Editor's Note: Corrigendum released December 2, 2014. The original of the following Reasons for Decision of the Saskatchewan Labour Relations Board was corrected with text of the corrigenda appended.

Saskatchewan
Labour Relations Board

PRAIRIE ARCTIC REGIONAL COUNCIL OF CARPENTERS, DRYWALLERS, MILLWRIGHTS; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1985; INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, LOCAL UNION NO. 771; and CONSTRUCTION AND GENERAL WORKERS UNION, LOCAL NO. 180; Applicants v. ELLISDON CORPORATION; ELLISDON ENERGY SERVICES INC.; ELLISDON INDUSTRIAL SERVICES INC.; GOLDERADO CONTRACTING CORP.; SILVERADO SITES SERVICES LTD.; 1630959 ALBERTA LTD.; ELLISDON INC.; ELLISDON CIVIL LTD.; ELLISDON CONSTRUCTION SERVICES INC.; ELLISDON CONSTRUCTION LTD.; AND PME INC.; Respondents, and CONSTRUCTION WORKERS UNION (CLAC), LOCAL 151, Intervenor

LRB File Nos. 195-13, 196-13, 263-13, 264-13, 275-13 & 171-14; November 25, 2014.
Vice-Chairperson, Steven D. Schiefner; Members: Maurice Werezak and Joan White

For the Construction and General Workers' Union, Local 180 and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union No. 771:	Mr. Gary Caroline.
For the Prairie Artic Regional Council of Carpenters, Drywallers, Millwrights and Allied Workers and United Brotherhood of Carpenters and Joiners of America, Local 1985:	Mr. Drew S. Plaxton.
For EllisDon Corporation:	Mr. Larry F. Seiferling, Q.C.
For EllisDon Industrial Services Inc., EllisDon Energy Services Inc., Golderado Contracting Corp., Silverado Site Services Ltd. and 1630959 Alberta Ltd. and PME Inc.:	Mr. Hugh McPhail, Q.C.
For EllisDon Inc., EllisDon Civil Ltd., EllisDon Construction Services Inc. and EllisDon Construction Ltd.:	Mr. Kevin Wilson, Q.C.
For the Construction Workers Union (CLAC), Local 151:	Mr. Richard F. Steele

PRACTICE AND PROCEDURE – Particulars – Applicant trade unions name eleven different corporations as respondents in successorship/common employer applications – Trade unions seek particulars from named respondents – Board reviews jurisdiction to compel a respondent to provide particulars and its expectation as to extent of particularization required by a respondent in a Reply – Board notes that some respondents failed or neglected to file Replies – Board directs these respondents to file Replies – As to the Replies

that had been filed, Board satisfied that respondents either commented on or denied each of the material element of complaints set forth in application of the trade unions – Board not satisfied that particulars required from these respondents.

PRACTICE AND PROCEDURE – Information and Production of Documents – Applicant trade unions name eleven different corporations as respondents in successorship/common employer applications – Trade unions seek information and production of documents from named respondents – Board reviews jurisdiction to compel a respondent to produce documents and provide information – Board directs respondents to provide some but not all of the information desired by trade unions and to produce some but not all of the documents desired by the trade unions.

Saskatchewan Employment Act, ss. 6-103 & 6-111.

REASONS FOR DECISION – PRELIMINARY MATTERS

Background:

[1] **Steven D. Schiefner, Vice-Chairperson:** These Reasons for Decision deal with a number of issues related to pre-hearing procedures of the Board. The first issue involves this Board's authority to require the respondent employers to provide "*particulars*" and our expectations as to the level of particularization that respondents must include in their Replies. The second issue involves the authority of this Board to require the respondent employers to provide "*information*", either in the form of lists of information or answers to interrogatories. A collateral issue is the scope and application of solicitor-client privilege to certain information desired by the applicants. The balance of the issues involves our determinations with respect to the not-insignificant list of information and documents desired by the applicant trade unions in these proceedings.

[2] The applicant trade unions are the Prairie Artic Regional Council of Carpenters, Drywallers, Millwrights and Allied Workers and the United Brotherhood of Carpenters and Joiners of America, Local 1985 (hereinafter collectively referred to as the "Carpenters") together with the Construction and General Workers' Union, Local 180 (the "Labourers') and the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union No. 771 (the "Ironworkers"). The respondent employers fall into three (3) different groups. The first group is represented by Mr. Seiferling and includes EllisDon Corporation. The second

group is represented by Mr. McPhail and includes 1630959 Alberta Ltd., PME Inc., Golderado Contracting Corp., Silverado Site Services Ltd., EllisDon Industrial Services Inc. and EllisDon Energy Services Inc. The third group is represented by Mr. Wilson and includes EllisDon Inc., EllisDon Civil Ltd., EllisDon Construction Ltd., and EllisDon Construction Services Ltd.

[3] By way of background, in 1975, the Carpenters were certified by this Board to represent their typical craft unit of employees employed by Ellis-Don Limited in the Province of Saskatchewan. In 1979, the Ironworkers were certified by this Board to represent their typical craft union of employees employed by Ellis-Don Limited in the Province of Saskatchewan. In 1975 and in 1976, the Labourers were certified by this Board to represent their typical craft unit of employees employed by Ellis-Don Limited; firstly in northern Saskatchewan, and then also in southern Saskatchewan. In all of these certification orders, the named employer is "*Ellis-Don Limited*".

[4] Through applications bearing LRB File Nos. 195-13 and 196-13, the Carpenters seek to amend their certification Order to have that Order name and apply to all of the respondent employers. Through application being LRB File No. 263-13, the Ironworkers seek to amend their certification Order to have that Order name and apply to Mr. Seiferling's client and Mr. McPhail's clients but not Mr. Wilson's clients. Through application being LRB File No. 264-13, the Labourers seek to amend their certification Orders in the same fashion as that desired by the Ironworkers.

[5] In summary, the applicant trade unions collectively allege that all (or at least some) of the named respondents are part of one (1) large corporate enterprise involving numerous inter-related divisions. The applicant trade unions allege that the entire corporate enterprise is the successor to the business interests in Saskatchewan that were previously conducted by Ellis-Don Limited. As such, the applicant trade unions allege that the respondent corporations are successors to the collective bargaining obligations arising out of their respective certification Orders and seek to amend their certification Orders to reflect the occurrence of this successorship. In the alternative, the applicant trade unions allege that the respondent corporations operate under common direction and/or control. It is further alleged that the corporate structure used by the named respondents was created for the purpose or is being used to avoid the collective bargaining rights enjoyed by the Carpenters, the Ironworkers and the Labourers for work done in Saskatchewan. As such, the applicant trade unions ask this Board to

name the respondent corporations as common employers (also now as "spin-off" corporations in the construction industry) with Ellis Don Limited and/or its successor(s).

[6] EllisDon Corporation has filed Replies to each of the Carpenters' applications (LRB File Nos. 195-13 & 196-13) and the applications of both the Ironworkers (LRB File No. 263-13) and the Labourers (LRB File No. 264-13). To paraphrase these Replies, EllisDon Corporation, Mr. Seiferling's client, disputes that it is a successor to the business activities previously conducted by Ellis-Don Limited in Saskatchewan but, for the most part, it does not object to the amendments desired by the Carpenters, Labourers or Ironworkers to include it as a named employer in their respective certification Orders.

[7] The balance of the named respondent employers, namely Mr. Wilson's clients and Mr. McPhail's clients, wholly resist the applications of the unions. Most, but not all, have filed Replies to the applications of the trade unions.

[8] The Replies filed by 163059 Alberta Ltd. to all of the applications contain essentially the same information:

> 1. *This reply is made by 1630959 Alberta Ltd. of 8402 – 116 Street, Fort Saskatchewan, Alberta, T8L 0G8 780-992-2265*
> 2. *With respect to the said application:*
> *(1) The following statements are specifically admitted:*
> *(a) This respondent was first incorporated in 2011.*
> *(2) The following statements are specifically denied:*
> *(a) This respondent denies all allegations in the complaint except where admitted and puts the applicant to strict proof of the matters alleged.*
> *(b) This respondent specifically denies that it is an associated or related business, undertaking or activity that is carried on under common control or direction with EllisDon Limited or any other company with EllisDon in its name with bargaining rights in Saskatchewan, if any, and denies the unspecified vague allegation of a successorship from entities unspecified but supposedly Ellis-Don Limited.*
> *(c) This respondent denies that the various companies in the EllisDon group of companies are in reality one enterprise. There are a variety of businesses ultimately owned by the parent corporation with a variety of union relationships and activities.*
> 3. *The following is a concise statement of the material facts which are intended to be relied upon in support of this Reply:*
> *(a) This respondent is an employer performing work in Saskatchewan as part of a larger contract with Enbridge that covers work in other provinces. It is the employer of the employees affected by the application for certification of the Construction Workers Union Local 151.*

(b) The shares of this respondent are owned by Golderado Contracting Corp. which is a company with a long-standing union relationship with the Christian Labour Association of Canada.

(c) The ongoing business activities of this respondent have never eroded and do not erode any bargaining rights held by the applicants with any of the EllisDon companies in Saskatchewan.

[9] The Replies filed by Silverado Site Services Ltd. to all of the applications contain essentially the same information:

1. *This reply is made by Silverado Site Services Ltd. Address 5009 47 Street Lloydminster, Saskatchewan 780-992-2265*
2. *With respect to the said application:*
   (1) The following statements are specifically admitted:
      (a) EllisDon Civil Ltd. purchased the pre-existing and operating PME group of companies in July of 2012. The ultimate owners of the PME group of companies at that time were Earlyn and Mervyn Pidherney and the key man operating those businesses was at that time Gil Brulotte. His employment continued after the transaction. Those companies included these two respondents.
   (2) The following statements are specifically denied:
      (a) This respondents deny all allegations in the complaint and puts the applicant to strict proof of the matters alleged.
      (b) These respondents specifically deny that either is an associated or related business, undertaking or activity that is carried on under common control or direction with Ellis-Don Limited or any other EllisDon company, if any, with bargaining rights in Saskatchewan, and denies the unspecified vague allegation of a successorship which is totally lacking in particulars.
      (c) These respondents deny that the various EllisDon companies are in reality one enterprise. There are a variety of businesses ultimately owned by the parent corporation with a variety of union relationships.
   (3) The following is a concise statement of the material facts which are intended to be relied upon in support of this Reply:
      (a) Silverado has carried on business in Alberta since 2004. It is a civil/earthworks contractor and has never employed carpenters or pipefitters in Saskatchewan. It has never had any union affiliations. PME Inc. is a management company that does not employ tradesmen and has never done business in Saskatchewan and is not registered to carry on business in Saskatchewan.
      (b) The ongoing business activities of these respondents have never eroded and do not erode any bargaining rights held by the applicant unions with any of the EllisDon companies in Saskatchewan.

[10] The Replies filed by Golderado Contracting Corporation to all of the applications contain essentially the same information:

1. *This reply is made by Golderado Contracting Corporation, 8402 – 116 Street, Fort Saskatchewan, Alberta, T8L 0G8 780-992-2265*
2. *With respect to the said application:*

(1) The following statements are specifically admitted:

(a) EllisDon Civil Ltd. purchased the pre-existing and operating PME group of companies in July of 2012. The ultimate owners of the PME group of companies at that time were Earlyn and Mervyn Pidherney and the key man operating those businesses was at that time Gil Brulotte. His employment continued after the transaction. Those companies included this respondent.

(2) The following statements are specifically denied:

(a) This respondent denies all allegations in the complaint and puts the applicant to strict proof of the matters alleged.

(b) This respondent specifically denies that it is an associated or related business, undertaking or activity that is carried on under common control or direction with Ellis-Don Limited or EllisDon Corporation. It is not reliant on the resources of EllisDon Corporation nor is it ultimately directed by EllisDon Corporation.

(c) This respondent denies that there has been any sale of business from Ellis-Don Limited and/or EllisDon Corporation to it.

(d) This respondent denies that the various EllisDon companies are in reality one enterprise. There are a variety of businesses ultimately owned by the parent corporation with a variety of union relationships and activities.

(3) The following is a concise statement of the material facts which are intended to be relied upon in support of this Reply:

(a) This respondent was originally incorporated in 1985 and previously operated under the name Eugene Forest Systems Ltd. in both British Columbia and Alberta. It has a long-standing relationship with the Christian Labour Association of Canada going back to certifications obtained in Alberta in 2000 and prior to that in British Columbia. It is currently bound by 5 CLAC certifications in Alberta for Carpenters, Labourers, Structural Ironworkers, Millwrights and Operating Engineers and is bound by a collective agreement in Alberta which includes recognition of other construction trades as well.

(b) The ongoing business activities of this respondent have never eroded and do not erode any bargaining rights held by the applicants with any of the EllisDon companies in Saskatchewan.

[11] The Replies filed by EllisDon Industrial Services Inc. to all of the applications contain essentially the same information:

1. *This reply is made by EllisDon Industrial Services Inc. Address: Suite 204, 9452 – 51 Avenue Edmonton, Alberta, T6E 5A6*
2. *With respect to the said applications:*

(1) The following statements are specifically admitted:

(a) EllisDon Industrial Services Inc. was registered to carry on business in Saskatchewan on February 25, 2013.

(2) The following statements are specifically denied:

(a) This respondent denies all allegations in the complaint and puts the applicant to strict proof of the matters alleged.

(b) This respondent specifically denies that it is "an associated or related business, undertaking or activity that is carried on under common control or direction" (as those terms are used in the

legislation) with Ellis-Don Limited or EllisDon Corporation. It is not reliant on the resources of EllisDon Corporation nor is it ultimately directed by EllisDon Corporation.

(c) This respondent denies that there has been any sale of business from Ellis-Don Limited and/or EllisDon Corporation to it.

(d) This respondent denies that the various EllisDon companies are in reality one enterprise. There are a variety of businesses ultimately owned by the parent corporation with a variety of union relationships and activities.

3. The following is a concise statement of the material facts which are intended to be relied upon in support of this Reply:

(a) The ongoing business activities of this company has never eroded and does not erode any bargaining rights held by the applicant unions in Saskatchewan.

[12] EllisDon Energy Services Inc. has not filed a Reply to the Carpenters' applications. However, the Reply filed by EllisDon Energy Services Inc. to the applications of the Labourers and the Ironworkers reads as follows:

1. *This reply is made by EllisDon Energy Services Inc. Address: Suite 204, 9452 – 51 Avenue Edmonton, Alberta, T6E 5A6*
2. *With respect to the said applications:*
   (1) The following statements are specifically admitted:
      (a) EllisDon Energy Services Inc. was registered to carry on business in Saskatchewan on February 25, 2013.
   (2) The following statements are specifically denied:
      (a) This respondent denies all allegations in the complaint and puts the applicant to strict proof of the matters alleged.
      (b) This respondent specifically denies that it is "an associated or related business, undertaking or activity that is carried on under common control or direction" (as those terms are used in the legislation) with Ellis-Don Limited or EllisDon Corporation. It is not reliant on the resources of EllisDon Corporation nor is it ultimately directed by EllisDon Corporation.
      (c) This respondent denies that there has been any sale of business from Ellis-Don Limited and/or EllisDon Corporation to it.
      (d) This respondent denies that the various EllisDon companies are in reality one enterprise. There are a variet of businesses ultimately owned by the parent corporation with a variety of union relationships and activities.
3. *The following is a concise statement of the material facts which are intended to be relied upon in support of this Reply:*
   (a) The ongoing business activities of this company has never eroded and does not erode any bargaining rights held by the applicant unions in Saskatchewan.
   (b) This company has never performed any work in Saskatchewan nor employed anyone in Saskatchewan.

[13] EllisDon Civil Ltd. is not named as a respondent in the applications of the Labourers or the Ironworkers. However, the Reply filed by it to the applications of the Carpenters read as follows:

> 1. *This reply is made by EllisDon Civil Ltd. ("EllisDon Civil") of 2045 Oxford Street East, London, Ontario N5V 2Z7.*
> 2. *If the reply is made by a trade union, labour organization or corporation, the name and address of, and office held by, an officer acting on behalf of the trade union, labour organization or corporation are as follows:*
>
> *Name:* *James C. Haldenby*
>
> *Office Held:* *Director, Civil Division*
>
> *Address:* *EllisDon Civil Ltd.*
> *2045 Oxford Street East*
> *London, Ontario*
> *N5V 2Z7*
>
> 3. *With respect to the said application:*
>
> *(1) The following statements are specifically admitted:*
> *(a) None.*
>
> 4. *The following is a concise statement of the material facts which are intended to be relied upon in support of this Reply:*
>
> *(a) EllisDon Civil is a business corporation, registered in accordance with the laws of Ontario. EllisDon Civil is not extra-provincially registered in Saskatchewan.*
> *(b) EllisDon Civil does not now, nor has it ever, operated or carried on business in Saskatchewan. EllisDon Civil does not now, nor has it ever, employed any employees in Saskatchewan.*
> *(c) EllisDon Civil is a wholly-owned subsidiary of EllisDon Inc.*
> *(d) EllisDon Civil states that it has no connection whatsoever to Saskatchewan and is therefore not subject to the Board's jurisdiction. EllisDon Civil therefore asks that the application be dismissed, as against it, on this basis.*
> *(e) EllisDon Civil also states that the Union, in its application, has provided no basis for the allegations pleaded to support a finding of common employer relating to EllisDon Civil. EllisDon Civil therefore requests that the application be dismissed, as against it, on this basis also.*
> *(f) Section 37 of The Trade Union Act is inapplicable to any of the issues raised by the Union in its application as there has been no sale, lease, transfer or other disposal of a unionized business, or part thereof, in Saskatchewan involving EllisDon Civil.*
> *(g) Further, s. 37.3 of The Trade Union Act and s. 18 of The Construction Industry Labour Relations Act, 1992 have no application to EllisDon Civil as it does not operate at all within the province of Saskatchewan yet alone in common with any of the other named respondents.*
> *(h) EllisDon Civil therefore requests that the Union's application be dismissed in its entirety.*

[14] EllisDon Construction Ltd. is not named as a respondent in the applications of the Labourers or the Ironworkers. However, the Reply filed by it to the applications of the Carpenters read as follows:

> 1. *This reply is made by EllisDon Construction Ltd. ("EllisDon Construction") of 2045 Oxford Street East, London, Ontario N5V 2Z7.*
> 2. *If the reply is made by a trade union, labour organization or corporation, the name and address of, and office held by, an officer acting on behalf of the trade union, labour organization or corporation are as follows:*
>
> *Name:* *Sandra Wilson*
>
> *Office Held:* *Manager, Compensation & Benefits*
>
> *Address:* *EllisDon Construction Ltd.*
> *2045 Oxford Street East*
> *London, Ontario*
> *N5V 2Z7*
>
> 3. *With respect to the said application:*
>
> *(1) The following statements are specifically admitted:*
> *(a) None.*
> *(2) The following statements are specifically denied:*
> *(a) EllisDon Construction specifically denies allegations contained in the Union's application except as may be specifically admitted herein.*
> *(3) The following statements are specifically commented on:*
> *(a) None.*
>
> 4. *The following is a concise statement of the material facts which are intended to be relied upon in support of this Reply:*
>
> *(a) EllisDon Construction is a business corporation, registered in accordance with the laws of Ontario. EllisDon Construction is not extra-provincially registered in Saskatchewan having been struck off the corporate registry in 2001.*
> *(b) EllisDon Construction does not operate or carry on business in Saskatchewan. EllisDon Construction does not employ any employees in Saskatchewan.*
> *(c) EllisDon Construction is a wholly-owned subsidiary of EllisDon Inc.*
> *(d) EllisDon Construction states that it has no connection whatsoever to Saskatchewan and is therefore not subject to the Board's jurisdiction. EllisDon Construction therefore asks that the application be dismissed, as against it, on this basis.*
> *(e) EllisDon Construction also states that the Union, in its application, has provided no basis for the allegations pleaded to support a finding of common employer relating to EllisDon Construction. EllisDon Construction therefore requests that the application be dismissed, as against it, on this basis also.*
> *(f) Section 37 of The Trade Union Act is inapplicable to any of the issues raised by the Union in its application as there has been no sale, lease, transfer or*

other disposal of a unionized business, or part thereof, in Saskatchewan involving EllisDon Construction.

(g) Further, s. 37.3 of The Trade Union Act and s. 18 of The Construction Industry Labour Relations Act, 1992 have no application to EllisDon Construction as it does not operate at all within the province of Saskatchewan yet alone in common with any of the other named respondents.

(h) EllisDon Construction therefore requests that the Union's application be dismissed in its entirety.

[15] EllisDon Construction Services Inc. is not named as a respondent in the applications of the Labourers or the Ironworkers. However, the Reply filed by it to the applications of the Carpenters read as follows:

1. *This reply is made by EllisDon Construction Services Inc. ("EllisDon Services") of 3400, 150-6th Avenue Southwest, Calgary, Alberta T2P 3Y7.*
2. *If the reply is made by a trade union, labour organization or corporation, the name and address of, and office held by, an officer acting on behalf of the trade union, labour organization or corporation are as follows:*

   Name: *Vince Davoli*

   Office Held: *Senior Vice President*

   Address: *EllisDon Construction Services Inc.*
   3400, 150-6th Avenue Southwest
   Calgary, Alberta
   T2P 3Y7

3. *With respect to the said application:*

   (1) The following statements are specifically admitted:
   (a) None.
   (2) The following statements are specifically denied:
   (a) EllisDon Services specifically denies allegations contained in the Union's application except as may be specifically admitted herein.
   (3) The following statements are specifically commented on:
   (a) None.

4. *The following is a concise statement of the material facts which are intended to be relied upon in support of this Reply:*

   (a) EllisDon Services is a business corporation, registered in accordance with the laws of Ontario. EllisDon Services is not extra-provincially registered in Saskatchewan
   (b) EllisDon Services does not operate or carry on business in Saskatchewan. EllisDon Services does not now, nor has it ever, employed any employees in Saskatchewan.
   (c) EllisDon Services is a wholly-owned subsidiary of EllisDon Inc.
   (d) EllisDon Services states that it has no connection whatsoever to Saskatchewan and is therefore not subject to the Board's jurisdiction. EllisDon Services therefore asks that the application be dismissed, as against it, on this basis.

(e) *EllisDon Services also states that the Union, in its application, has provided no basis for the allegations pleaded to support a finding of common employer relating to EllisDon Services. EllisDon Services therefore requests that the application be dismissed, as against it, on this basis also.*
(f) *Section 37 of The Trade Union Act is inapplicable to any of the issues raised by the Union in its application as there has been no sale, lease, transfer or other disposal of a unionized business, or part thereof, in Saskatchewan involving EllisDon Services.*
(g) *Further, s. 37.3 of The Trade Union Act and s. 18 of The Construction Industry Labour Relations Act, 1992 have no application to EllisDon Services as it does not operate at all within the province of Saskatchewan yet alone in common with any of the other named respondents.*
(h) *EllisDon Services therefore requests that the Union's application be dismissed in its entirety.*

[16] PME Inc. is named as a respondent but has not filed a Reply to any of the applications of the trade unions.

[17] EllisDon Inc. is not named as a respondent in the applications of the Labourers or the Ironworkers. However, it is named as a respondent in the applications of the Carpenters but has not filed a Reply to those applications.

