal – Board reviews applications and matters plead therein – Determines that allegations, even if proven, do not give rise to an arguable case

Common or Related Employer – Section 37.3 of *The Trade Union Act* and Section 18 of *The Construction Industry Labour Relations Act* – Board determines that one of employers alleged to be common or related employers must be unionized employer.

REASONS FOR DECISION

Background:

[1] Kenneth G. Love, Q.C., Chairperson: The International Brotherhood of Electrical Workers, Local 529, (the “Union”) applied to be certified as the bargaining agent for a unit of employees of Western Electrical Management Ltd. (“Western”) by application dated April 16, 2013 (LRB File No. 096-13). The Applicant amended its application on April 17, 2013,

requesting that Board certify both Western and Merick Contractors Inc. (“Merick”) as the Employer of the employees on whose behalf the Union sought certification.

[2] Also on April 16, 2013, the Union filed an Unfair Labour Practice application against Western alleging interference with employees during the certification drive and alleging breaches of Sections 3, 11(1)(a), 11(1)(b), 11(1)(e), 11(1)(f) and 11(1)(o) of *The Trade Union Act*, R.S.S. c.T-17 (the “Act”) (LRB File No. 097-13). That application was also amended on April 17, 2013 to include Merick and to allege that Merick was operating as a related Employer with Western.

[3] Western filed a Reply to the application on April 29, 2013 denying that it was the Employer of the employees for whom the Union sought certification. In its Reply dated April 29, 2013, Merick acknowledged that it was the Employer of the employees for whom certification was sought by the Union.

[4] The parties have not agreed that the unit applied for by the Union is appropriate. Additionally, there are two (2) employees within the proposed unit with respect to whom the Union or Merick take exception. These two (2) employees are Mel Hill, whom the Union alleges is a site superintendent, and whom Merick describes as a Project Foreman. The other was Desiree Heit who the Union challenged as not being an apprentice electrician.

[5] The Board conducted a vote among the employees eligible to vote on April 26, 2013. The votes cast by Mr. Hill and Ms. Heit were double enveloped. Following the vote being conducted, the ballot box was sealed and retained in the Board’s custody pending further order.

[6] On May 6, 2013, Western filed an Objection to the Conduct of the Vote (LRB File No. 109-13). That application was withdrawn by Western on July 23, 2013.

[7] On June 11, 2013, the Union applied to the Board for Production of Documents and Things (LRB File No. 152-13) related to both the certification application (LRB File No. 096-13) and the Unfair Labour Practice application (LRB File No. 097-13). In response to the request for production, Western and Merick produced considerable materials. However, the

Union sought more documents and they challenged the redactions, which had been made to several documents provided by Western and Merick.

[8] A telephone hearing was conducted with the parties by the Executive Officer of the Board on July 11, 2013. There were seven (7) issues before the Executive Officer. Those were:

1. The issue of the redacted documents;
2. Production of payroll records showing remittances to the Canada Revenue Agency;
3. A copy of the Electrical Permit issued for the project;
4. Documents related to Desiree Heit's apprenticeship;
5. Memoranda and other documents related to the relationship between Merick and Western;
6. Financial Statement for both Merick and Western; and
7. Listing of directors and shareholders for Merick and Western as at February, 1991.

[9] An Order for Production of Documents was made by the Executive Officer. That Order provided as follows:

1. *The Respondents shall provide to the Board at the opening of the hearing of this matter, 3 un-redacted copies of those documents which they have previously provided to the Applicant in redacted form. The parties shall also file with the Board on or before Friday, July 26, 2013 their arguments with respect to those redacted documents for consideration of the Board at the outset of the hearing of the matter in relation to LRB File No. 096-13.*
2. *With respect to the provision of documents to the Applicant regarding payments to the Canada Revenue Agency, the Respondent Merrick Contractors Inc. shall provide a witness who can speak to that issue.*
3. *The Respondent Merrick Contractors Inc. has agreed to provide a copy of the electrical permit sought. Such permit to be provided to the Applicant on or before July 24, 2013.*
4. *The Respondents have agreed to provide copies of all WEM and MCI cheques and invoices exchanged between them during the calendar months of March, April and May of 2013. Those documents are to be provided to the Applicant on or before July 24, 2013.*

5. *The Applicant requested production from the Respondents of their most recent financial statements. That request is denied.*
6. *The Applicant requested production of a listing of who the directors and shareholders of the Respondent Merick Contractors Inc. were as at February, 1991 and at the date of a share purchase at the date immediately preceding the date of the transaction. The Applicant agreed to undertake searches at the requisite corporate registries to obtain this information.*

[10] The Union requested a review of the Executive Officer's Order in accordance with Section 4(12) of the *Act*. That review was scheduled to be heard on July 29, 2013 in Saskatoon. At that hearing, the Board also considered the issue of the document redactions as directed in the Executive Officer's Order, an application by the Union to have the ballots from the vote held April 26, 2013 counted, and an application made by Western on July 23, 2013 (LRB File No. 181-13) for Summary Dismissal of the Union's application for a declaration pursuant to Sections 37.3 of the *Act* and/or Section 18 of *The Construction Industry Labour Relations Act, 1992 (the "CILRA")* that Western and Merick were common employers.

[11] At the hearing on July 29, 2013, the Board reserved its decision with respect to the issue of document production and the requested review of the Executive Officer's Order. It also reserved its decision regarding the application for Summary Dismissal. It granted the Union's request that the ballots be counted, with the instruction that the double enveloped ballots of Mel Hill and Desiree Heit not be counted unless those ballots were statistically significant to the result of the vote. These are the reasons with respect to the two (2) outstanding issues before the Board, those being the review of the Executive Officer's Order and the application for Summary Dismissal (LRB File Nos. 180-13 & 181-13).

Relevant statutory provision:

[12] Relevant statutory provisions are as follows:

The Trade Union Act, R.S.S. c.T-17 (the "Act")

4(12) The board may delegate to the executive officer any of its powers or functions but any employer, employee or trade union affected by any act done by the executive officer in the exercise or purported exercise of any such delegated power may apply to the board upon the application or, of its own motion, may exercise its powers or perform its functions with respect to the matter in issue as if the executive officer had not done such act.

(12.1) *The chairperson may designate one or more persons as investigating officers for the purposes of this act.*

...

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

...

(p) to summarily dismiss a matter if there is a lack of evidence or no arguable case;

...

37.3(1) On the application of an employer affected or a trade union affected, the board may declare more than one corporation , partnership, individual or association to be one employer for the purposes of this Act if, in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by or through those corporations, partnerships, individuals or associations.

37.3(2) Subsection (1) applies only to corporations, partnerships, individuals, or associations that have common control or direction on or after October 28, 1994.

The Construction Industry Labour Relations Act, 1992 (the “CILRA”)

18(1) On the application of an employer or a trade union affected, the board may declare more than one corporation, partnership, individual or association to be one unionized employer for the purposes of this Act and The Trade Union Act where:

(a) in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by or through those corporations, partnerships, individuals or association; or

(b) a corporation, partnership, individual or association is sufficiently related to a unionized employer that, in the opinion of the board, they should be treated as one and the same.

18(2) Subsection (1) applies only to corporations, partnerships, individuals and associations that commence carrying business, undertakings or other activities in the construction industry after the coming into force of this Act.

18(3) In exercising its discretion pursuant to subsection (10), the board may recognize the practice of non-unionized employers performing work through unionized subsidiaries.

18(4) The effect of a declaration pursuant to subsection (1) is that the corporations, partnerships, individuals and associations:

(a) constitute a unionized employer in a specified trade division; and

(b) are bound by a designation of a representative employers' organization by the minister pursuant to section 10 or a determination of a representative employers' organization pursuant to section 11.

18(5) The board may make an order granting any additional relief that it considers appropriate where:

(a) the board makes a declaration pursuant to subsection (1); and

(b) in the opinion of the board, the associated or related businesses, undertakings or activities are carried on by or through more than one corporation, partnership, individual or association for the purpose of avoiding:

(i) the effect of a designation of the minister or an order of the board determining an employers' organization to be the representative employers' organization with respect to a trade division; or

(ii) a collective bargaining agreement that is in effect or that may come into effect between the representative employers' organization and a trade union.

18(6) Where the board is considering whether to grant additional relief pursuant to subsection (5), the burden of proof that the associated or related businesses, undertakings or activities are carried on by or through more than one corporation, partnership, individual or association for a purpose other than a purpose set out in subclause (5)(b)(i) or (ii) is on the corporation, partnership, individual or association.

18(7) An order pursuant to subsection (5) may be made effective from a day that is not earlier than the date of the application to the board pursuant to subsection (1).

Review of the Executive Officer's Order

[13] At the outset of the hearing, the parties took note that the Executive Officer of the Board and the Chairperson of the Board are the same person. Following discussion of the issue, the parties agreed that they did not object to the Chairperson of the Board sitting in review of the Executive Officer's Order.

Union's arguments:

[14] The Union argued that an application to review an Order of the Executive Officer was a *de novo* proceeding. In support of that argument, the Union relied upon *PCL Holdings*

*Ltd. (Re:)*¹ and *The North West Company and Tora Regina (Tower) Limited o/a Giant Tiger v. UFCW, Local 1400.*²

[15] The Union argued that whether or not redaction of a document is appropriate is not one for Western or Merick to determine, but was within the discretion of the Labour Relations Board. They also argued that they were entitled to seek documents disclosing a relationship between the two corporations. The Union noted that Merick and Western's response that their relationship was based on verbal negotiation required challenge.

[16] In addition, the Union originally requested payroll information regarding remission of statutory deductions from employee's wages, a copy of the electrical permit issued by the City of Saskatoon, documents and correspondence concerning Ms. Heit's apprenticeship, Financial Statements for both corporations, and a copy of any contracts, agreements or other undertakings concerning a share purchase transaction in November 1992 and any other share purchase transactions to date.

Western's arguments:

[17] Western argued that the information which was redacted was not relevant to the issues before the Board and that it was properly redacted. It relied upon the Board's decision in *Edgewood Forest Products Inc. v. IWA-Canada, Local 1-184*³ and *Sun Electric (1975) Ltd.*⁴

[18] Western also argued with respect to the documents requested concerning the relationship between Western and Merick did not exist and that they cannot be required to prepare documents that do not otherwise exist in response to a production request. They advised the Board that they would provide witnesses at the hearing to deal with the oral arrangements between the parties.

[19] In respect of the information concerning Ms. Heit, they argued that the request was now moot as Ms. Heit was no longer an employee.

¹ *Re: PCL Construction Holdings Ltd. v. U.B.C.J.A., Local 1985*, [2002] Sask. L.R.B.R. 120, [2002] S.L.R.B.D. No. 12, 85 C.L.R.B.R. (2d) 57

² *United Food and Commercial Workers, Local 1400 v. Tora Regina (Tower) Limited (Giant Tiger, Regina)*, [2008] SKCA 38 (CanLII), LRB File Nos. 026-04, 041-08, 072-08 & 150-08

³ See *United Steel Workers Union, Local 1-184 v. Edgewood Forest Products Inc. and C & C Wood Products Ltd.* L.R.B. File No. 011-12, [2013] CanLII 15714 (SK LRB)

[20] Western objected to production of financial statements because the request was too “open ended” and constituted a fishing expedition by the Union. Furthermore, they argued that the information in its financial statements was confidential.

Merick’s arguments:

[21] With respect to the redaction issue, Merick argued that only confidential information had been redacted. It noted that there was only one remaining unredacted document which had not been produced, being an invoice from Merick to National Electrical Supply (1997) Ltd., which invoice Merick agreed to supply.

[22] Insofar as the production of other documents which deal with the relationship between Western and Merick, Merick also argued that such further documents do not exist and therefore, Merick cannot be compelled to prepare documents in response. Merick, too, argued that testimony by witnesses at the hearing would be more satisfactory.

[23] Merick further argued that there was not the same standard of disclosure in matters before the Board as pertained in civil matters in Her Majesty’s Courts. They relied upon the decision in *Air Canada Pilots Association v. Air Canada et al.*⁵

[24] In respect to the payroll remittance issue, Merick advised that the payroll system utilized by them did not provide the information requested. They argued that the provision of this information was not material to the issue. They also argued that the best evidence in this respect would be from witnesses who could testify regarding the issue.

Analysis and Decision:

[25] Section 4(12) of the *Act* provides for an automatic right of review of an Order made by the Executive Officer as a result of the delegation to the Executive Officer of any of the Board’s powers or functions. The delegation of those powers to the Executive Officer is designed to provide expeditious determinations of various matters, including procedural and

⁴ *International Brotherhood of Electrical Workers, Local 529 v. Sun Electric (1975) Ltd., et. al.*, [2002] Sask. L.R.B.R. 362, and in subsequent proceedings, [2002] Sask. L.R.B.R. 698, LRB File No. 216-01, [2002] S.L.R.B.D. No. 36.

⁵ [1999] C.I.R.B.D. No. 3

production matters without the necessity of a full hearing before the Board. However, as a safeguard, the Legislature has provided that any such Order may be reviewed by the Board.

[26] We agree with the Union that the review of the Executive Officer's Order is a *de novo* proceeding. As such, the standard of review is not the correctness of the Executive Officer's Order, but rather, upon the rehearing of the matter, the Board may "exercise its powers or perform its functions with respect to the matter in issue as if the executive officer had not done such act".

[27] Accordingly, we have a fresh slate and must consider afresh the matters in issue. For ease of reference, I will deal with them individually.

The Redacted Document Issue

[28] At the conclusion of the hearing, the parties came to a resolution of the issue. Merick and Western agreed to provide some unredacted documents to the Union and the Union agreed that it would, for the time being, accept the redactions made to the remaining documents. Accordingly, this issue was concluded.

Documents related to the Contractual Relationship between Merick and Western

[29] We accept that Merick and Western have produced all of the documents in their possession with respect to this issue. They cannot produce what they do not have. Accordingly, we accept that they will produce a witness, or witnesses, who can provide testimony concerning the verbal agreements between the parties. Merick and Western shall advise the Union as to the name of the witness (or witnesses) and a summary of their expected testimony not less than ten (10) business days prior to the hearing of this matter.

Documents related to Statutory Remittances on Behalf of Employees

[30] Again, we accept that Merick cannot produce meaningful documents with respect to this issue. Accordingly, we accept that they will produce a witness, or witnesses, who can provide testimony concerning the verbal agreements between the parties. Merick shall advise

the Union as to the name of the witness (or witnesses) and a summary of their expected testimony not less than ten (10) business days prior to the hearing of this matter.

Documents regarding Ms. Heit

[31] Because it has been determined that Ms. Heit's participation in the vote of the employees is not significant to the result, and, as a result of her no longer being an employee, we agree that the production of information and documents concerning her apprenticeship are no longer relevant to the proceedings. No order for production will be made.

Provision of a Copy of the Electrical Permit from the City of Saskatoon

[32] At the hearing of this matter, counsel for Merick agreed to provide a copy of such a permit, if it was available.

Provision of Financial Statements for Merick and Western

[33] We agree with counsel for Merick and Western that these documents are both confidential and are not material to the matters at issue. We agree that the information to be provided by the witness (or witnesses) in paragraphs [29] & [30] above will undoubtedly provide the information which the Union seeks to glean from the financial statements (that is the interaction and interdealing between the two corporations). Accordingly, this request is denied.

Copies of any Agreements related to the Share Purchase Transaction in November, 1992 of Shares in Merick

[34] Counsel for Merick advises that there are no such documents in possession of the Company. This is not surprising as a share transaction would be between two or more individuals, not the Company. The company may have documents showing that shares were cancelled and new shares issued to the purchaser, and there may be documents related to resignations of officers as well. From this information, the Company will have knowledge of the persons involved in the share purchase transaction and shall make this information available to the Union, if that information is not already known to it.

Summary Dismissal of the Common Employer Allegation

Western's arguments:

[35] Western argued that the test to be applied on Summary Dismissal was as enunciated by the Board in *IBEW, Local 529 v. KBR Wabi Ltd. et al.*⁶ They argued that the Application as filed, assuming the applicant proves everything contained in its application, must disclose the requisite elements necessary to support a finding of common employer. Western argued that the application did not satisfy this test

[36] Western argued that only Section 18 of the *CILRA* was applicable in this case. It argued that the *CILRA* was specific legislation applicable to common employer situations.

[37] Western argued that in order for the common employer provisions to apply, there must first be a unionized employer and that the non-union employer must be engaged in associated or related businesses, undertakings or other activities. In support it cited *PCL Construction Holdings Ltd.*⁷ and *Wayne Bus Ltd.*⁸

[38] It argued that at paragraph 56 of *Wayne Bus, supra*, the Board noted that in addition to other criteria, a fourth element to substantiate a common employer situation was that "one of the corporations, partnerships, individuals or associations be a unionized employer either pursuant to an order of the Board or pursuant to a collective agreement". Western argued that the term "unionized employer" was utilized in Section 18 of the *CILRA* and was defined within that *Act*. Therefore, they argued that Section 18 of the *CILRA* can only apply if a unionized employer in existence by virtue of a certification order or by virtue of a voluntary recognition.

[39] Section 18 of the *CILRA* and Section 37.3 of the *Act*, it argued, are remedial provisions which exist to address the erosion of existing bargaining rights. If there are no existing bargaining rights to erode, then there is no labour relations purpose for a common employer declaration. Furthermore, it argued, there is no labour relations purpose to bring Western to the table if and when bargaining rights may be granted to the Union insofar as Merick is concerned.

⁶ [2013] CanLII 47053 (SK LRB)

⁷ *supra*

Merick's arguments:

[40] Merick took no active position on this matter, but was generally supportive of the arguments made by Western.

Union's arguments:

[41] The Union argued that the application for Summary Dismissal was untimely and was filed too late in the proceedings.

[42] It argued that Western was misreading the authorities which it cited in support, being *PCL, supra*, and *Wayne Bus, supra*. It argued that they supported too narrow a view of the term "unionized" as used in the *CILRA*.

[43] It argued that the requirement that there first be a unionized employer would present practical difficulties insofar as the nature of construction jobs often resulted in those jobs being completed before a union could file a common employer application. It argued that there was a "potential" interference with bargaining rights, citing *Amalgamated Transit Union, Local 279, and Ottawa-Careton Regional Transit Commission and Blue Line Taxi Co. Ltd.*⁹ in support of its position.

[44] The Union also argued that if they were required to wait for events to unfold before bringing a common employer application, then, they argued, the Union might be faced with an abandonment defence.

[45] The Union characterized the test for summary dismissal as a case where there is "no hope at all of success". They also argued that the determination here required the determination of a question of law, citing *Nycholat v. Royal Bank of Canada*¹⁰ in support.

