The Labour Relations Board
Saskatchewan

SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, Applicant v. CHARNJIT SINGH and 1492559 ALBERTA INC., Respondents

LRB File No. 196-10; January 31, 2013
Vice-Chairperson, Steven Schiefner; Members: John McCormick and Michael Wainwright

For the Applicant: Mr. Larry Kowalchuk
For the Respondents: Mr. Richard W. Elson, Q.C.

SUCCESSORSHIP – Practice and Procedure – Union's application inaccurately identifying new owner of disputed workplace – Alberta company filing reply to Union's application indicating it is new owner – Union granted leave to amend application but declining to do so – Board satisfied that Alberta Company is successor - Because of defect in pleadings, Board not prepared to grant any remedial relief other than declaration of successorship.

SUCCESSORSHIP – Transfer of Business – New owner purchased hotel through a judicial sale in foreclosure proceedings – While seeking out potential purchasers, selling officer appointed by the court kept hotel open for business – Board noting that, at time property sold, hotel was operational but severely distressed – At time new owner took possession, hotel was closed and required extensive repair to reopen – Soon after hotel re-opened, hotel suffered water and structural damage as a result of heavy rainfall – Hotel again required extensive repairs to reopen - Board concludes that, although hotel was severely distressed at time of sale, it continued to represent a functional vessel for hotel business – Board satisfied that essential elements of viable business survived and were transferred to new owner – Board makes declaration of successorship.

The Trade Union Act, Section 37.

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson**: This case involves the labour relations status of a hotel complex located in the City of Swift Current (the "hotel"). In 2010, the hotel was purchased by the current owners through a judicial sale after the previous owners ran into financial difficulty. At the time of the hearing, the hotel was being operated under the flag name of "*Howard Johnson*". In its past, the hotel had been operated under other flags (i.e.: franchise names), including "*Imperial 400*". In 1997, when the hotel was operated as part of the Imperial

400 network, a certification Order[1] was issued by this Board naming the Saskatchewan Joint Board, Retail Wholesale and Department Store Union (the "Union") as the certified bargaining agent for the employees of the hotel.

[2] On December 2, 2010, the Union filed an application with the Board alleging that a violation of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "*Act*") was occurring in relation to the operation of the hotel because the new owner of the facility was refusing to recognize the Union as the exclusive bargaining agent and was failing to comply with the Union's collective agreement. In its application, the Union identified "*Howard Johnson – Charnjit Singh - Owner"* as the employer of the subject employees. On December 13, 2010, 1492559 Alberta Inc. (the "Owner") filed a Reply with the Board indicating that it was the owner of the hotel but disputed that it was a successor to the collective bargaining obligations of the previous owner or that it was bound by the previous certification Order issued by this Board or bound by the Union's collective agreement with the previous owner.

[3] The parties first appeared before this panel of the Board on June 11, 2012. At which time, the application was adjourned and the Union was granted leave to amend its application to name the Owner as the employer in its application. For reasons unclear to the Board, it declined to do so.

[4] The evidence in the Union's application was heard on December 13 and 14, 2012 in Regina, Saskatchewan. The Owner called Jasbir Ghuman, one of the four (4) principals[2] and a director of 1492559 Alberta Inc. The Owner also called Mr. Charnjit (Charn) Singh, the person assigned by the principals of the Owner to oversee the start up and ongoing operation of the hotel. Mr. Singh was neither an owner nor a director of 1492559 Alberta Inc. The Union called Mr. Garry Burkart, the Union's Secretary-Treasurer, Mr. Mark Hollyoak, a staff representative for the Union, and Mrs. Sandra Dyck, the chief shop steward for the disputed bargaining unit.

[5] Oral submissions were heard by the Board on January 7, 2013. The parties also filed written Briefs, which we have read and for which we are thankful.

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[1] See: LRB File No. 014-97.

[2] 1492559 Albert Inc. was owned and controlled by four (4) principals, one of which was Mr. Ghuman.

[6] After having considered the evidence in these proceedings, and the argument of the parties, we are satisfied that neither "*Howard Johnson*" nor "*Charnjit Singh*" is the employer of the employees forming the Union's bargaining unit. Furthermore, neither "*Howard Johnson*" nor "*Charnjit Singh*" has any ownership interest in the hotel. As such, the Union's application must be dismissed. In our opinion, the owner of the hotel and the employer of the subject employees is the Owner (i.e.: 1492559 Alberta Ltd.).

[7] We are also satisfied, based on the evidence, that the Owner is a successor to the collective bargaining obligations arising out of this Board's previous Orders involving this particular workplace. In our opinion, a transfer of a business within the meaning of Section 37 of the *Act* has occurred and the previous Orders of this Board apply to the Owner. However, because the Union declined to name the Owner as a respondent in these proceedings, we decline to grant any other remedial relief.

Facts:

[8] It should be noted that certain evidence in these proceedings was in dispute, including inconsistencies in the recollection of witnesses regarding the content of certain conversations. The findings of fact set forth in these Reasons for Decision are based upon the evidence, both oral and documentary, tendered during the proceedings before the Board. Where a witness has testified in contradiction to the findings of fact set forth in these Reasons, we have discredited that portion of his/her testimony because such testimony was, in our opinion, in conflict with other credible evidence (documentary and/or testimonial). In some cases, we have preferred the testimony of one (1) witness over another because the Board deemed the evidence of the former to be more plausible and/or more reasonable in light of known or undisputed facts. In each case, the test applied by this Board has been the preponderance of probabilities and any testimony that was found to be inconsistent with the preponderance of probabilities (implausible or unreasonable when viewed by a practical and informed person) has been discounted. In doing so, it should be noted that this Board did not find any witness's testimony to be inherently unreliable. However, there were inconsistencies in the testimony of certain witnesses regarding certain conversations that occurred and we have resolved those inconsistencies in our findings of fact.

[9] The hotel is a two (2) story complex comprising 144 hotel suites and including a lobby, office space, swimming pool, recreation area and concomitant parking space. In its day, it

was probably a very impressive facility. However, through the serial neglect of a number of previous owners, the hotel fell into a serious state of disrepair.

[10] In February of 2006, the hotel was acquired by a group of individuals from Edmonton, Alberta, who held the property through a Saskatchewan Corporation bearing the name "*101111253 Saskatchewan Ltd.*" (the "previous owners"). The hotel staff referred to these individuals as the "*boys from Edmonton*" or just the "*boys*". After a rather short tenure operating the facility, the previous owners defaulted on their mortgage and, on September 14, 2009, the Court of Queen's Bench granted the mortgagor's application for foreclosure and Sullivan and Associates (the "selling agent") was appointed by the Saskatchewan Court of Queen's Bench to oversee the sale of the hotel.

[11] The selling agent took possession of the hotel in November of 2009 and described the facility as being in an "*extreme state of disrepair*" and that the hotel was a "*severely distressed property*". At that time, the hotel was being operated under the flag name of "Howard Johnson". As a consequence, the selling agent contacted a representative of Howard Johnson Canada and deposed as to the following information to the Court regarding the condition of the hotel as January 21, 2010[3]:

> 3. *Upon the expiration of the redemption period under the Order Nisi (or very shortly before that date), I had a number of discussions with Glen Blake, the President of Howard Johnson Canada Franchise Systems Limited, which manages the Howard Johnson Hotel franchise network. Glen Blake is familiar with this hotel and its operations and has been involved in dealing with hotel operations. Mr. Blake stated that it was his desire to keep this hotel operating as a Howard Johnson franchise, although the standards of the hotel needed to be vastly improved and the defaults by the Defendant Mortgagee addresse[d]. Upon learning of the foreclosure and sale proceedings, he indicated that he was aware of a number of parties that might have a possible interest in the hotel. He advised that his company had been involved in trying to pair potential buyers of hotels in foreclosure situations and when other operators were looking to sell.*
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> 4. *Glen Blake stated to me very clearly during those discussions that the extreme state of disrepair of the hotel was a very serious detriment to selling the hotel. His recommendation was to spend a great deal of money (approximately $1 million) to improve and renovate a portion of the hotel before the hotel could be sold. The comment made by him was that if that "staging" did not occur, any purchaser would be looking at a severely distressed property, a significant cost of renovations and a long time before the hotel could reach a reasonable operating condition. In effect, a purchaser would be looking at the hotel on a very narrow*

[3] See: Affidavit of Clark Sullivan dated January 21, 2010 filed in *Affinity Credit Union v. 101111253 Saskatchewan Ltd., et. al.*, Q.B.G. No. 1149 of 2009.

view of the "as is" basis with a substantial amount of work required to get it up to a reasonable standard, and would not see the potential for the hotel very clearly, or at a minimum on a very discounted basis.

5. *The Selling Officer is not in a position where it can or would undertake substantial renovations prior to completing a sale as it has to deal with the property in its current state.*

[12] The selling agent also deposed the following information to the Court after personally inspecting the property and speaking with hotel staff regarding the operational status of the hotel:[4]

10. *As a result of the steps that I have taken to inspect the hotel and to deal with the sale proceedings that I was intent upon following, I made contact with certain employees who were involved at the hotel. Very early after the redemption period had expired, problems were being encountered in respect of the operations, which problems were often brought to my attention by telephone calls from hotel employees, and in particular by Sandra Dyck. The first problem occurred when a pump needed to be repaired. Sandra Dyck advised me that the Defendant Mortgagor was not prepared or able to commit to pay an outstanding invoice from the same party that needed to do the repair work and that they would not fund the costs of the repairs. The hotel was at risk of having pipes freeze up, which could cause the pipes to burst, if the pump was not repaired. As Selling Officer I concluded that I had the power to expend some money to pay for those repairs in order to keep the pipes from freezing and to prevent extensive damages if the pipes burst. The total paid out by me for that work was approximately $4,600.00.*

11. *Throughout December, I was contacted several times by Sandra Dyck. Payroll cheques drawn by the owners to the employees were being returned due to insufficient funds in the Defendant Mortgagor's account. I was told that room revenues were only averaging approximately $20,000 per month and that payroll appeared to be around $18,000 per month. I was told that there was not enough money in the company's account to meet the payroll because the payroll cheques were being rejected. Sandra Dyck had no control over what was happening to these room revenues as they were being administered by accountants on behalf of the owners from Edmonton.*

12. *I was faced with the statement at that time that if the employees were not paid, they would stop working, and the hotel would in effect be forced to close without any steps being taken to secure or manage the process. At that time, it was considered necessary to keep the hotel operating to encourage possible offers from interested purchasers. After considerable thought, I agreed that I would utilize the preservatory powers I had under the Order Nisi to cover any payroll cheques that were returned due to insufficient funds.*

13. *I asked Balfour Moss LLP to communicate with the solicitors for the owners that this was not a step taken lightly or voluntarily, nor was it to relieve the Defendant Mortgagor and its directors from the obligations to the employees but was only being done on an emergency basis to preserve the assets for the hotel.*

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[4] Ibid.

14. Since that first time, it has now occurred in respect of three separate pay periods. I have had to pay a total of approximately $23,920.00 to employees as unpaid payroll in efforts to keep the hotel operating at some level.

15. For the last pay period, which was the middle of January, Sandra Dyck advised me that there was enough revenue generated from room rentals that the employee payroll should have been covered, that the money was in the account, but when the employees went to present their pay cheques for clearance, the funds were no longer in the account to be used for the payroll amounts. My concern at that time was that the owners of the hotel had withdrawn the funds or utilized them for other purposes in the expectation that the Selling Officer would once again cover the payroll expenses. Given the circumstances, I advised the employees that would be the last time on which the Selling Officer was included to cover any dishonored payroll cheques in order to preserve the property. It was my opinion that the employer/owners of the hotel were not allowing monies generated from room rental to be applied towards proper expenses of operations. Attached hereto as Exhibit "C" to this my Affidavit is a copy of my letter dated January 18 to Sandra Dyck.

16. Throughout these steps, I continually advised the employees that they were employed by the hotel owner and not by the Selling Officer and that the hotel owner was responsible for their payroll obligations. It was my opinion that I needed to take some steps in order to prevent the closure of the hotel over the Christmas season and early part of January. However, I have now concluded that the owners are taking advantage of that circumstance and I do not consider it reasonable to continue to cover off the failure of the owners in this way.

17. I have also been advised by the franchisor commencing on or about January 26, 2010 that the franchisor was terminating its franchise agreement with the hotel owners because not only were the franchise payments not being made, but the operations of the hotel had deteriorated to such a point that the franchisor felt that the franchise name was being severely harmed, and that the operations in the hotel fell far below the standards expected of a Howard Johnson operation, with the owners not doing anything, in the opinion of the franchise operator, to protect, preserve or meet the franchise standards. Attached hereto as Exhibit "D" to this my Affidavit is a copy of the letter dated January 27, 2010 sent by the franchise system operator.

18. It is my expectation that most of the employees have or will be withdrawing their employment services because they are not being paid. On January 26, 2010 the franchisor advised me that they had become aware that the telephone service to the hotel had been terminated for non-payment to the utility company, and as at the time of preparation of the Affidavit it is my understanding that the telephones continue to remain out of service. It is my further understanding that the franchise operator has taken steps to notify the public generally that the hotel is no longer a Howard Johnson hotel and that it will no longer bear the Howard Johnson name nor operate as part of the Howard Johnson system. That system not only requires certain standards be met, but it also enables advertising and participation internationally as part of the Howard Johnson chain and the access to multi-leveled reservation and processing facilities.

19. It is abundantly clear to me that the hotel will have to close unless other arrangements are being made by the owners.

[13] The selling agent summarized the state of the hotel for the Court as follows:

> *22. The difficulty with respect to this hotel is that it is [in] a terrible state of repair, which state has only gotten worse and which will in my opinion continue to worsen. It is averaging only a few rooms rented on a regular basis, and is not generating enough revenue to cover reasonable operating costs. Only purchasers that are prepared to spend a considerable amount of money (and the franchisor has indicated that it would take at least $1,000,000) to complete renovations, and is prepared to do so while the hotel [is] in effect closed, are going to be interested in the opportunity for the property. Part of the complicating fact is that while the hotel is relatively large, it currently has a very limited operating base that is really only a very few rooms on any given day.*

[14] While the hotel was in the control of the selling agent (from November, 2009 till March 31, 2010), Ms. Sandra Dyck was the most senior employee associated with the facility. As such, she was asked by the selling agent to show the property to any prospective purchasers. Ms. Dyck testified that she showed the property to a number of individuals, including representatives of the Owner. In do so, Ms. Dyck attempted to do two (2) things; firstly, she wanted potential purchasers to see the hotel's potential; and secondly, she wanted to ensure that potential purchasers clearly understand all of the deficiencies in the facility. The property had badly deteriorated under the tenure of a series of previous owners who either willfully neglected the property or who purchased it unprepared for the scope of capital improvements necessary to return the hotel to a reasonable operational status. Ms. Dyck demonstrated pride in the hotel and a clear desire to see it survive. Ms. Dyck felt it was vitally important for any potential purchaser to have a clear picture of the cost and scope of repairs that the hotel required. Ms. Dyck was also proud of the hotel's employees and the trade union that represented them. As such, Ms. Dyck also wanted potential purchasers to know the workplace was unionized and that the employees (and the Union) would cooperate with any new owners to see the facility returned to a reasonable operational status.

[15] Representatives of the Owner inspected the property on December 27, 2009. Ms. Dyck conducted their tour of the facility. We have no doubt that Ms. Dyck did her best to ensure that the representatives of the Owner both saw the potential of the hotel and the extensive repairs necessary to return it to a reasonable operational status. At that time, the hotel was open but the restaurant, swimming pool and recreation areas were all closed. We are also satisfied that Ms. Dyck informed these individuals of the fact the employees of the hotel were represented by the Union.

[16] On January 9, 2010, the Owner made an Offer to Purchase that, subject to a few adjustments not relevant to these proceedings, was ultimately recommended by the selling agent

and approved by Court. Of significant, the Offer to Purchaser included the following provisions dealing with the condition of the property at the time of sale and its operational status:

> *6.1 The Buildings and all included items will be in substantially the same condition at Possession Date as when viewed by the Offeror on <u>December 27, 2009</u>. The operations from the premises may be ceased without affecting the obligations of the Offeror to complete the purchase hereunder.*
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> *. . .*
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> *7.1 The assets are purchased on an as is/where is basis and there are no representations or warranties by the Selling Officer as to the condition of the purchased assets, the state of repair of the purchased assets or the fitness for purpose of the purchased assets of any nature or kind, whether express, implied or construed by law. The Purchaser is responsible for its own review of and due diligence relating to the purchased assets and is not relying upon the Selling Officer in any respect of such matters.*

[17] Following acceptance of the Owner's Offer to Purchase but before the Owner took possession, the hotel closed. At this point in time, the selling agent was unwilling to use any further proceeds from the sale of the property to keep the facility open and the Owner had imposed no condition that they do so. Ms. Dyck testified that by mid-January of 2010, the hotel was being operated by the staff on a cash-only basis. By that time, payroll cheques were not being honoured by either the previous owners or the selling agent. Rather, the employees and suppliers were being paid (at least partially paid) from cash received from room rentals. By mid-February of 2010, this could no longer continue and hotel operations ceased. At this point in time, the hotel had no phone service, many of the employees had not been paid, and only a few of the hotel's room were serviceable (i.e.: were in a condition that could be rented). Also, the Howard Johnson Canada had cancelled their franchise agreement with the previous owners and removed all of the flag signage from the property.

[18] Although no longer employed by anyone associated with the hotel, Ms. Dyck continued to regularly check on the hotel while it was closed and was the Owner's local point of contact both for the hotel and its employees.

[19] Prior to taking possession, the Owner applied for and obtained franchise approval from Howard Johnson Canada and arranged for, among other things, new signage to be delivered to and installed at the hotel.

[20] The Owner took possession of the hotel on April 1, 2010. At this point in time, the hotel had been closed for approximately six (6) weeks. The Owner hired Ms. Dyck and she was instructed to call back the staff to reopen the hotel. Ms. Dyck testified that, when she first got to the hotel, she used her personal cell phone for hotel business because the hotel's phones weren't working yet and she brought her own computer to work, as she had preserved the hotel's supplier lists, payroll information and other system information utilized by the hotel under the Howard Johnson franchise agreement.

[21] Ms. Dyck began calling back the staff as she deemed necessary for the tasks associated with cleaning and preparing the hotel to reopen. Although not instructed to do so by the Owners, Ms. Dyck utilized seniority and called back the employees in accordance with the Union's most recent (albeit expired) collective agreement. In addition, Ms. Dyck also began re-using the payroll system of the previous owners and paid all employees in accordance with the wages set forth in the collective agreement. By utilizing the previous payroll system, union dues were automatically deducted from each employee's paycheques. While these union dues were deducted from employee paycheques, the funds were not transferred to the Union. Rather, the funds merely accumulated in one of the Owner's accounts. Ultimately, these funds were returned to the employees, with interest.

[22] It took the Owner approximately two (2) weeks to reopen the hotel and, even then, only a small percentage of the rooms were suitable for accommodation. Prior to reopening the hotel was inspected by officials from the Cypress Regional Health Authority (i.e.: the local health inspectors), who found problems with most of the hotel's guest rooms. When the hotel reopened on April 15, 2010, only about twenty-four (24) of the hotel's 144 rooms were suitable or acceptable for occupancy. Staff continued work to improve the facility over the next number of months, and by August of 2010, approximately thirty (30) of the hotel's rooms were operational. During this period, the restaurant was open on a limited basis but the swimming pool and recreation areas remained closed.

[23] On or about April 14, 2010, the Union's Secretary/Treasurer contacted Mr. Singh and indicated to him that the Union was the certified bargaining agent for the employees of the hotel and that it had various documents for the Owner. Mr. Singh replied that the Union's documents could be delivered to him at the hotel. Thereafter, the Union directed its

correspondence to Mr. Singh at the hotel. It appears that Mr. Singh did not relay these documents to the Owner.

[24] Soon after the hotel reopened, representatives of the Union attended to the facility and attempted to speak with Mr. Singh regarding union business. On each occasion, Mr. Singh indicated he was too busy to speak with the Union's representatives but hoped to have time later to do so. The representatives of the Union recognized that it was very busy at the hotel during this period and did not press the matter at that time.

[25] Unfortunately, in June and/or July of 2010, the Swift Current area experienced severe weather, including very heavy rainfalls. During this period, the hotel began experiencing water damage from a leaking roof. The water damage accumulated to the extent that, in August of 2010, the health inspectors closed the facility pending extensive repairs. At this point, the Owner was required to repair the roof and remediate water-related, structural damage to most of the hotel. The hotel remained closed for repairs until November of 2010. During this period, in addition to the structural repairs, the Owner was either required or decided to replace most of the furniture, beds and bedding in the hotel. When the hotel reopened in November of 2010, notwithstanding the extensive repairs and other improvements, only sixty (60) of the hotel's 144 rooms were suitable or acceptable for occupancy and the restaurant, swimming pool and recreation areas all remained closed. On the other hand, the sixty (60) upgraded rooms were substantially improved from that which was there before.

[26] In February of 2011, the Owner leased the operation of the restaurant and the lessee reopened the restaurant in June of 2011.

[27] Mr. Singh testified that, when the Owner took over the property, the hotel was dilapidated; that it had no customers; and that there were received no accounts receivable or even a customer list. Mr. Singh didn't think the hotel's computer was even working. In Mr. Singh's opinion, the Owner received absolutely no good will when it acquired the property and, but for the large sums of money invested by the Owner, the hotel would not; could not; have reopened. Mr. Singh indicated that the depreciation and damage to the hotel was so severe that, even with all the money that the Owner has invested in the property, by the time of the hearing, only a portion of the hotel's room were approved for occupancy.

[28] When the hotel was closed in August of 2010, the Owner laid off most of its employees. However, a few employees were retained to clean up and repair the hotel. When the hotel was reopened in November of 2010, the Owner laid off all but one (1) of the employees that had worked to clean up and repair the hotel. Mr. Singh testified that, at least initially, family members of the Owner were used to operate the facility. Mr. Singh indicated that, when the hotel reopened in November of 2010, it did not have enough money to hire staff. Later, however, other individuals were hired. At the time of the hearing, only one (1) member of the Union's bargaining unit was employed by the Owner and the hotel was being operated almost entirely with new staff.

Argument of the Parties:

[29] The Union argued that *The Trade Union Act* had been violated in a number of ways, including a failure to recognize the Union as the certified bargaining agent of the employees; a failure to deduct and remit dues to the Union; a failure to comply with the collective agreement; and a failure to bargain collectively with the Union. The Union noted that the Owner appeared to voluntarily recognize the Union when it first took possession of the hotel and that it utilized the skill and expertise of the members of the bargaining unit to repair and reopen the hotel until November of 2010. The Union argued that the Owner altered its position in November of 2010 and thereafter refused to recognize the Union and decided to use non-union employees to do the work of members of the bargaining unit. The Union argued that the Owner's conduct was indicative of an anti-union animus because it exploited the Union's members when the Owner needed them to repair and reopen the hotel but abandoned them and denied their collective bargaining rights when the Owner felt that they were no longer required. The Union asked the Board to note that it was the hard work, skill and effort of the employees that helped save the business and took the position that the Owner should not now be allowed to take advantage of those same employees by discarding them because the Owner feels they are no longer necessary.

[30] The Union took the position that it is irrelevant that the transfer occurred through foreclosure proceedings. To which end, the Union asked the Board to note that the hotel was still open when it was sold to the Owner and that it was, for all intents and purposes, being operated as the same business after it reopened. The Union argued that, although depreciated, the essence of the business being conducted by the pervious owner remained intact and was transferred to the Owner. To which end, the Union argued that the circumstances of the present

application are very similar to the circumstances in *Hotel Employees and Restaurant Employees, Local 767 v. 603195 Saskatchewan Ltd.*, [1995] 25 C.L.R.B.R. (2s) 137, LRB File Nos. 125-94, 130-94 & 131-94, wherein the Board made a finding of successorship.

[31] The Union asked this Board to find that the Owner was a successor within the meaning of s. 37 of the *Act*, to make a declaration that the Owner is bound by this Board's previous certification Orders and the Union's collective agreement with the previous owner, and to find that the Owner has violated ss.11(1)(c) and 32 of the *Act* for failing to recognize the Union and for failing to remit Union dues when required to do so.

[32] The Owner argued it was not a successor within the meaning of s. 37 of the *Act* and thus it was not bound by this Board's previous certification Orders or the Union's collective agreement with the previous owner. Simply put, the Owner argued that there was no "life" left in the former business when it acquired the hotel from the selling agent. The Owner argued that the previous owner essentially abandoned the hotel when it ran into financial difficulties and noted that there had been a significant hiatus in the operations of the respective businesses. The Owner also pointed to the poor physical and operational condition of the hotel and argued that it was not reasonable for the Board to conclude the life of its present business could have been drawn from the previous owner of the hotel. The Owner argued that most of the typical indicators of successorship were not present in this case. For example, the Owner noted the lack of transfer of any good will or branding from the previous owner, as well as the lack of any transferred obligations, accounts receivable or ongoing consultation services.

[33] In support of its position, the Owner relied upon two (2) decisions of this Board; firstly, *International Woodworkers of America, Local 1-184 v. Regina Design Millwork Ltd.*, [1981] 2 Can L.R.B.R. 353, Sask. Labour Report, May 1981, p. 42, LRB File No. 344-80; and secondly, *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Marriott Canadian Management Services Limited*, (1988) Sask. Labour Report, Fall 1988, p. 69, LRB File No. 029-88. The Owner argued that both of these cases supported its position that it was not a successor within the meaning of s. 37 of the *Act* and asked that the Union's application be dismissed.

Relevant Statutory Provisions:

[34] The relevant provision of *The Trade Union Act* is s. 37, which reads as follows:

> *37(1) Where a business or part thereof is sold, leased, transferred or otherwise disposed of, the person acquiring the business or part thereof shall be bound by all orders of the board and all proceedings had and taken before the board before the acquisition, and the orders and proceedings shall continue as if the business or part thereof had not been disposed of, and, without limiting the generality of the foregoing, if before the disposal a trade union was determined by an order of the board as representing, for the purpose of bargaining collectively, any of the employees affected by the disposal or any collective bargaining agreement affecting any of such employees was in force the terms of that order or agreement, as the case may be, shall, unless the board otherwise orders, be deemed to apply to the person acquiring the business or part thereof to the same extent as if the order had originally applied to him or the agreement had been signed by him.*
> *(2) On the application of any trade union, employer or employee directly affected by a disposition described in this section, the board may make orders doing any of the following:*
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> *(a) determining whether the disposition or proposed disposition relates to a business or part of it;*
> *(b) determining whether, on the completion of the disposition of a business, or of part of the business, the employees constitute one or more units appropriate for collective bargaining and whether the appropriate unit or units will be:*
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> *(i) an employee unit;*
> *(ii) a craft unit;*
> *(iii) a plant unit;*
> *(iv) a subdivision of an employee unit, craft unit or plant unit; or*
> *(v) some other unit;*
>
> *(c) determining what trade union, if any, represents a majority of employees in the unit determined to be an appropriate unit pursuant to clause (b);*
> *(d) directing a vote to be taken among all employees eligible to vote in a unit determined to be an appropriate unit pursuant to clause (b);*
> *(e) amending, to the extent that the board considers necessary or advisable, an order made pursuant to clause 5(a), (b) or (c) or the description of a unit contained in a collective bargaining agreement;*
> *(f) giving any directions that the board considers necessary or advisable as to the application of a collective bargaining agreement affecting the employees in a unit determined to be an appropriate unit pursuant to clause (b).*

Analysis:

[35] As we indicated at the outset, this case involves the labour relations status of a hotel complex located in the City of Swift Current. In its application to the Board, the Union alleged that either or both "*Howard Johnson*" or "*Charnjit Singh*" were the successors to the collective bargaining obligations imposed by this Board on the previous owners of the hotel. After having considered the evidence in these proceedings and the argument of the parties, we are satisfied that neither the corporation properly known as, Howard Johnson Canada Franchise

Systems Limited ("*Howard Johnson Canada*"), nor the individual known as Mr. Charnjit Singh, are the employer of the employees forming the Union's bargaining unit. Furthermore, neither Howard Johnson Canada nor Mr. Singh has any ownership interest in the hotel. For this reason, the substance of the Union's application must be dismissed.

Who is the Current Owner of the Hotel and the Employer of its Employees?

[36] Prior to the commencement of the hearing, the Owner (an Alberta registered corporation bearing the name, 1492559 Alberta Ltd.) filed a Reply with the Board to the Union's application and admitted therein that it was the owner of the hotel. However, as indicated, the Union neglected or declined to amend its application to add the Owner as a party. As a consequence, we find ourselves bound by the limits of the Union's pleadings. While we are satisfied that we have authority to make a determination as to whether or not the Owner is a successor[5], we are not satisfied that we have authority to grant any other remedial relief against the Owner. If we do have such authority, under the circumstances we decline to exercise it.

[37] At the conclusion of the hearing, the Union asked that we utilize the remedial authority set forth in s. 19 of the *Act* to amend its application to merely add the Owner as a Respondent. In our opinion, doing so would represent a breach of natural justice and an inappropriate use of s. 19. In coming to this conclusion, we note that the Owner admitted in its Reply that it purchased the hotel pursuant to a judicial sale and that it was the current owner of the disputed facility. The Owner's Reply was filed with the Board on December 10, 2010 and a copy was provided to the Union at that time. Six (6) months prior to the hearing, the parties appeared before the Board and the Union was granted leave to amend its Reply to add the Owner as a respondent, yet it declined to do so. No evidence was tendered during the hearing that anyone other than 1492559 Alberta Inc. was the owner of the hotel, including either Howard Johnson or Mr. Singh. Rather, the singular issue for the Board during the hearing was whether or not the Owner was a successor within the meaning of s. 37 of the *Act* and thus bound by the collective bargaining obligations imposed by this Board on the previous owner of that facility. Also, the Board noted at the outset of the hearing that the Union had not amended its application, with Counsel indicating that the Union felt it did not need to do so.

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[5] In *Robert Flaman v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada & Western Automatic Sprinklers (1983) Ltd.*, [1989] Spring Sask. Labour Rep. 45, LRB File No. 45-88, the Board concluded that s.37 of The Trade Union Act applies to a successor employer irrespective of whether or not that employer acknowledges it is bound by a previous certification Order of the Board or the Board makes a determination to that effect.

[38] While we are satisfied that we have authority to make a determination on the issue of successorship, we are not satisfied that we have authority to grant any other remedial relief against the Owner. While this Board has been granted not-insignificant authority in s. 19 of the *Act* to cure irregularities and technical defects in proceedings before us, in our opinion it would be an inappropriate use of this authority to amend the Union's application in the fashion it suggests at this stage in the proceedings. On several occasions, this Board has stated its expectation that applicants bear the responsibility to ensure that their pleadings are reasonably precise and that alleged violations are plead with reasonable particularity. See: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. WaterGroup Companies Inc.,* [1993] 1st Quarter Sask. Labour Rep. 252, LRB File No. 009-93; *United Food and Commercial Workers, Local 1400 v. P.A. Bottlers Ltd.*, [1997] Sask. L.R.B.R. 249, LRB File No. 017-97; and *Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers, et. al. v. Construction Workers Union (CLAC), Local 151, et. al.* [2012] 212 C.L.R.B.R. (2d) 134, LRB File Nos. 162-10, 163-10 & 164-10. In our opinion, an applicant bears the onus of identifying the alleged offending party with reasonable precision and, as here, where the identity of the appropriate respondent was disclosed prior to the start of the hearing, it is not for the Board to cure an applicant's defective pleadings, particularly so when leave was granted by the Board for the Union to amend its application but it declined to do so.

Is the Owner a successor to the Collective Bargaining Obligations imposed upon Previous Owner?

[39] Having considered the evidence presented in these proceedings and the arguments of Counsel, we are satisfied that the Owner is a successor to the collective bargaining obligations arising out of this Board's previous Orders involving this particular workplace. In our opinion, a transfer of a business within the meaning of Section 37 of the *Act* has occurred and the previous Orders of this Board apply to the Owner. However, it should be noted at the outset that the circumstances of the present application are close to the line.

[40] Successorship in labour relations is a legislative creation that provides for the transfer of collective bargaining obligations from the owner of a certified business to another party upon the disposition of that business or a part therein. Without legislative intervention, changes in the ownership of a business would generally have the effect of undermining and/or dislocating the collective bargaining rights of the employees of that business. However, thanks

to specific provisions in labour legislation, collective bargaining rights now tend to survive and flow through changes in the ownership of a business (provided there is some sense of continuity of that "business"). Through legislative intervention, it is the "business", not a particular employer to which the collective bargaining rights are seen to have attached and, if that business ends up in the hands of a new owner, previous collective bargaining obligations tend to flow with the transaction through to that new owner.

[41] Like so many other areas of labour legislation, the statutory provisions dealing with successorship are policy laden and represent an attempt to balance competing interests; in this particular case, the right of owners to freely dispose of their property and the expectation of employees that their collective bargaining rights will have some reasonable permanency irrespective of changes in ownership of their workplace. The legislative rationale for s. 37 of Saskatchewan's *Trade Union Act* was succinctly stated by the Board in *Hotel and Restaurant Employees, Local 767 v. 603195 Saskatchewan Ltd.*, (1995) 25 C.L.R.B.R. (2d) 137, [1994] 3rd Quarter, Sask. Labour Rep. 136, LRB File Nos. 125-94, 130-94 & 131-94, at 139:

> *Section 37 of The Trade Union Act provides for a transfer of collective bargaining obligations when a business or part of a business changes hands. It represents an effort on the part of the legislature to safeguard the protection which employees have achieved through the exercise of their rights under the Act, when the enterprise in which they are employed is passed on as a result of negotiations or transactions in which they have no opportunity to participate. The protection provided by Section 37, however, does not apply to all cases where an employer disposes of his business, and the determination as to whether the means by which a business has changed hands brings the new entity under the obligations which flow from Section 37 is often a matter of some complexity.*

[42] In determining whether or not a new owner is a successor within the meaning of s. 37 of the *Act*, it is not necessary that we find there has been a transfer of a business in the strict legal sense. Rather, it is apparent that the legislature intended that we look at the transaction through a different lens; a lens that examines the practical effect of the transaction rather than its technical or legal form. In *United Brotherhood of Carpenters and Joiners of America, Locals 1805 and 1990 v. Cana Construction Co. Ltd. et al.*, [1985] Feb. Sask. Labour Rep. 29, LRB Nos. 199-84, 201-84, 202-84 & 204-84, the Board made the following comment, at 37:

> *In order to determine whether there has been a sale, lease, transfer or other disposition of a business or part thereof, the Board will not be concerned with the technical legal form of the transaction but instead will*

> *look to see whether there is a discernable continuity in the business or part of the business formerly carried on by the predecessor employer and now being carried on by the successor employer.*

[43] As this Board noted in *Canadian Union of Public Employees Local 1975-01 v. Versa Services Ltd.*, [1993] 1st Quarter Sask. Labour Rep. 174, LRB File No. 170-92, there is no exact criteria or checklist for determining whether or not a transfer of obligations has taken place within the meaning of s. 37. Rather, labour relations boards across Canada, including this Board have resigned themselves to the fact that such determinations must be made in the context of the facts of each particular case but always with a view to determining whether there has been a transfer of a business (or part thereof) rather than merely the disposition of a collection of surplus assets; with the former giving rise to successorship but not the latter.

[44] The challenging nature of this determination has been repeatedly recognized by this Board. In many of our decisions, the Board has referred with approval to the following well-known statement on the concept of successorship from the Ontario Labour Relations Board in *Canadian Union of Public Employees v. Metropolitan Parking Ltd.*, [1980] 1 Can. L.R.B.R. 197, 1979 CanLII 815 (ON. LRB):

> *A business is a combination of physical assets and human initiative. In a sense, it is more than the sum of its parts. It is a dynamic activity, a going concern, something which is carried on. A business is an organization about which one has a sense of life, movement and vigour. It is for this reason that one can meaningfully ascribe organic qualities to it. However intangible this dynamic quality, it is what distinguishes a business from an idle collection of assets...*
>
> . . .
>
> *This distinction is easily stated, but the problem is, and has always been, to draw the line between a transfer of a business, or a part of a business and the transfer of incidental assets or items. In case after case the line has been drawn, but no single litmus test has ever emerged. Essentially the decision is a factual one, and it is impossible to abstract from the cases any single factor which is always decisive, or any principle so clear and explicit that it provides an unequivocal guideline for the way in which the issue shall be decided. Thus, an apparent continuity of the business may not be significant if the alleged successor has already been engaged in the business, or has set up a new business which resembles the old one in many respects.*

[45] Numerous successorship cases have demonstrated a number of factors that have been considered by various labour boards to help in making this determination, including: the presence of any legal or familial relationship between the predecessor and the new owner; the acquisition by the new owner of managerial knowledge and expertise through the transaction;

the transfer of equipment, inventory, accounts receivable, customer lists and existing contracts; the transfer of goodwill, logos and trademarks; and the imposition of covenants not to compete or to maintain the good name of the business until closing. While the presence of any of these factors can be indicative of successorship, their absence is often considered inconclusive. Labour boards have also considered factors such as the perception of continuity of an enterprise; whether or not the employees have continued to work for the purchaser; whether or not these employees are performing the same work; and whether or not the previous management structure has been maintained or if there has been a commonality of directors and other officers. If the work performed by the employees after the transfer is substantially similar to the work performed prior to the transfer, an inference of continuity can be drawn. Similarly, Labour boards have also considered whether or not there has been a hiatus in production or a shutdown of operations. Depending upon the industry, the longer a property lays dormant, the more difficult it is to draw an inference of continuity. Of course, this list is not exhaustive of the factors that may be considered, and, depending upon the situation, certain factors will be given more import than others. This concept was stated by the Board in *Versa Services Ltd. v. C.U.P.E., supra*, as follows:

> *No list of significance, however, could ever be complete; the number of variables with potential relevance is endless. It is of utmost importance to emphasize, however, that none of these possible considerations enjoys an independent life of its own; none will necessarily decide the matter. Each carries significance only to the extent that it aids the Board in deciding whether the nature of the business after the transfer is the same as it was before, i.e. whether there has been a continuation of the business.*

[46] In the end, the vital consideration for the Board is whether or not the effect of the transaction was to put the transferee into possession of something that could be considered a "going concern"; something distinguishable from an idle collection of surplus assets from which the new owner has organized a new business. To make a finding of successorship, the Board must be satisfied that the new owner acquired the essential elements of a business or part thereof; something of a sufficiently dynamic and coherent quality to be considered a going concern; and that the said business interest can be traced back to the business activities of the previous certified owner. In making this determination, this Board has cautioned that the test is not whether the business activities of the new owner resemble the previous certified business; but whether or not the business carried on after the transaction was <u>acquired from</u> the certified employer. See: *JKT Holdings Ltd. v. Hotel Employees and Restaurant Employees, Local 767*,

[1990] 5 C.L.R.B.R. (2d) 316, LRB File No. 149-89. Tracing the business interest back to the previous owner is essential to a finding of successorship as this Board has rejected the proposition that, once a trade union becomes certified at a particular location for a particular type of work, anyone who subsequently opens a similar business at those premises is automatically a successor within the meaning of s. 37 of the *Act*. See: *United Steelworkers of America v. A-1 Steel & Iron Foundry Ltd., et. al.*, [1985] Oct Sask. Labour Rep. 42, LRB File No. 001-85.

[47] Difficult cases can arise when the economic elements of the business have been damaged while in the hands of previous owners, or where there has been a significant hiatus in business activities, or where the assets of the business have been heavy depreciated or neglected. In such cases, the issue for the Board is whether or not the business has survived long enough to be acquired by the new owner. In these cases, by definition, we tend to be dealing with businesses that have been bruised and battered. We are not examining healthy patients and, like a triage physician, the penultimate question is whether or not the patient continued to have a "*beating heart*" during the transfer. This proposition was well-stated by then Chairperson Bilson in *Hotel Employees and Restaurant Employees, Local 767 v. 603195 Saskatchewan Ltd. (Victoria Inn)*, [1995] 25 C.L.R.B.R. (2d) 137, 1994 Sask. Labour Report, 3rd Quarter, 136, LRB File Nos. 125-94, 130-94 & 131-94:

> *The fact that the business is in a slightly bruised and battered state does not, in our opinion, alter that conclusion. The Board has in the past held, for example, that insolvency or the interposition of a receiver do not prevent a finding that a later enterprise is a successor; see, for example, Diogenes Investments Ltd. and Sask. Joint Board, R.W.D.S.U., Sask. L.R.B. (File No. 072-83); Regina Design Millwork Ltd. and I.W.A., Local 1-184, Sask. L.R.B (File No. 344-80)[reported [1981] 2 Can LRBR 353]; West-Can Photo & Graphic Supply and Sask. Joint Board, R.W.D.S.U., Sask. L.R.B. (File No. 034-85). As the Board said bluntly in the Headway Ski decision, supra, "the fact that a business is losing money does not in itself mean it is not 'a business'".*

[48] In the present case, there can be no doubt that the economic elements of the hotel were distressed and the building was dilapidated when acquired by the Owner. The poor physical and operational condition of the hotel, together with the fact it was acquired through foreclosure proceedings, are factors that the Owner argued were indicative that the business of the previous owner came to an end resulting in the transfer of nothing more than a mere collection of assets as was found to be the case in *Regina Design Millwork, supra*. On the other hand, just because a business is in distress and the assets of that business are heavily depreciated, does not necessarily mean that it has not survived long enough to be transferred to

the new owner. Depreciation is a factor in pricing and a heavily depreciated asset can still provide the vessel for the essential elements of a viable business. The question we face in the present application is whether or not there continued to be a viable business interest associated with the hotel (a "*beating heart*", if you will) when that facility was transferred to the Owner. Or put another way, is it reasonable to conclude that the business now conducted by the Owner at the hotel resulted from the rehabilitation and resurrection of the previous owner's business or did the Owner organize a new, parallel business out of the ashes of the previous owner's surplus assets?

[49] Firstly, we note that there was no evidence of any legal or familial relationship between the predecessor and the Owner. The principals of the Owner were independent business men, interested in investing in new business opportunities. None of the principals of the Owner had any previous hotel experience. Rather, they were guided by an advisor to consider purchasing the hotel as a business investment. The straightforward goal of the Owner was to acquire the hotel while it was in a depreciated state, repair and upgrade the facility, and then flip it for a profit. The Owner did not purchase any managerial expertise or knowledge from the previous owners. On the other hand, judging by the financial state and poor physical condition of the hotel, it was not apparent that the previous owners had any managerial expertise or knowledge to transfer. Such as there was managerial knowledge or expertise at the hotel, it appeared to reside with Ms. Sandra Dyck and Howard Johnson Canada. While we note that the Owner hired Ms. Dyck and entered into a franchisee agreement with Howard Johnson Canada, it is debatable whether it can be said that the Owner acquired this expertise from the previous owner. In this regard, we note that there was no provision in the Offer to Purchase to ensure the retention of either Ms. Dyck (and/or any other staff) or the franchise rights with Howard Johnson Canada. On the other hand, neither the principals of the Owner nor Mr. Charnjit Singh brought any previous knowledge or experience in the management of a hotel to the transaction.

[50] Although the hotel was closed when the Owner took possession on April 1, 2010, we note that it was operational when the Offer to Purchase was made and accepted. The selling agent kept the hotel open and encroached upon the proceeds of the sale to do so. The selling agent paid for the replacement of a pump that was essential to the operation of the hotel and also agreed to cover the payroll on at least one occasion. It is apparent from these actions that the selling agent's goal was to market more than just an idle collective of surplus hotel assets. Nonetheless, by the time the Owner took possession, the hotel had been closed for several

weeks and there were no guests, no customer lists and no accounts receivable. In addition, a not-insignificant amount of repair and capital investment was required before the facility could be reopened. Even when it was reopened in April of 2010, the hotel was structurally vulnerable to severe weather and, within months, it had to be closed again for more repairs and more capital investment. There can be no doubt that the patient was battered and bruised when in came into the Owner's possession.

[51] However, notwithstanding the poor physical condition of the hotel, we have concluded that the Owner acquired more than an idle collection of surplus assets. In our opinion, the Owner acquired the essential elements of a business when it acquired the hotel. While undoubtedly the facility was in need of major refurbishment when it was transferred, it nonetheless continued to be the vessel for the essential elements of a viable business. We take notice of the fact that it is not uncommon for some businesses to close while the assets that support that business undergo a major refurbishment. In which case, the issue for the Board is whether or not the business is the kind of business that can survive a temporary shutdown. We are satisfied that a hotel is that kind of business.

[52] In coming to this conclusion, we noted that the business activities carried on at this workplace are essentially the same as that carried on by the previous owner; it is a hotel bearing the Howard Johnson flag. Other than a substantial improvement in quality, the change in ownership would have been largely imperceptible to customers once the hotel reopened. The employees were performing essentially the same work after the transfer and the business is providing essentially the same services as that of the previous owner. In this respect, it may well be that the goodwill of the business was rooted, not in the economic state of the business or in the condition of the assets, but rather in the fact that it was a hotel at a particular location and thus the Owner tended to inherit the hotel's old customers once it reopened.

[53] Furthermore supporting our conclusion, we note that the selling agent took steps to preserve the business, not just the assets, while the hotel was in his possession and did so until it was purchased by the Owner. It is apparent that the selling agent was marketing more than an idle collection of assets.

[54] In our opinion, the facts of the present case are sufficiently similar to the facts before this Board in the *Victoria Inn* case[6], *supra*, to be guided by the findings therein. In that case, a company acquired a hotel in Regina through foreclosure proceedings. The relevant facts where summarized as follows:

> *Counsel for 603195 Saskatchewan Ltd. argued that the company initially made a straightforward business investment, and that when they took possession of the property after the foreclosure proceedings, they did not acquire anything which could be called a business. They did not have access to the customer lists or completed reservations of the former owners, the notional "goodwill" of that enterprise was of questionable, or perhaps negative, value, and the building itself had no noteworthy or unique qualities.*
>
> *In giving evidence, Mr. Nicolle stated firmly that the company had no intention of "getting into the hotel business," and that their role throughout was simply that of investors. In our view, though the nature of the transaction by which a new entity is created is of some relevance in assisting the Board to decide whether the situation falls within the scope of Section 37, the intention of the putative successor employer is not a determining factor. Regardless of the intentions of preferences of Mr. Nicolle and his colleagues, they ceased to be mere investors, and by May 25, they were in the hotel business.*
>
> *At the time when 603195 Saskatchewan Ltd. acquired the mortgage in the fall of 1993, it seems likely that the intention of the company was simply to make a promising investment. There are, of course, a number of ways in which the promise of this investment might have been fulfilled. One of these was that the hotel operated by Fairway Hotels Ltd. would get back on its feet financially and be able to perform its commitments under the mortgage, which 603195 Saskatchewan Ltd. had acquired at a considerable discount. Another possibility would be that the numbered company would be able to sell the mortgage to another party at some sort of a profit.*
>
> *The means by which the numbered company chose to try to realize its expectations, however, was by instituting foreclosure proceedings against Fairway Hotels Ltd. It is true that these proceedings related to the premises and contents which secured the mortgage acquired in September of 1993. As Mr. Nicolle acknowledged, however, the current value of the investment was closely linked to whether the property could be presented as a viable enterprise. When the numbered company therefore proceeded to actually foreclose on the mortgage, they assumed possession, not only of an empty building, but of an entity which they have tried to make the basis of a business operation.*

[55] In the *Victoria Inn* case, *supra,* the Board found that the respondent company was a successor within the meaning of s. 37 of the *Act* for the following reasons:

> *In spite of the admitted difficulties which lay in their path, 603195 Saskatchewan Ltd. was able to put into operation, within a period of twenty-four hours, a business which was a hotel, as the previous business occupying the premises*

[6] *603195 Sask. Ltd. v. H.E.R.E., Local 767, supra*

> *had been. All of the elements of the hotel business now in place under the International Inn name are drawn from the previous business which operated as the Victoria Inn, with the exception of the expertise of Mr. Pritchard. There is no evidence that 603195 Saskatchewan Ltd. brought any of the tangible or intangible components of a hotel with it, or that it acquired these elements from anywhere else. Without such evidence, the only reasonable conclusion which can be drawn is that all of the essential elements of the current hotel business have been acquired from the certified predecessor. The numbered company was able to rely on the knowledge of the public and of previous customers of the operation of a hotel of a particular kind in that particular location to engender what business they have been able to cultivate. The numbered company may have entered the picture merely as an investor, at several removes from the actual operation of the business. Through the foreclosure proceedings, however, it is our view that they did acquire a business, which they decided to keep in operation, and that they are a successor within the meaning of Section 37 of The Trade Union Act.*

[56] Having considered the evidence in these proceedings, we are satisfied that purchase of the hotel placed the Owner into possession of the essential elements of a business and that business is traceable back to the business activities of the previously certified owner of that workplace. In our opinion, it is more reasonable to assume that the business being conducted by the Owner at the hotel resulted from the repair and resurrection of the business activities of the previous owner rather than from the organization of a new, parallel business by the Owner. In this regard, while the Owner made large financial investments in the facility, we have noted that neither the principals of the Owner nor Mr. Singh had any previous hotel experience. In our opinion, because of the lack of hotel expertise that the Owner brought to the transaction, it is more reasonable to infer that they acquired more than an idle collection of assets when they bought the hotel; they acquired the essential elements of the business (albeit a bruised and battered business).

[57] Simply put, we are satisfied that, notwithstanding the distressed state of the business and the depreciated state of the assets, the hotel continued to be a functional vessel for the economic activities of a hotel business when it was transferred to the Owner. Notwithstanding its bruised and battered state, the business of the hotel continued to have a beating heart when it was acquired by the Owner and it is from this source that the Owner drew the economic life for its new business venture. Because of these findings, we are satisfied that the facts of this case are distinguishable from the facts before the Board in both *Regina Design Millwork, supra*, and *Marriott Canadian Managements Services, supra*.

Conclusion:

[58] For the foregoing reasons, we are satisfied that the Owner is a successor to the collective bargaining obligations arising out of this Board's previous Orders involving this particular workplace. In our opinion, a transfer of a business within the meaning of Section 37 of the *Act* has occurred and the previous Orders of this Board apply to the Owner. The Union's certification Order shall be amended accordingly.

[59] For the reasons stated above, we decline to grant any of the other remedial relief sought by the Union.

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

LABOUR RELATIONS BOARD

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Steven D. Schiefner,
Vice-Chairperson