The Specific Disclosure and Production Requests of the Applicant Trade Unions:

[18] Dissatisfied with the information contained in the above captioned Replies, the applicant trade unions have asked this Board for an Order directing the respondent employers to provide particulars, to disclose enumerated lists of information and/or to produce multiple categories of documents.

[19] The specifics of these requests are contained in two (2) applications. The first application was filed by the Carpenters on October 11, 2013 and bears LRB File No. 275-13. In their application, the Carpenters seek the following information from the respondent employers:

I. From each of the Corporations (All Employers)
1. A listing of all directors and shareholders of each corporation effective July 2013.
2. A complete listing of all key personnel for each corporation effective July 2013.
3. A complete listing of Powers of Attorney for each corporation effective July 2013.
4. Copies of all contracts, leases, agreements or understanding between any of the corporations whereby one or more corporations supplies labour to any of the others, or;
One or more corporations supplies management services to any of the others, or;
One or more corporations provides accounting, payroll or office services to any of the others, or;
One or more corporations supplies materials, tools, facilities, vehicles, equipment, computers and/or support to any of the others, as well as;

Copies of any notes or memoranda made in relation to these said contracts, agreements or understandings and/or any conversations or meetings concerning same.

The applicants request copies of all documents referred to herein in effect or referring to matters occurring in the year 2013 as well as a listing of all other contracts, agreements, understandings prior to this period of time.

5. *A listing of the institutions and locations and branches of same where the corporation maintained its bank accounts during the years 2012 and 2013.*
6. *A listing of accounting firms, their offices and locations that provided accounting advice to the corporations during the years 2012 and 2013.*
7. *A listing of law firms who provided legal advice to any of the corporations during the years 2012 and 2013, alternately;*

   A listing of those law firms who have filed documents or pleadings in any Court, tribunal or registry where documents are open to public inspection and/or where said law firms have appeared in any court, tribunal or other proceedings on behalf of any of the employers.
8. *Copies of personnel, safety and other employment manuals effective for the corporation's operations in the Provinces of Alberta and Saskatchewan for the years 2012 and 2013.*
9. *A listing of all works or undertakings performed by any of the corporations in the Province of Saskatchewan for the years 2012 and 2013, including sites and dates of work done.*
10. *A listing of all offices, buildings or other premises leased or owned by the corporation or anyone on behalf it in the Provinces of Alberta and Saskatchewan during the years 2012 and 2013.*
11. *A listing of all postal addresses, telephone numbers, facsimile numbers and email addresses operative for each of the corporations for the years 2012 and 2013.*
12. *A listing of all corporations or other entities comprising "EllisDon" or the "EllisDon Group of Companies" or any other similar collective name.*
13. *A listing of all corporations or other entities comprising the "PME Group of Companies".*

II. *From each of the Corporations (All Employers)*

1. *A statement indicating the identity and office held of the deponent in their respective replies.*
2. *A copy of the agreement or agreements evidencing the purchase of the PME Group of Companies referred to in the replies filed by Silverado Site Services Ltd. and Golderado Contracting Corp.*

III. . . .

IV. *From the Numbered Alberta Company*

1. *A copy of the contract with Enbridge referred to in its reply filed with the Labour Relations Board.*
2. *A listing of all tools, equipment and vehicles owned, leased or rented by the company during the year 2013 and location of same.*
3. *Copies of all business licenses, contractor licences or permits held by the corporation in relation to works done in the Provinces of Alberta or Saskatchewan during the years 2012 and 2013.*
4. *Copies of any collective bargaining agreements or other employment agreements dealing with terms and conditions of any of its non-management employees in either the Provinces of Saskatchewan or Alberta effective during*

the years of 2012 and 2013 and/or any agreements or understanding made in connection with same.

[20] The second application bears LRB File No. 171-14 and was brought by the Labourers and Ironworkers. The content of this application is set forth in correspondence dated June 30, 2014 and October 27, 2014 from Mr. Caroline. In their application, the Ironworkers and the Labourers seek the following particulars, information and/or documents for Mr. McPhail's clients, as well as Ellisdon Corporation:

June 30, 2014 Request:

A. Particulars Requested

The Unions request the following particulars. This request is without prejudice to the Unions' position that Mr. McPhail's clients have not filed proper replies. Some of the particulars requested could be reframed into a document production order but in our view, the provision of the following particulars will reduce or eliminate the need for documents on these points.

We request the following particulars from each respondent.

1. *In lieu of documents, please provide a list of unsuccessful bids for construction services in Saskatchewan between January 2011 and the present.*
2. *Is each respondent's capital pooled with other entities or held separately?*
3. *Which entity retains each respondent's profits (if any)?*
4. *How does the respondent report, if at all, to any other respondent?*
5. *With which institution and where are each respondent's bank accounts maintained?*
6. *Who are each of the respondent's external accountants and where are they located?*
7. *Which law firm(s) has represented the respondent in relation to Saskatchewan matters between January 2011 and the present?*
8. *Does each respondent handle its own accounts receivable and payable? If not, who does?*
9. *Who employs the respondent's executives, managerial and technical personnel?*
10. *What are the names of the persons and entities who have been responsible for the preparation of bids, estimates of jobs, invoices, employee and payroll records and all other documents associated with construction work in Saskatchewan since January 2011.*
11. *What are the names of all employees directing, supervising or administering the work in Saskatchewan including those performing technical functions?*
12. *A list of Saskatchewan clients.*

The following particulars are requested from specific respondents.

From PME Inc., Golderado Contracting Corp., Silverado Site Services Ltd. and 1630959 Alberta Ltd.

13. *These respondents' replies reference their "ongoing business activities". What are those activities?*
14. *Were any of these companies' shares ever held by EllisDon Industrial Services Inc., EllisDon Energy Services inc. or any other company containing EllisDon in its name excepting EllisDon Civil Ltd.?*

From EllisDon Corporation

15. *Who owns the shares of EllisDon Corporation?*
16. *What is EllisDon Corporation's relationship to EllisDon Inc.?*
17. *Has EllisDon Construction Ltd. bid on or performed any construction work in Canada since 2001?*

From EllisDon Industrial Services Inc. and EllisDon Energy Services Inc.

18. *Has either company ever owned any shares in PME Inc., Golderado Contracting Corp., Silverado site Services Ltd. or 1630959 Alberta Ltd.?*
19. *What is the company's relationship with each of the following: PME Inc., Golderado Contracting Corp., Silverado site Services Ltd. and 1630959 Alberta Ltd.,?*
20. *What is each company's relationship to EllisDon Corporation?*
21. *What is each company's relationship to EllisDon Inc.*

B. *Documents Requested*

In addition to the documents requested by the Carpenters on October 11, 2013, the Unions make the following requests of each respondent.

From each respondent, any and all documents including correspondence, memos, personal notes, e-mails, meeting minutes and notes, telephone records/messages, filings, lists, contracts, agreements, directors' resolutions and minutes including those in electronic or draft format and digital files and emails that have been deleted that discuss or relate to the following.

1. *The sharing, sale, lease, transfer or disposition in any form whatsoever of:*
   - *skills;*
   - *financial or physical assets;*
   - *goodwill;*
   - *personnel;*
   - *services; or*
   - *reputation;*

   among the respondents with respect to EllisDon's construction work in the Province of Saskatchewan from January 1, 2011 to date.

2. *The procurement, direction and performance of construction work at the Milden pump station or any other Saskatchewan project obtained by any of the respondents other than EllisDon Corporation.*
3. *The management, operational control or oversight of construction work in Saskatchewan including human resources and labour relations from January 2011 to date.*

4. *The involvement of any EllisDon entity in obtaining work for or directing 1630959 Alberta Ltd. with regard to its construction work in the Province of Saskatchewan.*
5. *Plans, discussions, strategies and directions about business development or marketing strategies for construction work in Saskatchewan including the purchase and use of the PME Group and 1630959.*
6. *Non-competition agreements between any of the respondents.*
7. *The purchase or leasing records for all the equipment utilized by 1630959 Alberta Ltd. in Saskatchewan.*
8. *The purchase or leasing documents for the PME Group's facilities in Alberta.*
9. *The insurance policies covering work performed in Saskatchewan.*
10. *The insurance policies covering assets held in Saskatchewan*
11. *The insurance policies covering assets held in Alberta by the former PME Group companies.*
12. *All insurance policies concerning officers' and or directors' liability.*
13. *The performance bonds for the Milden, Saskatoon Police Station, Remai Art Gallery and Kerrobert Integrated Health Care Centre projects.*
14. *The WCB Clearance certificates for each of these projects.*
15. *Correspondence in any form between any of the respondents and CLAC in relation to the employment of tradespeople in Saskatchewan.*
16. *All applications for employment in Saskatchewan with 1630959 Alberta Ltd. and completed TD1 forms for its project(s) in the Province.*

June 30, 2014 Request:

The documents described in items one and two below are arguably subsumed within our May 8th request but for greater certainty we are making our request more explicit.

1. *All company policies applying to employees working in Saskatchewan and all signed orientation forms for employees in Saskatchewan from January 1, 2011 to date.*

   These documents fell under our previous request for documents about the "direction and performance of construction work" in Saskatchewan from all respondents save EllisDon Corporation and documents about the "management, operational control or oversight" of work in Saskatchewan, including human resources and labour relations [our requests #2 and 3]. The request here is addressed to all of the respondent employers including EllisDon Corporation.

2. *Contracts and subcontracts for all work in Saskatchewan from January 1, 2011 to date.*

3. *All completed TD1s for employees in Saskatchewan from January 1, 2011 to date.*

   We had asked 1630959 Alberta Ltd. for all TD1s and job applications for its work in Saskatchewan [our request #16]. The request described here is addressed to all of the respondent employers.

> *Arguably all TD1 forms were covered by our request for documents about the "performance" of construction work in Saskatchewan. We had asked for these documents from every respondent except EllisDon Corporation [our request #2}.*

[21] EllisDon Corporation has provided some of the information sought by the applicant trade unions. However, Mr. McPhail's clients and Mr. Wilson's clients object to this Board compelling the disclosure of any of the information desired by the applicant trade unions and to the production of most of the documents sought by the unions. In summary, they do so for the following reasons:

1. The respondents rely on this Board's decision in *Denise Nagel v. Administrative and Supervisory Personnel Association & the University of Saskatchewan*, [2000] Sask. L.R.B.R. 800, LRB File No. 252-00, as standing for the proposition that respondents are not required to specifically deny each and every allegation set forth in an applicant's application nor are they required to rehearse the whole of the evidence they intend to rely upon. The respondents take the position that the level of detail contained in their respective Replies is wholly sufficient for the applicants to know the case they must meet. Thus, the respondents argue that the additional information desired by the applicant trade unions is not properly characterized as "*particulars*" at all. Rather, the Board is being asked to engage in a pre-hearing interrogatory process is both outside of our authority and beyond the reasonable requirements that can be imposed on respondents in proceedings before this Board.

2. This Board's authority to require documents production does not include the authority to compel a party to prepare lists of information or to provide answers to interrogatories. Simply put, the respondents argue that the Board does not have the authority to compel a party to create a document that does not already exist.

3. The Board should not permit document production to become a "*fishing expedition*". Simply put, the respondents argue that they should not be compelled to engage in wholesale production of otherwise private corporate documents merely because the applicant trade unions hope that useful information may be found by scouring through their internal workings.

[22] Although the parties have tried to resolve these issues, they are at impasse as to the scope of particulars that are required in pleadings, to the scope of the information that the respondents can be asked to provide, and the volume and kind of documents that should be produced. The parties have framed a series of questions regarding the issue of disclosure and production that they believe will assist in resolving these issues.

[23] The Board heard oral argument from the parties on November 3, 2014. In these Reasons for Decision we have attempted to answer the questions posed by the parties and make specific determinations on both of the preliminary applications; namely LRB File Nos. 275-13 & 171-14.

Relevant Statutory Provisions:

[24] Sections 6-103 and 6-111 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1 (the "*Act*"), are relevant to these proceedings:

> ***6-103****(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.*
>
> *(2) Without limiting the generality of subsection (1), the board may do all or any of the following:*
>
> *(a) conduct any investigation, inquiry or hearing that the board considers appropriate;*
>
> *(b)make orders requiring compliance with:*
>
> *(i) this Part;*
>
> *(ii) any regulations made pursuant to this Part; or*
>
> *(iii) any board decision respecting any matter before the board;*
>
> *(c) make any orders that are ancillary to the relief requested if the board considers that the orders are necessary or appropriate to attain the purposes of this Act;*
>
> *(d) make an interim order or decision pending the making of a final order or decision.*
>
> ***6-111****(1) With respect to any matter before it, the board has the power:*
>
> *(a) to require any party to provide particulars before or during a hearing or proceeding;*
>
> *(b) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing or proceeding;*

> *(c) to do all or any of the following to the same extent as those powers are vested in the Court of Queen's Bench for the trial of civil actions:*
>
> *(i) to summon and enforce the attendance of witnesses;*
>
> *(ii) to compel witnesses to give evidence on oath or otherwise; and*
>
> *(iii) to compel witnesses to produce documents or things;*
>
> *(d) to administer oaths and affirmations;*
>
> *(e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the board considers appropriate, whether admissible in a court of law or not;*
>
> . . .
>
> *(h) to order preliminary hearings or procedures, including pre-hearing settlement conferences;*
>
> . . .
>
> *(t) to enter any premises of an employer where work is being or has been done by employees, or in which the employer carries on business, whether or not the premises are those of the employer, and to inspect and view any work, material, machinery, appliances, articles, records or documents and question any person;*
>
> *(u) to enter any premises of a union and to inspect and view any work, material, articles, records or documents and question any person;*

1. What is the scope of the Board's pre-hearing authority to compel a respondent to provide "particulars" in relation to a Reply filed with the Board? Does the Board have pre-hearing authority to compel a respondent to answer written interrogatories or to provide "information"?

[25] In 2000, *The Construction Industry Labour Relations Act, 1992*, S.S. 1992, c.C-29.11 (the "*CILR Act*"), was amended to give this Board the express authority to compel a respondent corporation in a common or related employer case (in the construction sector) to provide information and to produce records and to do so prior to the commencement of a hearing. In 2005, *The Trade Union Act*, R.S.S. 1978, c.T-17, was amended to give a number of additional powers to this Board, including the pre-hearing authority to compel any party in any proceeding before it to provide particulars or to produce documents and things. The amendment to *The Trade Union Act* also gave the Board express authority to issue *subpoenas*, to conduct investigations, to adjourn and postpone proceedings, to decide matters without an oral hearing, and to summarily dismiss matters for lack of evidence. Arguably, the Legislative intent of these amendments was to cure the limitations in this Board's authority over pre-hearing proceedings

identified by the court in *Pyramid Electric Corporation v. International Brotherhood of Electrical Workers, Local 529*, 1999 SKQB 114 (CanLII), 185 Sask. R. 82 (Q.B.).

[26] The first area of direction desired by the parties in these proceedings has to do with the proper meaning of the term "*particulars*" and the scope of this Board's authority to compel a respondent to provide particulars and/or the expectations of this Board on respondents to particularize their Replies. While the parties may disagree on the scope of our authority, all parties agreed that the primary locus of this Board's pre-hearing authority to compel a party to provide particulars is now found in s. 6-111(1)(a) of *The Saskatchewan Employment Act* (following the repeal of both *The Trade Union Act* and *The Construction Industry Labour Relations Act*). The general authority set forth in s. 6-103 over matters "*incidental to the attainment of the purposes of the Act*" and the common law principle of necessary implication were also identified by Mr. Caroline as secondary sources of potential authority. However, in our opinion, we need not have recourse to these secondary sources of authority to resolve the first series of questions posed by the parties.

[27] The applicant trade unions argue that we should adopt a large and liberal interpretation of this section and, in particular, to the meaning of words "*to require any party to provide particulars*". The unions argue that this includes the authority to compel the respondents to provide information and answer interrogatories and that we should exercise that authority in the present proceedings. The applicant trade unions argue that compelling the respondents to provide the information and produce the documents they desire will promote the interests of efficiency, economy and fairness in proceedings before this Board. The unions argue that the requirement for a party to provide particulars is rooted in the rules of procedural fairness and that the obligation exists so that both the applicant and the respondent will know the case they must meet before they get to a hearing. The unions further argue that this Board's pre-hearing authority to require a respondent to provide particulars is not just confined to matters narrowly arising out of its Reply but also includes the authority to require that party to provide clarification or information on any matter in dispute between the parties. Simply put, the unions take the position that we have the authority to compel the respondents to provide the information and produce the documents they desire and we should exercise that authority.

[28] Taking the contrary position, the respondent corporations argue that the plain meaning of s. 6-111(1)(a) of the *Act* does not support the interpretation sought by the unions.

The respondents observe that this Board may have had authority of the nature propounded by the unions in s. 18.1 of the *CILR Act.* However, the respondents note that the *CILR Act* was repealed and replaced by *The Saskatchewan Employment Act.* The respondents also note that the Legislature reproduced many of the provisions of the *CILR Act* in the new *Saskatchewan Employment Act* but it did not reproduce s. 18.1 in the new *Act.* The respondents take the position that the Legislature has spoken. While this Board may have once had the authority to compel a respondent corporation to provide information, to make lists or to create documents in related employer cases, we no longer have that particular authority. The respondents argue that, as a creature of statute, this Board only has the authority delegated to it by the Legislature. The respondents argue that the term "*particulars*" has a clear and obvious meaning in the context in which it was used and, in using this term (and not other terms such as "*information*" or "*interrogatories*"), the Legislature intended to only grant a narrow or restrictive scope of authority to this Board. Simply put, the respondents take the position that we do not have the authority to compel them to answer interrogatories or provide information.

[29] The applicant trade unions dispute the significance of the repeal of *CILR* Act and argue that, in using the term "*particulars*", the Legislature did not intend a restrictive and overly legalistic meaning of that term. The unions argue that s.18.1 was added to the *CILR Act* in the first place in recognition of the information imbalance between unions and employers in labour relations cases and, in particular, in "*spin-off*", common or related employer cases. The unions argue that the specific authority this Board had to compel a respondent corporation to "*provide information*" and "*produce records and things*" in common employer cases was not lost with the repeal of the *CILR Act.* To the contrary, the unions argued that this authority was merely subsumed in this Board's general power to compel "*any party*" to provide "*particulars*" with respect to any matter before the Board now contained in s. 6-111(1)(a) of *The Saskatchewan Employment Act.*

[30] In our opinion, the authority granted to this Board in s. 6-111(1)(a) is broader than that suggested by the respondents but not as open-ended as suggested by the unions. A plain reading of the section reveals that no specific limitations have been placed on this Board's right to compel any party to provide "*particulars*". The authority delegated to this Board is broad and is limited only by the plain meaning of the term "*particulars*". Of significance, the provision does not differentiate between a respondent and an applicant. To which end, we may seek particulars from any party in any proceeding before this Board and we may do so from both respondents

and applicants alike. In our opinion, the fact that responding to a request for particulars requires a respondent to provide information or to answers to interrogatories is of no particular significance. In fact, it is difficult to imagine how a party could provide particulars without providing information and/or answering interrogatories.

[31] In our opinion, there are two (2) limiting factors associated with exercise of the authority granted to this Board by s. 6-111(1)(a) of the *Act*. The first limiting factor is the proper meaning of the term "*particulars*" in the context in which it was used. As a statutory tribunal, this Board has no inherent jurisdiction. As a creature of statute, we must look to the expressed or implied authority delegated to this Board by the Legislature in the exercise of any coercive action. See: *Canadian Pacific Airlines Ltd. v. Canadian Air Line Pilots Assn.*, 1993 CanLII 31 (SCC), [1993] 3 SCR 724. In the present case, the scope of the authority delegated to this Board pursuant to s. 6-111(1)(a) is limited by the meaning of the term "*particulars*" in the context in which it has been used. The second limiting factor is the exercise of discretion. In examining our statutory authority, it is clear that the Legislature has granted wide discretion to this Board in many areas, such as in defining appropriate bargaining units, in adjudicating unfair labour practices, and in awarding appropriate remedial relief. Simply put, in many areas the Legislature has seen fit to give wide authority to this Board so that we have the flexibility to address the variety of circumstances that present themselves in the various disputes that arise in a labour relations context. In these areas, it is the application of discretion by this Board (not the limits of our statutory authority) that has become instrumental in determining what is and what is not an appropriate bargaining unit; in determining whether or not an unfair labour practice has occurred; and in fashioning appropriate remedial relief. In most areas, the Board has not seen fit to exercise all of the authority that has been delegated to it. While the statute may define the outer parameters of our authority (parameters that must be respected by this Board), the answer to the first series of questions derives for the most part from the exercise of our discretion; not from the limits of our statutory authority.

[32] However, in the interest of thoroughness, we will examine the limits of this Board's authority and the proper meaning of the term "*particulars*" as that terms is used in s. 6-111(1)(a).

Statutory Interpretation:

[33] In *Rodney McNairn v. United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry of United States and Canada, Local 179*, 2004 SKCA 57 (CanLII), the Saskatchewan Court of Appeal set forth the now accepted approach to be adopted by the Board in interpreting its statutory authority:

> *[31] . . . The provisions of The Trade Union Act, no less than any other, fall to be interpreted along the lines laid down by section 10 of The Interpretation Act, 1995 and by the decision of the Supreme Court of Canada in Rizzo and Rizzo Shoes Ltd. (Re), 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27. Section 10 states that every enactment is to be interpreted as remedial and "given the fair, large and liberal construction and interpretation that best ensure the attainment of its objects." The decision in Rizzo and Rizzo Shoes states that words of an enactment are to be read in their entire context and in their grammatical ordinary sense harmoniously with the scheme of the enactment, the object of it, and the intention of the Legislature.*

[34] In accordance with the so-called modern method of statutory interpretation, in interpreting s. 6-111(1)(a), the words in that provision must be read in their **entire context** and in their **grammatical and ordinary sense**. Furthermore, the interpretation we give to s. 6-111(1)(a) must be **harmonious** with the scheme and objectives of *The Saskatchewan Employment Act*, as well as the intention of the Legislature as expressed through that statutory instrument.

[35] While the term "*particulars*" can attract a number of meanings, in a legal context, the term typically refers to supplemental information either ordered or voluntarily provided by a party in an adversarial process. Particulars are given to supplement information or to provide more details as to an allegation, a claim, or a defense. A request for particulars typically arises because a respondent does not have sufficient information to understand the allegations or claims being made by an applicant or an applicant does not have sufficient information to understand the defense(s) being relied upon by a respondent. In our opinion, it is precisely in this context that the term has been used in s. 6-111(1)(a) of the *Act* and it was in this same context that the term was used in s. 18(a) of *The Trade Union Act*.

[36] In several decisions, including *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.P. Bottlers Ltd.*, [1997] Sask. L.R.B.R. 249, LRB File No. 017-97, *United Brotherhood of Carpenters and Joiners of America, Local 1985 v. PCL Construction Group Inc. et. al.*, (2003) 85 C.L.R.B.R. (2d)

57, [2002] Sask. L.R.B.R. 120, LRB File No. 192-01, and *Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers, et. al v. Tercon Industrial Works Ltd.*, [2012] 212 C.L.R.B.R. (2d) 134, LRB File Nos. 162-10, 163-10 & 164-10, this Board has discussed the onus on an applicant (i.e.: the party filling an application) to provide sufficient specificity in his/her pleadings (i.e.: in the application) so that the party against whom a complaint is made is able to read the applicant's application and get a clear understanding of when, how and by whom, the *Act* was alleged to have been violated. On the other hand, the Board does not expect an applicant to provide a complete rehearsal of the evidence upon which he/she intends to rely in his/her application. In deciding whether or not an applicant has sufficiently particularized their allegations, the Board takes into consideration the nature of the issues in dispute between the parties. The Board also takes into consideration any practical or informational disadvantages that a party may be operating under. For example, there is generally a lower expectation on an unrepresented applicant. There is also a lower expectation on an applicant to particularize a complaint that involves the status of a respondent (such as in successorship or related employer cases) than in a conduct-based complaint (such as unfair labour practices). See: *PCL Construction Holdings Ltd.*

[37] It should be noted that each of the above decisions was in the context of a respondent seeking supplemental information and/or answers to interrogatories, from an applicant. In each case, the Board was asked to determine whether or not the respective applicants should be compelled to provide additional information as to the nature of their claims against the respondent. This Board's jurisprudence with respect to compelling a respondent to provide particulars prior to a hearing is not so well developed. Only three (3) examples were propounded by the parties; those being, the decision of Chairperson Gray, Q.C. in *Denise Nagel v. Administrative and Supervisory Personnel Association & the University of Saskatchewan*, [2000] Sask. L.R.B.R. 800, LRB File No. 252-00; the Order of Chairperson Love , Q.C. dated July 9, 2013 in *International Brotherhood of Electrical Workers, Local 529, et. al. v. KBR Canada Ltd, et.al.*, LRB File Nos. 188-12, 191-12 to 193-12 & 198-12 to 201-12; and report of Board Agent Beth Bilson, Q.C. dated May 28, 2014 in *International Brotherhood of Electrical Workers, Local 529 v. Merick Contractors Inc., et. al.*, LRB File Nos. 331-13 and 073-14.

[38] The *Nagel v. ASPA* case involved an allegation by Ms. Nagel that the Administrative and Supervisory Personnel Association (ASPA) had failed to fairly represent her in her deals with her employer, the University of Saskatchewan. Ms. Nagel sought to strike

portions of the Reply filed by the University on the basis that it had not specifically commented on a number of the allegations contained in Ms. Nagel's application. In dismissing Ms. Nagel's application to strike, Chairperson Gray provided the following reasons on behalf of the Board:

> *[9] The Board does not require extensive pleadings either from an applicant or a respondent. There is no formal discovery process before the Board although often parties will voluntarily attend a pre-hearing meeting where evidence and documents will be discussed and exchanged. There is no formal requirement for a responding party to make a specific denial of matters asserted in the application. A general denial will suffice to put the applicant on notice that the responding party does not admit to the matters alleged in the application. In this case, the University has properly set out the material facts on which it will rely as it is required to do in Form 11 thus disclosing its case to the applicant.*
>
> *[10] Ms. Nagel also sought details of the claim made by the University that it discharged her for just cause. This matter is one that is before the Board in a collateral fashion. It is the underlying grievance that Ms. Nagel wishes ASPA to challenge under the terms of the collective agreement between it and the University. The facts relied on to establish "just cause" are not central to this dispute which raises the issue whether ASPA has an obligation to grieve the dismissal of Ms. Nagel. No order for particulars will be made against the University in relation to Ms. Nagel's request for more details of her termination.*

[39] The Order of Chairperson Love in *IBEW, Local 529 v. KBR Canada Ltd, supra*, directed the respondent corporations therein to provide certain information and documents to the applicant trade union. In these proceedings, IBEW, Local 529 had alleged that the respondent corporations were successors to collective bargaining obligations arising out of the union's certification Order and/or common or related employers. The Order of Chairperson Love was based on the recommendations of Mr. Justice W.J. Vancise (retired), who had been appointed as an agent of the Board. Board agent Vancise met with the parties and heard representations from them on the issues of pleadings, production of documents and provision of information by the respondent corporations. The authority relied upon by the Board for the Order of Chairperson Love in these proceedings was s. 18.1 of the *CILR Act*. It is noted that much of the information now sought by the applicant trade unions in these proceedings is similar to the information that the respondent corporations were required to provide in *IBEW, Local 529 v. KBR Canada Ltd, supra*.

[40] In *IBEW, Local 529 v. Merick Contractors Inc., supra*, the applicant trade union sought a designation from the Board that Merick Contractors Inc. was a common employer with other named respondents. The applicant union sought disclosure of documents and things in connection with this application. On the request of the parties, the Board appointed Professor

Beth Bilson, Q.C. to work with the parties on the issue of production of documents and provision of information by the respondent corporations. The report of Board Agent Bilson was issued on May 28, 2014 after the repeal of the *CILR Act*. In that case, the respondent corporations voluntarily agreed to comply with the recommendations contained therein regarding the provision of information and production of documents.

[41] As indicated, the respondent corporations herein argue that this Board's authority pursuant to s. 6-111(1)(a) is narrowly confined to compelling a party to particularize the allegations set forth in that party's pleadings and not to provide answers to interrogatives arising out of the pleadings of the other party. The respondents argue that express authority is required, such as was contained in s. 18.1 of *CILR Act*, to compel a respondent to provide information or to answer interrogatories. The respondents argue that, with the repeal of the *CILR Act*, this Board lost its authority to compel the pre-hearing provision of "*information*" by employers in related employer cases. Simply put, the respondents argue that the Board's authority to compel a party to provide "*particulars*" does not include the authority previously contained in s. 18.1 of the *CILR Act*.

[42] Mr. McPhail's clients and Mr. Wilson's clients all take the position that their respective pleadings are clear and sufficient. These respondents rely on this Board's decision in *Nagel v. ASPA, supra*, as standing for the proposition that there is no requirement for them to make specific denials or provide greater specificity in their pleadings than they have. Simply put, these respondents take the position that they have adequately disclosed the whole of their respective cases in their Replies; namely, that the respondents deny all aspects of the allegations made by the applicant unions.

[43] Having considered the fulsome arguments of able counsel, we find that the term "*particulars*" as used in s. 6-111(1)(a) of the *Act* is capable of and, in fact, deserves a broader interpretation than that suggested by the respondents (but not as broad as that suggested by the unions). Firstly, this Board has relied upon similar authority in s.18(a) of *The Trade Union Act* to compel applicants to provide information to respondents and to answer interrogatories posed by either the Board or a respondent. It is difficult for us to reconcile that the term "*particulars*" is broad enough to grant us the authority to compel an applicant to provide information and answer interrogatories and yet prevents this Board from compelling a respondent to do the same thing. In coming to this conclusion, we note the broad language used by the Legislature in s. 6-

111(1)(a); namely, that the Board has the power to "*require any party to provide particulars before or during hearing or proceedings*". In this regard, we find persuasive (if not instructive) the comments of Chairperson Andrew Sims of the Alberta Labour Relations Board in *United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry of United States and Canada, Local 488 v. Vikon Technical Services Ltd.* (cited with approval in *Stuart Olson Construction, et. al. v. Construction and General Workers', Local 92, et. al.,* [1990] Alta. L.R.B.R. 210):

> *The requirement for particulars is not a request for a "legalistic" approach. A layman reading a complaint or application should be ale to get a clear understanding of what the matter is about and why the Board is being asked to use its powers. Most sections in the Labour Relations Act are not complex. The particulars should make it clear why the facts referred to make the section or sections of the Act applicable. This is not an onerous task. Applications that lack these basic particulars will not be accepted initially, and will not be processed further.*
>
> *We insist on particulars in order to ensure fairness to all parties. We have broad powers given to us by the Legislature. The exercise of these powers may cause major inconvenience to the party complained against. Answer must be given, officer's investigations cooperated with, records that would otherwise be confidential disclosed, hearings attended, and lawyers sometimes retained. We will only enter into or continue this process where there is an allegation that, if true, would lead us to believe that the legislation might apply or have been violated. If an applicant cannot even allege facts that would, if proven, result in a Board order or remedy, then there is no justification for the process being started.*
>
> *The other aspect of fairness, and the other reason for requiring particulars, is that the parties on the other side of an application or complaint are entitled to know, in general terms, what is alleged against them. This is so they can reply to the complaint or application clearly, and so they can prepare their defence or reply knowing what it is they have to defend or reply to.* ***We are going to expect the same degree of precision in replies as we are in complaints. Again, we expect the parties concerned to set out their defences or replies in English rather than that obnoxious form of legalism known as "boilerplate"; designed to raise every defence known to mankind and yet tell the Board and the applicant or the complainant absolutely nothing about the real issues in dispute. (Emphasis added)***

[44] As noted by the Alberta Board, the ordinary meaning of the term "*particulars*" is broader than that suggested by the respondents. In fact, a central issue in the decision of the Alberta Board in *Stuart Olson Construction, et. al. v. Construction and General Workers', Local 92, et. al., supra,* was the lack of particulars (i.e.: details) in the replies filed by the Construction and General Workers' Union, who were the respondents in that case.

[45] In our opinion, an examination of s. 6-111(1)(a) in the context of the *Act* supports the conclusion that the authority to compel a party to provide particulars is not limited in the fashion suggested by the respondents. This provision is but one of a series of pre-hearing authorities delegated to this Board by the Legislature, including s. 6-111(1)(b), which includes the pre-hearing authority to require "*any party to produce documents or things*"; and s. 6-111(1)(t) & (u), which authorizes the Board to enter any premises (of either an employer or a union) and inspect records or documents **and question any person**. We also note that this Board has been granted the authority pursuant to s. 6-103(2)(a) to conduct any "*investigation, inquiry or hearing*" that the Board considers appropriate. These pre-hearing authorities are restrained only by relevancy, procedural fairness and discretion. Of even greater significance, the Legislature has seen fit to grant this Board the authority pursuant to s. 6-126 to define and prescribe "*rules of procedure*" for matters before the Board, including preliminary procedures. In other words, the Legislature has given this Board broad discretion and generous authority to determine its own procedures. This Board has utilized this authority and enacted regulations governing proceedings before the Board. See: *The Saskatchewan Employment (Labour Relations Board) Regulations*, Chapter S-15.1 Reg 1 (effective April 29, 2014).

[46] In our opinion, it is improbable that the Legislature would provide broad discretion to this Board in all of these areas but envisioned a limited and restricted meaning for the term "*particulars*". The scheme of Part IV of *The Saskatchewan Employment Act* is to provide a comprehensive code for labour relations in Saskatchewan and a convenient, fair and efficient forum for the resolution of disputes arising out of the application of that code. As indicated, it is improbable that the Legislature intended to grant broad discretion to this Board in most areas but only provided limited and restricted authority in this one specific area.

[47] In our opinion, s.6-111(1)(a) includes the authority for this Board to compel both applicants and respondents to provide supplemental information if we find the pleadings to be deficient. Our authority with respect to the sufficiency of pleadings is the same for both applicants and respondents.

[48] Having concluded that this Board has the discretion to require a respondent to provide supplemental information if we deem their pleadings to be deficient, the next question is how should this authority be exercised and what limits do we place on the exercise of our discretion.

Application of Discretion:

[49] As this Board has noted above, the Legislature has seen fit to provide this Board with the authority to define its own procedures, including its own pre-hearing processes. In our opinion, the level of particularization expected of this Board in our proceedings is one of the areas where discretion exists. Similarly, discretion exists for this Board in our authority to compel pre-hearing production of documents and in the exercise of our investigative powers. These authorities are the means by which we define our pre-hearing processes and, notwithstanding the generous nature of the authorities have been delegated to this Board, we have consistently avoided requests that would tend to see us replicate the kind of comprehensive and fulsome processes commonly utilized in civil proceedings.

[50] As this Board clearly stated in *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations*, (2012) 210 C.L.R.B.R. (2d) 229, 2012 CanLII 18139 (SK LRB), LRB File Nos. 092-10, 099-10 & 105-10, even if we had greater authority, it would not be our intention to replicate the kind of pre-hearing discovery processes utilized in a judicial setting. Labour relations boards were established to provide an alternative to the formalistic procedures of our courts. While pre-hearing discovery and production of documents may be the norm in civil litigation, such procedures are not the norm in proceedings before the Board. Simply put, this Board has no desire to replicate the kind of discovery procedures commonly seen in a judicial setting. While we have the authority to compel respondents to provide much of the information desired by the applicant trade unions in these proceedings, in our opinion, doing so, would begin the process of replicating the type of pre-hearing discovery processes that we seek to avoid.

[51] On the other hand, boilerplate denials by respondents in their Replies provides little assistance to this Board in understanding the real issues in dispute and do not enable an applicant to prepare for hearing. The corollary of deficient pleadings tends to be requests for particulars, demands for production of documents and delay. While respondents are not required to rehearse the evidence they intend to tender at hearing, in our opinion, generic "boilerplate" denials by a respondent are vulnerable to requests for particulars. In this regard, we depart from the conclusion of the Board in *Nagel v. ASPA, supra*, that a responding party is not required to make a specific denial of matters asserted by an applicant. Without specific commentary or denials by a respondent on the essential elements of an alleged complaint, the

Board is left will little information as to the real issues in dispute between the parties and the applicant's ability to prepare for hearing is often frustrated. In our opinion, deficient pleadings (including, generic denials and the use of so-called "boilerplate") does not promote the efficient use of this Board's scarce resources.

[52] The sufficiency of pleadings must be evaluated on a case by case basis. However, generally speaking, we expect respondents to plead to each of the essential elements of the complaints that have been alleged by an applicant. This expectation is particularly acute when status-based complaints are involved, such as in successorship and/or common employer applications.

[53] Our analysis of the Replies filed by the respondents will occur later in these Reasons for Decision.

2. Does the Board have the pre-hearing authority to compel a party to create a document, such as a list of information, or is the Board's pre-hearing authority limited to the production of a document that is already in existence at that time? If so, what is the scope of that authority?

[54] As indicated, the respondent corporations argue that this Board does not have the authority to compel a party to provide information or answers to interrogatives prior to a hearing. The respondents argue that express authority to do so is required, such as that which was contained in s. 18.1 of *CILR Act*. The respondents argue that, with the repeal of the *CILR Act*, this Board lost its authority to compel the pre-hearing provision of "*information*" by employers in related employer cases. Simply put, the respondents argue that the Board's authority over pre-hearing procedures does not include the authority to compel a party to provide information or answers to interrogatives prior to a hearing.

[55] Taking the contrary position, the applicant trade unions argue that the specific pre-hearing authority delegated to this Board by s. 18.1 of the *CILR Act* to compel the provision of "*information*" in related employer cases has been replaced (and rendered redundant) by various provisions in *The Saskatchewan Employment* Act, including s. 6-103 & 6-111. Simply put, the unions argued that it was unnecessary to replicate s. 18.1 of the *CILR Act* in the new *Saskatchewan Employment Act*.

[56] As this Board noted in *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, supra*, a review of our enabling legislation (which at that time was *The Trade Union Act*) would indicate that this Board's authority to compel document production does not include the authority to require a party to create documents that do not already exist, such as a statement as to documents. On the other hand, there are circumstances where the preparation of a list of information is more efficient and a less invasive means of obtaining relevant and probative information when compared to document production. In these limited circumstances, we find that this Board has the requisite authority to compel a party to provide such information even if doing so involves the creation of a document. We should note, however that this is a limited and pragmatic exception to the general rule that a party is not expected to create documents for purposes of document production. The difference being that providing information in this form is an alternative to document production; it is not a means of accessing more information or obtaining information that would not otherwise be accessible through document production. As we have indicated, in our view, there are certain circumstances where the creation of a list of desired information is more efficient and a far less invasive means of disclosing relevant and probative information when compared to an Order compelling production of documents.

[57] In these limited circumstances, we rely on the authority set forth in s. 6-103 of *The Saskatchewan Employment Act*. As we have indicated, this is a very limited authority, the exercise of which is subject to a number of restrictions. Firstly, the information must be of a kind that would otherwise have been readily accessible through a document production request. Secondly, the Board must be satisfied that the creation of a list is an easier means of obtaining and providing the desired information and less likely to cause the production of irrelevant and/or privileged information. In our opinion, the authority to compel the production of a list of information is not a new authority; rather, it is an alternate means of exercising an existing authority. When narrowly applied, the authority to do so may be found in s. 6-103(1) of the *Act* and this Board's authority to control its own processes.

[58] Our analysis of the information desired by applicant trade unions will occur later in these Reasons for Decision.

3. Does the Board have the authority to compel a party to identify who their legal counsel was or is? Is that information protected by solicitor/client privilege?

[59] The applicant trade unions request that the respondent corporations provide a list of law firms who have provided legal advice to the respondents. In the alternative, the trade unions ask the respondents to provide a list of those law firms who have filed pleadings on their behalf. The unions argue that this information is indicative of common direction and control. While the unions acknowledge that the terms of a solicitor/client relationship may be privileged, they argue that the existence of that relationship is not. The unions argue that the respondents in successorship and common employer cases are routinely required to provide this type of information in other jurisdictions. In this regard, the unions pointed to approximately ten (10) examples where the Ontario Labour Relations Board ordered disclosure of the identity of a respondent's lawyer in successorship/common employer cases. The unions also rely on the recent report of Board Agent Bilson in the *IBEW, Local 529 v Merick Contractors Inc., supra.*

[60] The respondents take the position that the identity of their legal counsel or the law firms who have provided them with legal advice is protected by solicitor/client privilege. To which end, they strenuously object to being required to disclose this information. Furthermore, the respondents note that the labour bar in Saskatchewan is relatively small and argue that they should not be placed in a position where they feel compelled to explain why they may have used a particular lawyer or law firm.

[61] It is commonly recognized that the solicitor/client privilege is a special privilege entitled to special protection in our society. In many areas, solicitor/client privilege is fundamental to the proper functioning of our legal system. Of all the privileges recognized by law, the solicitor/client privilege is as close to absolute as you can get. See: *Maranda v. Richer*, [2003] 3 SCR 193, 2003 SCC 67 (CanLII).

[62] While we acknowledge that the common use of the same banking institution, the same accounting firm, and/or the same law firm by a group of respondents could be indicative of joint management and common direction and control, we also note that these are very, very weak indicators. In a relatively small province like Saskatchewan, the use of the same banking institution, the same accounting firm and/or the same lawyer proves very little. In our opinion, the risk of eroding the protection afforded to the solicitor/client relationship by compelling any of the respondents to disclose the identity of the law firms they have consulted or the lawyers who may have represented them is wholly disproportionate to the probabitive value of such information, particularly on a pre-hearing basis. It is difficult to image how this information could

meaningfully help the unions prepare for hearing, and any benefit that could arise from having this information is dwarfed by the potential of eroding the special protection placed on a solicitor/client relationship.

4. Is any of the information desired by the applicant unions in these proceedings properly classified as "particulars"? Does the information requested by the applicant unions in these proceedings fall within the scope of the Board's authority to compel a respondent to prepare a list? In the context of a successorship/ related employer application, does the Board have the authority to compel a party to produce a document that exists or is maintained in another jurisdiction? In that same context, does the Board have the authority to order production of a document related solely to the activities of that party outside of this province?

[63] In our opinion, the starting point for the evaluation of the sufficiency of a respondent's pleadings and/or requests for provision of information or production of documents is an analysis of the allegations of the applicants. In these proceedings, the applicant trade unions have alleged that all (or at least some) of the named respondents are part of one (1) large corporate enterprise involving numerous inter-related divisions. The unions allege that the entire corporate enterprise (or at last some of it) is the successor to the business interests in Saskatchewan that was previously conducted by Ellis-Don Limited. As such, the applicant trade unions allege that the respondent corporations are successors to the collective bargaining obligations arising out of their respective certification Orders and seek to amend their certification Orders to reflect the occurrence of this successorship. In the alternative, the unions allege that the respondent corporations all have and operate under common direction and/or control. It is further alleged that the corporate structure used by the named respondents was created for the purpose or is being used to avoid the collective bargaining rights enjoyed by the Carpenters, the Ironworkers and the Labourers for work done in Saskatchewan.

[64] Thus, there are two (2) aspects of the allegations made by the applicant trade unions; namely, successorships and common or related employers; both of which are status-based complaints, in circumstances where the respondents have custody and control of most of the relevant information. Furthermore, pursuant to s. 6-79(5) of the *Act*, the respondent corporations are subject to a burden of proof with respect to the purposes of any associated or related business activities in Saskatchewan.

<u>The Successorship Analysis</u>:

[65] The legislative purpose behind Saskatchewan's successorship legislation has been outlined in a number of previous decisions of this Board, including *Saskatchewan Government Employees' Union v. Saskatchewan Institute of Applied Science and Technology*, [1989] Summer Sask. Labour Report. 51, LRB File No. 131-88, and *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Saskatchewan Gaming Corporation & Moose Jaw Exhibition Association Company Ltd.*, [2001] Sask. L.R.B.R. 751, LRB File Nos. 163-01 & 164-01. A similar but more recent articulation can also be found in the decision of this Board in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Charnjit Singh and 1492559 Alberta Inc.*, [2013] 223 C.L.R.B.R. (2d) 136, 2013 CanLII 3584 (SK LRB).

[66] In Saskatchewan, successorship is now governed by s. 6-18 of *The Saskatchewan Employment Act*. In making a determination pursuant to s. 6-18, it is not necessary that we find that there has been a transfer or sale of a business in a strict legal sense. See: *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 File Nos. 199-84, 201-84, 202-84 & 204-84. Rather, in determining whether there has been a sale, transfer or disposition of a business (or part thereof), the practice of the Board has been to look to see whether there is a discernable continuity in the business formerly carried on by the predecessor employer and subsequently carried on by the successor employer. See: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Charnjit Singh and 1492559 Alberta Inc.*, supra. The vital consideration for the Board is whether or not the effect of the transaction (whether it be a sale, transfer or other disposition) was to put the transferee into possession of the essential elements of a business. To make a finding of successorship, the issue is not so much the legal or technical nature of how the transfer took place but rather whether or not the Board is satisfied that the new owner acquired the essential elements of a business and that those business interests can be traced back to the business activities of the previously certified owner. In other words, the fundamental question is whether there is evidence of a discernable continuity of the subject business (or part thereof). See: *Canadian Union of Public Employees, Locals 832-02 & 832-03 v. Conseil Scolaire Fransaskois de L'Ecole Saint Isidore*, [1995] Sask. Labour Rep. (3rd Quarter) 184, LRB File No. 110-95. See also: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Charnjit Singh and 1492559 Alberta Inc.* supra.

[67] As was noted by this Board in *International Union of Operating Engineers, Hoisting & Portable & Stationary, Local 870 v. North American Construction Group Inc. et.al.*,

(2014) 234 C.L.R.B.R. (2d) 168, 2013 CanLII 60719 (SK LRB), LRB File No. 051-13, the indicia of successorship in the construction industry can be very different from other sectors. This Board has recognized that certain features of companies operating in the construction sector are unique to that industry. For example, some employers carry on business with very few tangible assets. In the construction sector, the key asset of an employer may simply be the skill, knowledge and expertise of its principals or its key personnel, together with that employer's reputation and credibility. As a consequence, labour boards have recognized that the movement of these key personnel from one employer to another in the construction sector can be indicative of the transfer of a business or part thereof, particularly so where one business is wound down and a new employer established to carry on that same work. See: *United Brotherhood of Carpenters and Joiners of America, Local 1985 v. Graham Construction and Engineering Ltd. et.al.*, [2003] Sask. L.R.B.R. 471, LRB File Nos. 014-98 & 227-00.

Common Employers and "Spin-off" Corporations:

[68] Most Canadian jurisdictions have enacted legislation that authorizes labour boards to pierce the corporate veil and find that two (2) or more related businesses can be treated as one (1) common employer for the purposes of labour relations. Saskatchewan has two (2) provisions dealing with these types of circumstances in *The Saskatchewan Employment Act*; firstly s. 6-20, dealing with common or "related" employers in general; and secondly, s. 6-79, dealing with common employers specifically in the construction industry (aka "*spin-off*" corporations). Many companies are related to each other or operate in some associated fashion. In some cases, these companies operate under common direction and control. In some cases, they are merely divisions of a much larger corporate enterprise. There are a variety of legitimate business reasons why companies operate in this fashion and it is, generally speaking, not unlawful to do so. However, if the purpose or effect of a corporate organization is to avoid collective bargaining rights or obligations (for example, by transferring work that would normally be completed by a unionized company to a related company operated under common direction and control or a "spin-off" corporation), then this Board has authority to pierce the corporate veil, so to speak, and declare both employers to be one (1) for the purposes of collective bargaining. The affect of such a declaration is to cause both the unionized employer and the common or related employer (or the "spin-off" corporation in the construction industry) to fall within the scope of a trade union's certification order.

[69] In the case of either a related employer application (pursuant to s. 6-20) or a "spin-off" corporation in the construction sector (pursuant to s. 6-79), it is important to keep in mind that a finding that two (2) or more employers are related and operating under common direction and control, is not determinative of the issue. Even if we are satisfied that the related companies are operating under common direction and control, the question still remains as to whether or not the two (2) employers are operated for the purpose of avoiding collective bargaining rights or obligations. As a consequence, neither related employer applications nor "spin-off" corporation declarations are automatic. However, under s. 6-79(4) of the *Act*, the onus is now on related employers who operate under common direction or control in the construction sector to establish that the purpose of doing so is other than the avoidance of collective bargaining obligations.

Is any of the information desired by the applicant unions in these proceedings properly classified as "particulars"?

[70] We note that Replies have not been filed by either EllisDon Inc. or EllisDon Energy Services Inc. to the applications of the Carpenters. We also note that Replies have not been filed by PME Inc. to any of the applications. In our opinion, Replies ought to be filed by these parties. This Board has previously indicated its position that a party that desires to participate in proceedings before the Board must complete and file a Reply. See: *United Food and Commercial Workers, Local 1400* v. *Wal-Mart Canada Corp. et.al.,* 2004 CanLII 65601 (SK LRB), LRB File No. 172-04 (Dated: December 3, 2004). See also: *UFCW v. Wal-Mart*, (2007) 134 C.L.R.B.R. (2d) 161, 2007 CanLII 68930 (SK. LRB), LRB File No. 172-04 (Dated: March 12, 2007); and *UFCW v. Wal-Mart*, (2009) 158 C.L.R.B.R. (2d) 172, 2008 CanLII 57252 (SK LRB), LRB File No. 038-05 (Dated: October 24, 2008).

[71] A review of the Replies that have been filed would indicate that, while they vary in the degree of specificity contained therein, the respective deponents have either commented on or denied each of the essential elements of the allegations of the applicant trade unions, including the allegations involving successorship and status as being spin-off corporations. The respondents have not relied on blanket denials or generic boilerplate. In our opinion, no further particularization is required. In this regard, we note that the allegations of the applicant trade unions involve status-based complaints. On the other hand, the deponents have specifically commented on or denied each of the essential elements of the substantive allegations with respect to these complaints.

[72] In our opinion, the additional information desired by the applicant trade unions in their applications is not properly classified as "*particulars*". Rather, the desired information is better analyzed in terms of pre-hearing document production not in terms of deficiency of the pleadings.

Does the information requested by the applicant unions in these proceedings fall within the scope of the Board's authority to compel a respondent to prepare a list or provide answers to interrogatories?

[73] As we have indicated, the limited authority of this Board to compel a party to prepare a list of information is derived from our authority to compel document production. As a consequence, we must first examine each request for information by the applicant trade unions as if it were a request for document production.

[74] In numerous cases, this Board has outlined its approach to pre-hearing document production in the construction sector. See: *International Brotherhood of Electrical Workers, Local 2038 v. Sun Electric (1975) Ltd., Alliance Energy Limited and Mancon Holdings Ltd.*, [2002] Sask. L.R.B.R. 362, LRB File No. 216-01. Although not in the context of the construction sector, this Board conducted a general review of its procedures for pre-hearing production of documents in *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations*, *supra*. In doing so, the Board made the following comments we find instructive:

> *[44]* ***Desired documents must be relevant****: While the test for relevance was not seriously in dispute in these proceedings, the extent to which a party may embark upon a fishing expedition through discovery of documents in proceedings before this Board does warrant some consideration. As indicated, this Board does not have; nor do we wish to replicate; the kind of discovery procedures or the kind of production of document obligations commonly seen in a judicial setting. Generally speaking, an applicant seeking production of documents must satisfy the Board that the desired documents are arguably relevant and/or that there is a probative nexus between the documents or information sought and the matters in issue arising out of proceedings before the Board. The greater the number of documents sought, the stronger the probative nexus expected by the Board, particularly so if considerable expense, time and effort is required to locate and produce the desired documents. As we have indicated, it is also an expectation of this Board that such request will occur early in the proceedings whenever possible.*
>
> *[45] In our opinion, the principles identified by the Canada Industrial Relations Board in Air Canada, supra, are well-founded and provide a pragmatic approach*

> *to the production of documents that balances the competing interests arising out of a production request in a labour relations context. These principles were set forth in para. 28 of that decision and have become known as the "Air Canada" factors:*
>
> > *From these awards flow the following principles, which may be suitably applied to the present case.*
> >
> > 1. *Requests for production are not automatic and must be assessed in each case.*
> > 2. *The information requested must be arguably relevant to the issue to be decided.*
> > 3. *The request must be sufficiently particularized so that the person on whom it is served can readily determine the nature of the request, the documents sought, the relevant time-frame and the content.*
> > 4. *The production must not be in the nature of a fishing expedition; that is, the production must assist a complainant in uncovering something to support its existing case.*
> > 5. *The applicant must demonstrate a probative nexus between its positions in the dispute and the material being requested.*
> > 6. *The prejudicial aspect of introducing the evidence must not outweigh the probative value of the evidence itself, regardless of any possible "confidential" aspect of the document.*
>
> *[46] It is also important to note that, in the Air Canada case, the Canada Board acknowledged that there are a number of restrictions on a party's right to seek production of documents in labour relations proceedings and that these restrictions grow in intensity with the greater the number of documents sought and the greater the potential for involving confidential or privileged information. In this regard, we do not accept the argument of the applicant unions that their right to seek out and obtain potentially relevant documents ought to be the dominant factor in our determination. In determining any request for the production of documents, this Board must weigh a number of factors; including a number of competing factors; with the importance of any particular factor shifting with the circumstances under which the request is made (such as in the case of late requests for the production of documents).*

[75] Having reviewed the extensive list of information and documents desired by the Carpenters, the Ironworkers and the Labourers, we find that only a few of the enumerated items properly fall within the scope of the kind of limited pre-hearing disclosure procedures anticipated by this Board. As we have repeatedly indicated, we do not desire to replicate the kind of extensive pre-hearing procedures commonly utilized in a judicial setting. See: *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations*, *supra*. Simply put, the scope of pre-hearing document production permitted by this Board is not as extensive as that desired by the applicants in these proceedings. Pre-hearing disclosure of the extent desired by the unions would signal a fundamental change in this Board's pre-hearing procedures and would see this Board moving into the kind of discovery processes that we have consistently sought to avoid.

[76] On the other hand, there is no doubt that successorship and common employer applications tend to involve complicated fact situations, particularly so in the construction sector where enterprises often operate as groups of interconnected companies. Furthermore, the majority of the most probative evidence in these cases tends to be in the sole possession of employers. Furthermore, while employers are understandably reluctant to make public their inner working, often the most probative evidence does not tend to be controversial; the legal significance of that evidence (in terms of the application of Saskatchewan's labour relations regime) is often in dispute; but the evidence, itself, is generally not in dispute. In this regard, there are certain categories of evidence that tends to expedite preparation for hearings and for which it makes little sense to require an applicant to wait until its counsel has its first opportunity to cross-examine the employer's witnesses before it can obtain access to this information. In our opinion, the routine provision of certain information by employers in successorship/common employer cases in the construction sector will tend to expedite hearings, will tend to avoid pre-hearing delays, will tend to assist the parties in preparing their cases, and will generally promote a more efficient use of this Board's scare resources.

[77] In our opinion, the following categories of information are properly the subject of a pre-hearing request for document production in successorship/common employer cases in the construction industry (assuming an applicant has demonstrated an arguable case):

1. A listing of the key personnel for each respondent corporation.
2. A listing of all works or undertakings performed by each respondent corporation in the Province of Saskatchewan with a value in excess of $25,000 since 2012 (the year before the first application was filed with the Board), including the location and dates of such works or undertakings, together with a listing of the number and type of trades persons employed by the respondent corporations for each such work or undertaking.
3. A listing of all offices, buildings or premises owned or leased by each of the respondents in the Province of Saskatchewan since 2012.
4. A listing of any equipment leased or owned by each of the respondents that is located in the Province of Saskatchewan since 2012.
5. Copies of personnel, safety and employment manuals effective for each respondent corporation in the Province of Saskatchewan, if any for the years 2012 and 2013.

6. Copies of any insurance policies covering works or undertakings performed in Saskatchewan since 2012.
7. Copies of any insurance policies covering assets held in Saskatchewan since 2012.
8. Copies of any contracts or agreements between any of the named respondents wherein one respondent supplies labour to any other respondent for works or undertakings in the Province of Saskatchewan since 2012.
9. A statement from each of the respondents as to whether or not any of their capital is pooled with any of the other named respondents in these proceedings.
10. A statement from each of the respondents as to whether or not they report to any of the other named respondents in these proceedings.

[78] In our opinion, the information contained in each of the above captioned items satisfies the "*Air Canada*" criteria. For example, all of the listed information is arguably relevant to allegations of successorship or common employer status or both. Furthermore, we find that each of these categories is sufficiently particularized. We are mindful that requiring the production of this information and/or these documents could involve considerable expense, time and effort. Certainly, if documents are produced for each of these items, compliance could involve a significant number of documents. However, we are satisfied that there is a strong probative nexus between this information and the matters in dispute between the parties. In our opinion, the strength of the probative nexus associated with each of these categories of information is sufficient to justify the expense, time and effort associated with providing this information, whether compliance is in the form of a list, a statement or production of responsive documents. In our opinion, the provision of this information will tend to avoid any further pre-hearing delays by assisting the parties in preparing their respective cases.

[79] In our opinion, the probative nexus associated with the balance of the information and/or documents desired by the applicant trade unions (i.e.: the information and documents that we have not required the respondents to provide or produce) is generally weaker and insufficient to justify the time, effort and expense associated with locating and producing this information or these documents. In some cases, the scope of the requests is too broad and in some cases the probative nexus is too weak to justify pre-hearing production of responsive documents. As we have indicated, our pre-hearing processes are not the same as that seen in a judicial setting. This is not to say that such information would not be relevant, probative or admissible at a

hearing. However, in our opinion, compelling production of the volume of information and documents desired by the applicant trade unions is inconsistent with the kind of limited pre-hearing processes desired by this Board. As we have indicated, the greater the volume of pre-hearing disclosure desired by a party, the stronger the probative nexus expected by this Board. See: *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations*, *supra*.

[80] Next, a few comments on the issue of requiring the respondents to prepare and provide lists of information and/or statements. As we have indicated, this Board's authority to compel a party to prepare certain lists of information (and/or statements) is derivative from our authority to compel document production. In our opinion, the information contained in items 1, 2, 3, 4, 9 & 10 above are all properly the subject matter of a request for document production. We also anticipate that it would be far easier for the respondents to provide this information in the form of a list (or in the form of an answer) than it would be for them to find and produce all responsive documents that would fall into these categories. We also assume that providing a list (or an answer) would be less likely to result in the production of irrelevant or potentially privileged information requiring redactions. As a consequence, an Order shall issue requiring each respondent employer to provide the information contained in items 1, 2, 3, 4, 9 & 10 and to produce the documents in items 5, 6, 7 and 8. However, should any of the respondents object to providing the information in the form we direct (i.e.: as a list or statement), we grant leave to treat each of these items as an Order of this Board compelling production of that category of documents.

[81] In making the above captioned Order, we note that many of the respondents have already provided some of the enumerated information in their Replies (or possibly through other communications). However, it is impracticable for this Board to examine who has and who has not already provided the information set forth in each of these categories. To the extent that aspects of the above captioned Order will compel production of information already provided, we apologize.

[82] Finally, we note that Mr. Wilson's clients are not named as respondents in the applications of the Labourers or the Ironworkers. As such, these respondents are not compelled to provide their information to either the Labourers or the Ironworkers; however, in the interests of cooperation, they may wish to voluntarily do so.

In the context of a successorship/related employer application, does the Board have the authority to compel a party to produce a document that exists or is maintained in another jurisdiction? In that same context, does the Board have the authority to order production of a document related solely to the activities of that party outside of this province?

[83] In light of the limited scope of information and documents that we have directed the respondents to provide and/or produce, it is not apparent that these issues are of relevance any further. However, to the extent that these issues remain in dispute between the parties, we can do no better than to quote the conclusion of Madam Justice Dawson in *Pyramid Electric Corp. v. International Brotherhood of Electrical Workers, Local 529*, 185 Sask. R. 82, 19 Admin LR (3d) 113, 1999 SKQB 114 (CanLII):

> *[36] It is clear that the Board does not have jurisdiction over employees residing and working outside Saskatchewan. The Act is not intended to have application beyond Saskatchewan. However, s. 37 is concerned with continuing the bargaining rights applicable to a particular Saskatchewan business onto a person who has acquired that business or part thereof. Although Pyramid is an Alberta based company it could have employee relations which fall under the jurisdiction of the Board. Further, a certification order will apply to an employer based in another jurisdiction when it carries on business in Saskatchewan. Whether those relationships bring them within the bargaining obligations which were imposed on a predecessor business is within the Board's jurisdiction to decide. The Board must decide whether there is a sufficient nexus between Sparrow and Pyramid, as the putative successor, so as to determine whether Pyramid is the heir to the obligation to bargain collectively. As stated by McLachlin J. in the case of Lester (W.W.) (1978) Ltd. v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 740, 1990 CanLII 22 (SCC), [1990] 3 S.C.R. 644 at 676-77:*
>
> > *To determine whether or not the business or part of the business has been disposed of, most boards examine the nature of the predecessor business, and the nature of the successor business determines if the business of the predecessor is being performed by the successor. Most boards approach the issue by examining factors like the work covered by the terms of the collective agreement, the type of assets that have been transferred, whether goodwill has been transferred, whether employees are transferred, whether the business is operating in the same location, whether there is a continuity of management, and whether there is continuity of work performed ....*
>
> *Pyramid argues that its possible acquisition of some of Sparrow's inventory in Alberta cannot make it the successor of Sparrow's business. But that is the very determination that the Board must make: what is the nature and extent of the disposition from Sparrow to Pyramid? Pyramid argues that Sparrow is not the successor and therefore the evidence sought is not relevant. Without examination of the relevant facts and documentation the Board will be unable to perform its function. Pyramid may have entered into arrangements or contracts with Sparrow or its trustee, which arrangements or contracts occurred outside the*

> *territorial jurisdiction of Saskatchewan, but which nevertheless govern the employees, contracts or assets of Sparrow in Saskatchewan. The mere fact that such arrangements, if they exist, took place between Pyramid and Sparrow outside Saskatchewan or the mere fact that Pyramid alleges they do not apply to Sparrow is not determinative. The Board must determine whether such arrangements, if they exist, are sufficient to classify Pyramid as the successor to Sparrow in Saskatchewan in accordance with the legislation and the parameters outlined in Lester, supra. ...*

Conclusion:

[84] For the foregoing reasons, we direct that PME Inc., EllisDon Inc. and EllisDon Energy Services Inc. file Replies to the applications of the Carpenters in LRB File Nos. 195-13 & 196-13. We also direct that PME Inc. file a Reply to the application of Labourers in LRB File No. 264-13 and to the application of the Ironworkers in LRB File No. 263-13.

[85] We direct EllisDon Corporation, 1630959 Alberta Ltd., PME Inc., Golderado Contracting Corp., Silverado Site Services Ltd., EllisDon Industrial Services Inc. and EllisDon Energy Services Inc. to provide the following information, answers to interrogatives and/or produce the following categories of documents to each of the applicant trade unions:

1. A listing of the key personnel for each respondent corporation.
2. A listing of all works or undertakings performed by each respondent corporation in the Province of Saskatchewan with a value in excess of $25,000 since 2012, including the location and dates of such works or undertakings, together with a listing of the number and type of trades persons employed by the respondent corporations for each such work or undertaking.
3. A listing of all offices, buildings or premises owned or leased by each of the respondents in the Province of Saskatchewan since 2012.
4. A listing of any equipment leased or owned by each of the respondents that is located in the Province of Saskatchewan since 2012.
5. Copies of personnel, safety and employment manuals effective for each respondent corporation in the Province of Saskatchewan, if any for the years 2012 and 2013.
6. Copies of any insurance policies covering works or undertakings performed in Saskatchewan since 2012.
7. Copies of any insurance policies covering assets held in Saskatchewan since 2012.

8. Copies of any contracts or agreements between any of the named respondents wherein one respondent supplies labour to any other respondent for works or undertakings in the Province of Saskatchewan since 2012.
9. A statement from each of the respondents as to whether or not any of their capital is pooled with any of the other named respondents in these proceedings.
10. A statement from each of the respondents as to whether or not they report to any of the other named respondents in these proceedings.

[86] Finally, we direct EllisDon Inc., EllisDon Civil Ltd., EllisDon Construction Ltd., and EllisDon Construction Services Ltd. to provide the following information, answers to interrogatives and/or produce the following categories of documents to the Carpenters:

1. A listing of the key personnel for each respondent corporation.
2. A listing of all works or undertakings performed by each respondent corporation in the Province of Saskatchewan with a value in excess of $25,000 since 2012, including the location and dates of such works or undertakings, together with a listing of the number and type of trades persons employed by the respondent corporations for each such work or undertaking.
3. A listing of all offices, buildings or premises owned or leased by each of the respondents in the Province of Saskatchewan since 2012.
4. A listing of any equipment leased or owned by each of the respondents that is located in the Province of Saskatchewan since 2012.
5. Copies of personnel, safety and employment manuals effective for each respondent corporation in the Province of Saskatchewan, if any for the years 2012 and 2013.
6. Copies of any insurance policies covering works or undertakings performed in Saskatchewan since 2012.
7. Copies of any insurance policies covering assets held in Saskatchewan since 2012.
8. Copies of any contracts or agreements between any of the named respondents wherein one respondent supplies labour to any other respondent for works or undertakings in the Province of Saskatchewan since 2012.
9. A statement from each of the respondents as to whether or not any of their capital is pooled with any of the other named respondents in these proceedings.

10. A statement from each of the respondents as to whether or not they report to any of the other named respondents in these proceedings.

[87] Board members Maurice Werezak and Joan White both concur with these Reasons for Decision.

DATED at Regina, Saskatchewan, this **25th** day of **November**, **2014.**

LABOUR RELATIONS BOARD

"Original signed by"

Steven D. Schiefner,
Vice-Chairperson

PRAIRIE ARCTIC REGIONAL COUNCIL OF CARPENTERS, DRYWALLERS, MILLWRIGHTS; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1985; INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, LOCAL UNION NO. 771; and CONSTRUCTION AND GENERAL WORKERS UNION, LOCAL NO. 180; Applicants v. ELLISDON CORPORATION; ELLISDON ENERGY SERVICES INC.; ELLISDON INDUSTRIAL SERVICES INC.; GOLDERADO CONTRACTING CORP.; SILVERADO SITES SERVICES LTD.; 1630959 ALBERTA LTD.; ELLISDON INC.; ELLISDON CIVIL LTD.; ELLISDON CONSTRUCTION SERVICES INC.; ELLISDON CONSTRUCTION LTD.; AND PME INC.; Respondents, and CONSTRUCTION WORKERS UNION (CLAC), LOCAL 151, Intervenor

LRB File Nos. 195-13, 196-13, 263-13, 264-13, 275-13 & 171-14; December 2, 2014.
Vice-Chairperson, Steven D. Schiefner; Members: Maurice Werezak and Joan White

CORRIGENDUM

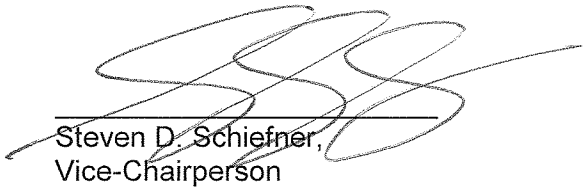
[88] In paragraphs 4, 13, 17 & 82 of the Board's Reasons for Decision in these proceedings, we erroneously indicated that neither EllisDon Inc. nor EllisDon Civil Ltd. were named as respondents in the application of the Construction and General Workers' Union, Local 180 (the "Labourers') or the application of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union No. 771 (the "Ironworkers"). These statements were incorrect. By Order of this Board dated June 3, 2014, both EllisDon Inc. and EllisDon Civil Ltd. were added as parties to the applications of the Labourers (being LRB File No. 264-13) and of the Ironworkers (being LRB File No. 263-13). As a consequence, the Order of this Board dated November 25, 2014 shall be amended to reflect this correction.

[89] In paragraphs 16 & 70 of the Reasons for Decision, we erroneously indicated that PME Inc. had not filed a reply to the applications of the Prairie Artic Regional Council of Carpenters, Drywallers, Millwrights and Allied Workers and the United Brotherhood of Carpenters and Joiners of America, Local 1985 (hereinafter collectively referred to as the "Carpenters"). These statements were incorrect. The Board's records indicate that PME Inc. has filed a reply to the applications of the Carpenters (being LRB File Nos. 195-13 & 196-13).

[90] Finally, in the style of cause and in paragraphs 2 and 86, we sometimes referred to EllisDon Construction Services Ltd. and EllisDon Construction Inc. The proper names for these respondents are EllisDon Construction Ltd. (not Inc.) and EllisDon Construction Services Inc. (not Ltd.).

DATED at Regina, Saskatchewan, this **2nd** day of **December**, **2014.**

LABOUR RELATIONS BOARD



Steven D. Schiefner,
Vice-Chairperson