⁸ *Amalgamated Transit Union v Wayne Bus*, [1999] Sask. L.R.B.R. 238, LRB File No. 363-97

⁹ 72 di 189, 19 CLRBR (NS) 165, CLRB Decision No. 670

¹⁰ [1997] 9 W.W.R. 66, 156 Sask R. 226 at paragraph 9

Analysis and Decision:

[46] The Union argued that the application for Summary Dismissal was untimely and was filed too late in the proceedings. We do not agree. At paragraph [88] of *IBEW, Local 529 v. KBR Wabi Ltd. et al*,¹¹ the Board says:

...Alternatively, rather than go through the initial step of requesting the determination regarding summary dismissal to be conducted in camera, the parties may, by additional application (Motion), give notice that they wish to raise the issue of summary dismissal as a preliminary matter at the opening of the main hearing of the matter.

[47] Rather than make the application at the hearing of the main matter, Western provided notice of its application at the hearing of these preliminary motions. That application would be in accord with the practice directive given in *KBR Wabi, supra*.

[48] The main prerequisite is that there is no surprise or ambush in the application. Notice was given in advance of the hearing date, *albeit*, a longer notice period would have been preferred. The Union was not even able to have ten (10) days to file its Reply, which it did at the hearing. However, apart from the objection as to timeliness, the Union agreed to proceed with the hearing of the matter on short notice.

[49] We agree with Western that the test for summary dismissal is as set out in our recent decision in *KBR Wabi*¹² In that decision, at paragraph [91], the Board restated the test originally formulated in *Beverly Soles v. Canadian Union of Public Employees, Local 4777*¹³ as follows:

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 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.*

¹¹ *supra*

¹² *supra*

¹³ [2006] Sask LRBR. 413, CanLII 62947, LRB File No. 085-06

[50] The facts which must be proven to establish a common employer situation were formulated by the Board in *PCL Construction Holdings Ltd.*¹⁴ and *Wayne Bus.*¹⁵ In *Wayne Bus, supra*, the Board held that the following factors were necessary to establish a common employer:

- (a) *There must be more than one corporation, partnership or association involved;*
- (b) *These entities must be engaged in associated or related businesses, undertakings or other activities; and*
- (c) *These entities must be under common control or direction.*

[51] In its decision in *PCL, supra* the Board added a fourth element. At paragraph 56, the Board says:

We would add a fourth element that one of the corporations, partnerships, individuals or associations be a unionized employer, either pursuant to an order of the Board or pursuant to a collective agreement. These elements are the same in s. 37.3 of the Act and s. 18 of the CILRA.

[52] In the Board's decision in *Graham Construction and Engineering Ltd. (Re:)*,¹⁶ at paragraph 14, the Board found:

In our view, s. 18 of the CILRA, 1992 governs the question of related employers in the construction industry while section 37.3 of the TUA applies to all other sectors

[53] Since the date of that decision, the provisions of both Section 37.3 of the *Act* and Section 18 of the *CILRA* have been amended so as to make those provisions more in concert. However, the provisions of Section 18 of the *CILRA* are much more extensive than those in section 37.3 of the *Act*. For the purposes of this decision, it is unnecessary, based upon our conclusion with respect to this application, to engage in an extensive examination of the differences and similarities between the two provisions. Suffice it to say that because the *CILRA* is specific legislation governing labour relations in the construction industry, the provisions of that *Act* should govern our examination of applications within the construction industry and outside of the construction industry, Section 37.3 should prevail.

¹⁴ *supra*

¹⁵ *supra*

[54] Nevertheless, there is no substantive difference with respect to the elements which must be proven with respect to a common employer under either the *Act* or the *CILRA* as noted above. It does, however, add some weight to the arguments of Western regarding the term “Unionized Employer”¹⁷ as utilized in the *CILRA* and the requirement for their being at least one unionized employer in existence.

Analysis of the Common Employer Requirements as set out in the Application

[55] For the purposes of this analysis, we will refer to the amended application for certification filed on April 17, 2013 as the “Certification application” and the amended Unfair Labour Practice application filed on that same date as the “ULP application”.

[56] Apart from a reference in the heading of the Certification application which suggests that the application is made under Section 37.3 of the *Act* and Section 18 of the *CILRA*, there is nothing in that application which references any allegations of common employer other than the application names both Merick and Western as employers against whom the application for certification is made.

[57] In paragraph 4b of the ULP application, the Applicant pleads the following:

b) The employer, Western Electrical Management Ltd., is and was at all times material, an employer operating in Saskatoon, Saskatchewan, with offices in Calgary and Edmonton, Alberta.

b.1) The employer, Merick Contractors Inc. is and was at all times material an employer operating in Saskatoon, Saskatchewan, with registered office in Calgary, Alberta, and operating as a related employer with Western Electrical Management Ltd.

b.2) Western Electrical Management Ltd. publicly represents, through its website and otherwise, that its current major projects include the Saskatoon Police Headquarters, and that it is the employer of the employees subject of this application working on that project. In job advertisements for electrical employees, the employer is listed as Western Electrical Management Ltd. Decals employees are given to put on their hard hats, company vehicles, other employer equipment at the worksite bear the Western Electrical Management logo. Safety Booklets are issued to employees by Western Electrical Management Ltd.

b.3) Merick Contractors Inc. is listed as the payor on the paycheques received by employees and is listed on records of employment issued to employees.

¹⁶ [1998] S.L.R.B.D. No. 58, LRB File No. 014-98

¹⁷ See: s. 2(s) of the *CILRA*

Employees have received a memo on Merick Contractors Inc., letterhead from Chris Nicholson, a manager with Western Electrical Management Ltd with information with respect to tools. Employees do not have a contact person from Merick Contractors or telephone or email addresses to contact Merick Contractors apart from the contact information for Mr. Hill or Mr. Nicholson at Western Electrical Management.

*b.4) The applicant submits by reason of the facts herein before set forth Western Electrical Management Ltd. and Merick Contractors Inc. are associated and/or related businesses and constitute a single employer pursuant to s. 37.3 of The Trade Union Act and The Construction Industry **Labour Relations Act, 1992.***

[58] Paragraph 4b simply recognizes Merick as a corporation with offices in Saskatoon. Paragraph 4b.1 does the same insofar as Western is concerned, but adds a conclusion that Western is a related employer. These claims do not assist the Union.

[59] However, paragraphs 4b.2 and 4b.3, if proven, could tend to show that there is more than one entity involved and that these entities may be engaged in associated or related businesses, undertakings or other activities, which would satisfy points 1 & 2 of the *Wayne Bus, supra*, criteria.

[60] There is nothing in the pleadings which would link the two corporations as being under common control or direction so as to satisfy criteria 3. More importantly, there is no allegation of a unionized employer being involved, and, in fact, the application itself discloses that that cannot be the case since it seeks to certify one or both of the entities for collective bargaining purposes.

[61] We agree with the arguments of Western that an application for common employer status cannot take place in conjunction with a certification application of one of the entities in respect of which a common employer declaration is sought. There are no bargaining rights at stake other than those sought by virtue of the certification application.

[62] Common employer provisions are designed to prevent erosion of established bargaining rights. It stands to reason, then, that there must first be rights that are the subject of erosion by virtue of a “double breasting” by an employer. That is the mischief which both Section 37.3 of the *Act* and Section 18 of the *CILRA* seeks to prevent.

[63] For these reasons, we find that the common employer application does not disclose an arguable case and must therefore be dismissed under Section 18(p) of the *Act*.

[64] We do not, by this decision, attempt to determine which of the two entities is the employer of the employees for whom collective bargaining rights have been requested. Based upon the admission made by Merick that it is the employer of the employees, we have ordered the vote to be counted. The Board must also determine the unit of employees appropriate for collective bargaining before an order certifying the Union as the representative of the employees can be made.

[65] Notwithstanding our summary dismissal of the Common Employer application, the Orders made above for production of documents regarding Western shall apply.

DATED at Regina, Saskatchewan, this **27th** day of **August, 2013**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson