SASKATCHEWAN JOINT BOARD RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, Applicant v. SASKATOON CO-OPERATIVE ASSOCIATION LIMITED, Respondent and UNITED FOOD AND COMMERCIAL WORKERS' UNION, LOCAL 1400, Intervenor

LRB File No. 081-14; September 10, 2014
Chairperson, Kenneth G. Love, Q.C.; Members: Greg Trew and Maurice Werezak

For the Applicant:	Larry Kowalchuk
For the Employer:	Kevin Wilson, Q.C.
For the Intervenor Union:	Drew Plaxton

Successorship – Co-op purchases former Safeway store through a stepped transaction involving Sobeys Canada Limited and Federated Co-ops – Former Safeway store closes and re-opens as a Co-op store within 36 hours – Board reviews criteria used to determine successorship – Successorship found.

Appropriate Unit – Employer and Intervenor union argue that a unit comprised of employees of former Safeway store would not be appropriate. Unit created would be an island without bargaining power operating in the shadow of a much larger unit represented by the Intervenor. Board considers arguments and finds that single store unit is an appropriate unit for collective bargaining in this context.

Successorship – Intervenor and Employer argue that closure of a grocery store one month after the purchase of grocery store operated by Safeway creates a successorship in favour of Intervenor union. Board considers arguments, but dismisses them.

Successorship – Board reviews its authority to "otherwise order" that the provisions of the Act related to successorship not apply – Board finds that such authority should not be used unless there is a valid labour relations purpose for so doing. Board considers factors in this case and finds no valid labour relations purpose.

Vote of Employees – Board considers whether in circumstances of this case if a vote among employees should be ordered. On consideration of relevant facts, Board declines to order vote.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Q.C., Chairperson:** Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, (the "Union") was certified as the bargaining agent for a unit of employees of Canada Safeway Limited ("Safeway") by an Order of the Board dated November 25, 1991.

[2] On or about May 13, 2013, Safeway and Sobeys Inc. ("Sobeys") concluded a transaction in which all, or substantially all, of the assets of Safeway, which included 213 retail grocery stores in Canada, were sold to Sobeys. The Competition Bureau reviewed the transaction pursuant to *The Competition Act*[1] and required Sobeys to divest 23 Grocery Stores throughout Canada,[2] including one (1) store in Saskatoon, Saskatchewan and one (1) in Regina, Saskatchewan.

[3] The Saskatchewan grocery stores which Sobeys was required to divest were:

Regina
3801 Albert Street

Saskatoon
8th Street and Circle Drive – 3310 8th Street East (the "Circle Store")

[4] On February 13, 2014, the Competition Bureau approved the divestiture of 22 of the 23 grocery stores that were required to be divested, which included five (5) Sobeys branded stores, one (1) IGA branded store, and eight (8) Safeway branded stores sold to Federated Co-operatives Limited ("Federated"). The grocery stores sold to Federated included the two (2) Saskatchewan Stores referenced above.

[5] Federated then sold the Circle Store to the Saskatoon Co-operative Association Limited (the "Co-op") by an agreement dated February 12, 2014. The Union then applied to the

[1] R.S.C. 1985 c. C-34
[2] See the Position Statement issued by the Competition Bureau on October 22, 2013

Board alleging that the Co-op was the successor to Safeway pursuant to Section 37 of *The Trade Union Act* (the *"Act")*[3] by an application filed on April 24, 2014.

[6] The Intervenor was certified to represent employees of the Co-op at its places of business throughout Saskatchewan by Order of this Board dated November 7, 2002. It claimed that it was entitled to represent the former Safeway employees when that location was purchased by the Co-op by virtue of that certification Order.

[7] The Intervenor also claimed to represent the employees of the Circle Store by virtue of a successorship that they argued arose upon the closure of the Co-op location at 2500 - 8th Street E. in Saskatoon (the "Greystone Store").

Decision:

[8] At the conclusion of the hearing held on August 1, 2014, the Board provided the parties with an oral decision which recognized that the Co-op was the successor to Safeway. The Board issued an Order amending the Union's November 25, 1991 Order to name the Co-op as the Employer in place of Safeway. The Board also issued an Order amending the Intervenor's existing Order with the Co-op to exclude the Circle Store location from the scope of the Intervenor's Order. These are the Reasons for that decision. The decision was a majority decision with member Werezak dissenting from these Reasons.

Applicable Law:

[9] All of the parties to the proceeding took the view that the provisions of the *Act* should govern these proceedings. We concur with counsel in that respect. The events at issue occurred primarily prior to the proclamation of *The Saskatchewan Employment Act*[4] on April 29, 2014. The Retail Asset Purchase Agreement was entered into between the parties on February 12, 2014, event though the closing of the transaction did not occurred until May 13, 2014, following the approval for the transaction to proceed given by the Canada Competition Bureau relating to the disposition of the Circle store from Sobeys to Federated who then flipped it to the Co-op.

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[3] *The Trade Union Act, R.S.S. 1978 c. T-17*
[4] S.S. 2013 c. S-15.1

Relevant statutory provision:

[10] Relevant statutory provisions provide 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.*
>
> *37(2) On the application of any trade union, employer or employee directly affected by a disposition described in this section, the board may make orders doing any of the following:*
>
> > *(a) determining whether the disposition or proposed disposition relates to a business or part of it;*
> >
> > *(b) determining whether, on the completion of the disposition of a business, or of part of the business, the employees constitute one or more units appropriate for collective bargaining and whether the appropriate unit or units will be:*
> >
> > > *(i) an employee unit;*
> > > *(ii) a craft unit;*
> > > *(iii) a plant unit;*
> > > *(iv) a subdivision of an employee unit, craft unit or plant unit; or*
> > > *(v) some other unit;*
> >
> > *(c) determining what trade union, if any, represents a majority of employees in the unit determined to be an appropriate unit pursuant to clause (b);*
> >
> > *(d) directing a vote to be taken among all employees eligible to vote in a unit determined to be an appropriate unit pursuant to clause (b);*
> >
> > *(e) amending, to the extent that the board considers necessary or advisable, an order made pursuant to clause 5(a), (b) or (c) or the description of a unit contained in a collective bargaining agreement;*
> >
> > *(f) giving any directions that the board considers necessary or advisable as to the application of a collective bargaining agreement affecting the employees in a unit determined to be an appropriate unit pursuant to clause (b).*

Issues to be determined:

[11] At the outset of the hearing, the parties were requested to address two (2) issues in addition to the successorship issue before the Board. These were, in the event that a successorship were found, should the Board "otherwise order" that the successorship not apply pursuant to the authority granted to the Board by s. 37(1) of the *Act*, and in that event, should a vote be ordered by the Board pursuant to s.37(2)(d) of the *Act*. The Union and the Co-op also raised an issue regarding an alleged successorship based upon the closure of the Co-op's Greystone Store.

[12] In their submissions to the Board, the parties identified the following issues:

a) Is the Co-op the successor to Safeway pursuant to s. 37 of the *Act*?

b) If so, is a unit comprised of the employees of the Circle store an appropriate unit of employees for the purposes of s. 2(a) of the *Act.*

c) Should the Board use its discretion under s. 37(1) of the *Act* to "otherwise order" that the successorship not apply?

d) Should the Board order a representational vote among the employees in the appropriate unit regarding their representation, for the purposes of collective bargaining?

e) Did a successorship in favour of the Intervenor arise upon the closing of the Greystone Store by the Co-op on June 14, 2014?

Has a successorship occurred?

[13] A clearer case for the application of s. 37 to the facts of this situation would be difficult to find. The former Safeway store and gas bar at the Circle store closed, signage was removed, Safeway branded products were removed, and, after new signage was installed and Co-op branded products added to the store, the store and gas bar re-opened as a Co-op grocery store and gas bar in less than 36 hours.

[14] The Asset Purchase Agreement between Federated and the Co-op clearly links the transactions back to the acquisition of the stores from Safeway, along with the requirement that this store, among others, was required to be divested by Sobeys to gain approval from the

Competition Bureau. For example, Federated gave numerous representations and warranties to the Co-op in respect of which they would have had to rely upon Sobeys, who in turn would have to rely upon Safeway to perform.

[15] There was a seamless transfer of the store and gas bar from Safeway (as distinct from either Sobeys or Federated) to the Co-op. It operated one day as a Safeway and emerged transformed in about 1 ½ days[5] as a Co-op. It was never branded as a Sobeys or as a Federated store in the interim.

[16] There was also, for example, a Non-Solicitation Agreement[6] in the Asset Purchase Agreement wherein Sobeys and its affiliates (which would include the other Safeway stores in Saskatoon operating under the Safeway banner after being purchased by Sobeys) "shall not, for a period of two years after Closing, conduct any marketing campaign using Sobeys Club Card or Club Safeway cardholder information to reach specific customers who have used a Sobeys Club card or Safeway card at any of the stores within six (6) months prior to Closing". This covenant was directly from Sobeys and included within the transaction between Federated and the Co-op.

[17] Numerous other provisions of the Asset Purchase Agreement support this conclusion. One of these is clause 6.2(g). One of the conditions for the benefit of the Vendor (Federated) is that the "sale by the Vendor and the purchase by the Purchaser are conditional upon the Vendor completing the purchase of the Purchased Assets…".

[18] The existence of a unionized workplace, and specifically the representational rights of the Union, were specifically referenced in the Asset Purchase Agreement[7]. Specifically, the Co-op was required to recognize the collective agreement between Safeway and the Union.

The Board's jurisprudence concerning successorship:

[19] The Board recently reviewed its jurisprudence regarding successorship in *RWDSU and Charnjit Singh*[8] and *United Steel Workers Union, Local 1-184 and Edgewood Forest Products Inc.*[9] At paragraph [40] of its decision in *Charnjit Singh*, the Board described successorship in the following terms:

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[5] The Circle Store reopened as a Co-op store on May 14, 2014.
[6] See clause 5.10 of the Asset Purchase Agreement
[7] See clause 5.7 and Schedule 3.1(r)
[8] [2013] CanLII 3584 (SKLRB)
[9] [2012] CanLII 51715 (SKLRB)

> *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.*

[20] In *Canadian Union of Public Employees v. Metropolitan Parking Ltd.,*[10] the Ontario Labour Relations Board described the concept of successorship in the following terms:

> *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...*

[21] In its determination of whether a successorship has occurred, the Board routinely examines a number of factors. These include 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. In *Versa Services Ltd. v. Canadian Union of Public Employees,*[11] the Board referenced the Ontario Labour Relations Board decision in *Re: Culverhouse Foods Ltd.*[12] In *Versa Services,* the Board adopted these words from that decision:

> *In each case the decisive question is whether or not there is a continuation of the business...the cases offer a countless variety of factors which might assist the Board in its analysis;among other possibilities the presence or absence of the sale or actual transfer of goodwill,a logo or trademark, customer lists, accounts receivable, existing contracts, inventory ,covenants not to compete, covenants to maintain a good name until closing or any other obligations to assist the*

[10] [1979] CanLII 815 (ONLRB), [1980] Can. L.R.B.R. 197
[11] [1993] 1st Quarter Sask. Lab. Rep 174, LRB File No. 170-92
[12] [1976] O.L.R.B. Rep. Nov. 691

> *successor in being able to effectively carry on the business may fruitfully be considered by the Board in deciding whether there is a continuation of the business. Additionally, the Board has found it helpful to look at whether or not a number of the same employees have continued to work for the successor and whether or not they are performing the same skills. The existence or non-existence of a hiatus in production as well as the service or lack of service of the customers of the predecessor have also been given weight. No list of significant considerations, 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 [sic] before, i.e. whether there has been a continuation of the business.*

[22] The Board has often referred to the concept of successorship as determining if, as described by former Chairperson, Sherstobitoff in *R.W.D.S.U. v. Pauline Hnatiw,*[13] the new business "drew its life" from that of the predecessor. That concept has also often been referred to as the Board making a determination of whether or not the "beating heart" of the business has been transferred.[14]

[23] In this case, a fully functional business (the Safeway store) was transferred, through Sobeys and Federated, to the Co-op. It functioned as a Safeway until the closing date on May 13, 2014 and immediately thereafter reopened as a Co-op grocery store. The same was true of the accessory gas bar. The transition was seamless with one business closing and the other opening. Good will was preserved and Sobeys agreed not to solicit customers of the Circle Store for a period of two (2) years. All of the inventory of the Safeway store[15] was purchased by the Co-op. All of the employees who were formerly employed by Safeway were retained by the Co-op in accordance with the terms of the Asset Purchase Agreement. It was the same store, with the same inventory, with the same employees, in the same location, conducting the same business. Without question, this is a successorship to which s. 37 would apply.

[24] The Co-op argued that if a successorship were found, that that would result in an operational issue for the Co-op insofar as it was Co-op policy to encourage employees to bid on

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[13] LRB File No. 190-80
[14] See *United Steel Workers Union, Local 1-184 v. Edgewood Forest Products,* [2012] CanLII 51715 (Sask LRB); *Applicant v. Charnjit Singh,* [2012] CanLII 51715 (Sask LRB); *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, Local 179 v. Monad Industrial Contractors* Inc., [2013] CanLII 83710 (SK LRB); *C.U.P.E. v. Athabasca Health Authority Inc.,* [2007] CanLII 68933 (SK LRB).
[15] Other than Safeway branded items

jobs at other locations closer to their homes or to work with former supervisors or other Co-op employees. They argued that having another union in what was previously a harmonious workplace would result in disruption and/or isolation of employees at the Circle Store location.

[25] With respect, we do not agree with the Co-op in this regard. We will deal with this issue more in the Reasons regarding appropriateness of the unit, but in the context of intermingling, this Board has dealt with that issue in *United Food and Commercial Workers Union, Local 1400 v. Affinity Credit Union.*[16] While not always desirable, it can, nevertheless, be accommodated. While in that case, the intermingling was between union and non-union employees, it is, in our view, possible to negotiate provisions within the collective agreements to provide for transfers between locations notwithstanding the differences in representation.

[26] The Co-op also led evidence that it was unusual to have more than one (1) bargaining unit (apart from health care and other governmental organizations) certified to one employer. In support, it relied upon *United Food and Commercial Workers Union v. Shelly Western.*[17] In that case, however, while expressing its views regarding the desirability of two (2) certified units within one workplace, the Board, rather than ruling on the issue, declined to make a determination and dismissed the application.

[27] Additionally, the *Shelly Western* case dealt with two (2) units which co-existed within the same workplace. That would not be the case here as only employees represented by the Union will work at the Circle store and gas bar.

[28] The creation of the two (2) units within the Co-op occurred as a result of the operation of the provisions of the s. 37 of the *Act*. It was not an unexpected event as it was clearly contemplated in the Asset Purchase Agreement. It was something that the Co-op had prior knowledge that a finding of successorship was a possibility and they had the opportunity to plan for such eventuality. It may well be an inconvenience for the Co-op, but it was clearly an inconvenience which they contemplated and covenanted to accept as a part of their purchase transaction.

Is a Unit Composed of the Employees of the Circle Store an Appropriate Unit?

[29] The Board has often cautioned that in determining what is an appropriate unit, it is not necessary that the unit be the most appropriate unit or the most optimal unit, only that it be

[16] [2010] CanLII 13388 (SKLRB), LRB File No. 135-09

an appropriate unit for collective bargaining. We accept that a single store unit composed of the Circle store is an appropriate unit.

[30] In *Canadian Union of Public Employees v. The Board of Education of the Northern Lakes School Division No. 64,*[18] the Board said at page 117:

> *The Board has always been reluctant to deny groups of employees access to collective bargaining on the grounds that there are bargaining units which might be created, other than the one which is proposed, which would be more ideal from the point of view of collective bargaining policy. The Board has generally been more interested in assessing whether the bargaining unit which is proposed stands a good chance of forming a sound basis for a collective bargaining relationship than in speculating about what might be an ideal configuration.*

[31] There was evidence lead that the creation of a unit of employees at the Circle store would create an "island" surrounded by a sea of other stores represented by the Intervenor. There was evidence of a difference in pay rates and terms in the collective agreement between the Union and the Intervenor. There was evidence that there would be a lack of mobility for employees in the Circle unit and that the Co-op would be restricted in its ability to assign other bargaining unit employees to that unit and *vice versa*. Additionally, there were different group benefit plans covering the members of the Union as distinct from the plans covering the Intervenor's members.

[32] It was also argued that a single store unit, in this context, would have limited bargaining strength insofar as a strike threat by employees of this unit would have limited impact without the support of the Intervenor's unit of employees.

[33] In *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. O.K. Economy Stores (a division of Westfair Foods Ltd.),*[19] the Board summarized the test for determining the appropriateness of a bargaining unit as follows:

> *This does not mean that large is synonymous with appropriate. Whenever the appropriateness of a unit is in issue, whether large or small, the Board must examine a number of factors assigning weight to each as circumstances require. There is no single test that can be applied. Those factors include among others: whether the proposed unit of employees will be able to carry on a viable collective bargaining relationship with the employer; the community of interest shared by the employees in the proposed unit; organizational difficulties in particular industries; the promotion of industrial stability; the wishes or agreement of the parties; the*

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[17] [1980] Nov. Sask. Labour Rep. 38, LRB File No. 166-80
[18] [1996] Sask. L.R.B.R. 115, LRB File No. 332-95
[19] [1990] Fall Sask. Labour Rep. 64, LRB File No. 264-89

> *organizational structure of the employer and the effect that the proposed unit will have upon the employer's operations; and the historical patterns of organization in the industry.*
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> *The Board recognizes that there may be a number of different units of employees which are appropriate for collective bargaining in any particular industry. As a result, on initial certification applications a bargaining unit containing only one store may be found appropriate. That finding does not rule out the existence of other appropriate units and, accordingly, on a consolidation application, a larger unit may be found appropriate. There is no inconsistency between the initial determination of a single store unit with a municipal geographic boundary and a subsequent determination that a larger unit is appropriate.*

[34] Utilizing those factors, we can acknowledge that an island unit of employees at the Circle store is less than ideal and would not, without the assistance of the larger intervenor unit, (if such assistance were possible) have a great deal of bargaining strength. Nevertheless, a strike at that location could provide some inconvenience to the Co-op and would have some impact.

[35] The Co-op, in their evidence, seemed to be disenchanted with the methodology whereby the Union bargained versus the bargaining methodology of the Intervenor. While professing to be neutral insofar as the determination of which union should represent the employees at the Circle store, it was clear that the Co-op would prefer the Union they knew, rather than the union it did not know.

[36] There is, however, no impediment to collective bargaining at the Circle store between the Union and the Co-op. The Union has a long history of representing members employed by Co-operatives throughout the province. The evidence showed that the Union represented employees in numerous locations throughout the province. This would provide context and background to the union in their negotiations with the Co-op. In our opinion, there is no impediment to the Union carrying on a viable collective bargaining relationship with the Co-op.

[37] Should a lack of strength in bargaining become an issue, the employees would have the option of joining the larger group of employees represented by the Intervenor. That is their choice to do in accordance with the provisions of the *Saskatchewan Employment Act.*[20] That would be their choice and is a fundamental tenement of both the *Act* and Part VI of *The Saskatchewan Employment Act.*

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[20] Which *Act* has now replaced *The Trade Union Act*

[38] On the question of community of interest being shared within this unit, it is, we believe, clear that the employees in the Circle store, having been represented for years by the Union, does not have a close community of interest with the other employees of the Co-op. There are differences between the units in seniority, benefits, and other collective bargaining terms. Conveniently, the Union's collective bargaining agreement is currently open for negotiation and the Union has provided notice to the Co-op to bargain revisions to the collective agreement.

[39] The biggest issue in respect of the creation of a unit of employees at the Circle Store is the promotion of industrial stability. While this is not normally a big issue in determination of the appropriateness of a bargaining unit, the past history of the Union and the Intervenor make it an issue in this case. There is extensive history between the two unions related to raids between them in the formation of the Intervenor in the late 1970's.[21]

[40] The catalyst for those early raids, the Union's website states, was the disaffiliation of the Union from the Canadian Labour Congress, the result of which was that it lost its protection from being raided by other unions. That factor is no longer in play, so, while the employees are free to change their union representation, it is unlikely that another union such as the Intervenor would actively assist in that process, so as to give rise to the change being categorized as a raid on the Union, given that the Union is now a member of the Canadian Labour Congress, and thereby enjoys some protection from raiding.

[41] Another factor to be considered is the wishes or agreement of the parties. Clearly, the Asset Purchase Agreement contemplated that the Union would continue to represent the employees at the Circle Store. This factor must also be considered in respect to the organizational structure of the Co-op and its impact on the Co-op. However, as noted above any impact on the Co-op was agreed to by the Co-op in the Asset Purchase Agreement. They knew that there was a clear possibility (perhaps even likelihood) that the Union would continue to represent the employees at the Circle Store. The Co-op agreed that the employees would continue to be represented by the Union.

[42] Weighing all the factors mentioned in *Sterling Newspapers*, we are of the opinion that a unit comprised of the employees of the Circle Store is both a viable and appropriate unit for collective bargaining.

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[21] See the History of the RWDSU on the Union's website

Should the Board use its discretion under Section 37(1) of the *Act* to "otherwise order" that the successorship not apply?

[43] In *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-184 v. Cabtec Manufacturing Inc.,*[22] the Board utilized its discretion granted by s. 37.3 of the *Act* to "otherwise order" that the provisions of s. 37.3 should not apply in that fact situation. In that case, the Employer acknowledged that the criteria normally utilized by the Board for finding common control and direction were satisfied. However, the Board concluded that a related employer designation under that provision was not appropriate.

[44] Notwithstanding that decision, the Board has not, to our knowledge, utilized its discretion pursuant to s. 37(1) to determine that a successorship, once found, would not be deemed to apply to the person acquiring the business or part thereof. The purpose of s. 37 is to preserve and protect bargaining rights obtained by a union from being interrupted or withdrawn as the result of a sale of the business. However, s. 37(1) provides the Board with some discretion to "otherwise order" that the certification order or the collective agreement not be deemed to apply to the new owner.

[45] We agree with Chairperson Seibel, as expressed in *Amalgamated Transit Union, Local 588 v. City of Regina and Wayne Bus Ltd.,* in respect to s. 37.3 of the *Act*, that the Board should not exercise its discretion unless a valid and sufficient labour relations purpose will be served.

[46] There is nothing unusual in the factual context here which, in our opinion, would be a valid and sufficient labour relations purpose that would be served by making such an order. The Co-op argued that the impact of the successorship to the Co-op would result in operational difficulties. These factors have already been considered above and do not, in our opinion outweigh the legitimate expectations of the Union who would expect its representational rights to be respected in accordance with the policy established by s. 37. As well, the terms of the Federated/Co-op Asset Purchase Agreement specifically recognized the Union's rights under s. 37 and the Co-op undertook to honour the collective agreement between the Union and Safeway.

[22] [2008] CanLII 47035 (SK LRB), LRB File No. 153-07

[47] The Co-op and the Intervenor also argued that the employees in the Circle Store would be better served if they were a member of the larger Intervenor union. Again, we have dealt with these arguments above and find no merit to them.

Should the Board order a representational vote among the employees in the appropriate unit regarding their representation for the purposes of collective bargaining?

[48] Had the Board found a justification for an order that the successorship provisions not apply, s. 3 of the *Act* would, we think, require that a representational vote be held to determine if the employees at the Circle Store would wish to join the Intervenor unit or remain on their own.

[49] We posed this question to the parties as noted above. The Union argued that no vote was necessary in these circumstances. The Union also argued that the Board should not re-test the employee's associational rights just because the name of the Co-op had changed on successorship.

[50] The Intervenor also argued against the ordering of a vote. In the alternative, it argued that if a vote were to be ordered that the vote should be conducted among all of the employees within both the Union's bargaining unit and the Intervenor's bargaining unit.

[51] The Co-op suggested that there were (4) four options the Board could consider. These were:

1. Order a vote of all employees as suggested by the Intervenor in its alternate argument.

2. Hold no vote, but determine that the former Safeway employees should be "swept in" to the larger Intervenor unit.

3. The Board should "otherwise order" that the successorship not apply and, without taking the position that the Circle Store automatically falls within the Intervenor's bargaining unit, that on a "without precedent" basis, the Co-op would agree that it does.

4. The Board could consider that there are overlapping successorships resultant from the closure of the Greystone Store and the Board could

otherwise order that the Union's successorship rights do not continue, favouring the Intervernor's successorship.

[52] To order a vote among the employees of the larger Intervenor unit and the employees in the Union's bargaining unit presumes that the Board would conclude that the Intervenor unit is the most appropriate unit for collective bargaining. We have not come to that determination.

[53] Additionally, it is not the Board's practice to conduct a vote among an aggregate unit when, as a result of a successorship, a formerly represented group of employees or an unrepresented group of employees is "swept in" to another unit. In order to recognize the employee's s. 3 rights under the *Act* and their Charter Rights of association, the Board would order a vote only among those employees who are proposed to be "swept in" to the unit. That would be a vote only among the former Safeway employees in this scenario. Because we have come to the conclusion that the Co-op is the successor to Safeway and the unit of employees is appropriate, no vote is necessary.

[54] Option two as suggested by the Co-op is also not a desirable option for the reasons set out above. The Board recognizes the right of employees to choose their bargaining representative and would not unilaterally sweep them into a unit without their choice.

[55] Since we have determined that we will not "otherwise order" that the successorship not apply, the Co-op's third option does not need to be considered.

[56] For the reasons which follow, we have determined that there was no overlapping successorship and accordingly, the Co-op's fourth option does not need to be considered.

Did a successorship in favour of the Intervenor arise upon the closing of the Greystone Store by the Co-op on June 14, 2014?

[57] The Intervenor, and the Co-op, to some extent, argued that the closure by the Co-op of its Greystone Store on June 14, 2014 should be recognized as a successorship in favour of the Intervenor in respect to the Circle Store. For the reasons which follow, we find that there was no successorship arising as a result of the closure insofar as the Circle Store was concerned.

[58] The foremost concern about this argument is that the closure of the Greystone Store occurred a month following the acquisition of the Circle Store from Federated. Successorship rights, as noted above, had already occurred in favour of the Union at that date. Those successorship rights cannot be superceded by this event.

[59] It is telling as well, that the Co-op took care not to intermingle employees that were displaced at the Greystone Store, by placing any of those employees in the Circle Store. Rather, they worked with the Intervenor to place all of the displaced employees at other Co-op stores represented by the Intervenor, including a newly opened location in Warman, Saskatchewan.

[60] Additionally, while the Circle Store had a pharmacy, the Co-op directed all of its pharmacy records from the Greystone Store to its store at 511 Wellman Crescent in Saskatoon, rather than to the Circle Store. The Gas Bar and convenience store operated in association with the grocery store at the Greystone Store, remained open, so none of that business was transferred to the Circle Store.

[61] There was no evidence that any inventory was transferred to the Circle Store from the Greystone Store. Nor was there any evidence of the transfer of any other assets from the Greystone Store to the Circle Store. This store closed and its business was transferred among the other Co-op locations in Saskatchewan operated by the Co-op, with the exceptions noted above with respect to pharmacy records and the gas bar and convenience store.

[62] The closure of the Greystone Store did not give rise to a successorship. The employees were transferred to other locations at which they were represented by the Intervenor and continued to be represented by the Intervenor for the purposes of collective bargaining. The Warman location also opened in June, 2014 arguably partially in substitution for the closure of the Greystone Store.

[63] Accordingly, based upon the principles outlined above, we are unable to conclude that there was a successorship in favour of the Intervenor in respect to the Circle Store upon the closure of the Greystone Store.

[64] This is a majority decision. Member Werezak dissents from these Reasons. Reasons for his dissent will follow.

DATED at Regina, Saskatchewan, this **10th** day of **September, 2014.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson