



**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.; SILVERADIO SITES SERVICES LTD.; 1630959 ALBERTA LTD.; ELLISDON INC.; ELLISDON CIVIL LTD.; ELLISDON CONSTRUCTION SERVICES INC.; ELLISDON CONSTRUCTION INC.; AND PME INC.; Respondents**

LRB File Nos. 195-13, 196-13, 263-13, 264-13, 275-13, 351-13, 022-14 & 023-14; June 3, 2014  
Vice-Chairperson, Steven D. Schiefner; Members: John McCormick and Mike Wainwright

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 the 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.

**PRACTICE AND PROCEDURE – Parties – Trade unions file applications seeking to amend existing certification Orders on basis of successorship and/or related employer or common employer designations – By way of preliminary applications, trade unions seek to name additional respondents, who resist being added to proceedings – In addition, some respondents ask that the allegations against them be summarily dismissed – Disputed corporations allege that they have never conducted business in Saskatchewan and have not employed any employees in province – Disputed corporations argue it is premature for the Board to consider successorship if they have never operated in Saskatchewan – Disputed corporations argue they can not be involved in erosion of bargaining rights if they have not employed any employees in province – Trade unions allege that disputed corporations are inter-related and operate with centralized**

**management structure – Trade unions argue it is premature to exclude any potential respondents prior to hearing of evidence – Board notes that it is not unusual for employers in the construction sector to operate with complex corporate structures – Board not satisfied that any of the disputed corporations can be excluded based on the limited information available at pre-hearing stage.**

## **REASONS FOR DECISION – PRELIMINARY MATTERS**

### **Background:**

**[1] Steven D. Schiefner, Vice-Chairperson:** These Reasons for Decision are limited to a preliminary determination as to the identity of the appropriate respondents to various allegations by the applicant trade unions involving successorship and/or desired designations based on common or related employer status. While there are many named Respondents, the disputed corporations are EllisDon Inc., EllisDon Civil Ltd., EllisDon Construction Ltd., EllisDon Construction Services Ltd. and PME Inc.

**[2]** The applicant trade unions in these proceedings involve 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”). In their applications, the applicant trade unions have named a number of Respondent corporations they believed ought to be added to their respective certification Orders on the basis of successorship and/or designated as related or common employers.

**[3]** For example, by certification Order dated October 22, 1975 (LRB File No. 264-95), a predecessor of the Carpenters was certified to represent a craft unit of carpenters and millwrights employed by Ellis-Don Limited in the Province of Saskatchewan. On August 6, 2013, the Carpenters applied to the Board to amend their certification Order and named EllisDon Corporation as a successor to the obligations flowing from that Order. See: LRB File No. 195-13. In addition to alleging that EllisDon Corporation is bound by their certification Orders as a successor, the Carpenters also allege that 1630959 Alberta Ltd., EllisDon Industrial Services Inc., EllisDon Construction Services Inc., EllisDon Construction Ltd., EllisDon Civil Ltd., PME Inc., Golderado Contracting Corp. and Silverado Site Services Ltd. are related or common

employers with EllisDon Corporation. To which end, the Carpenters seek an Order from this Board that these corporations (or any of them) are also bound by the Carpenters' certification Orders. See: LRB File No. 196-13. The issue that is the subject of these Reasons for Decision is whether or not the Carpenters ought to be granted leave to amend their applications to also add EllisDon Inc. as a potential successor and EllisDon Energy Services Inc. as potential related or common employers.

**[4]** By way of certification Order dated October 11, 1979 (LRB File No. 202-79), the Ironworkers were certified to represent a craft unit of ironworkers employed by Ellis-Don Limited in the Province of Saskatchewan. On September 30, 2013, the Ironworkers applied to the Board to amend this certification Order and named EllisDon Corporation, EllisDon Energy Services Inc., EllisDon Industrial Services Inc., Golderado Contracting Corp., Silverado Site Services Ltd. and 1630959 Alberta Ltd. as the Respondent employer that ought to be subject to their certification Order, see: LRB File No. 263-13. On the other hand, the Ironworkers did not name EllisDon Civil Ltd., EllisDon Inc. and PME Inc. The Ironworkers now seek leave to add these three (3) corporate entities as named Respondents to their applications.

**[5]** By way of certification Orders dated August 6, 1976 (LRB File No. 198-76), October 22, 1975 (LRB File No 262-75) and September 19, 2008 (LRB File No. 108-08), the Labourers were certified to represent all construction labourers and foreman employed by Ellis-Don Limited in both the northern and southern halves of the Province of Saskatchewan. On September 30, 2013, the Ironworkers applied to the Board to amend this certification Order and named EllisDon Corporation, EllisDon Energy Services Inc., EllisDon Industrial Services Inc., Golderado Contracting Corp., Silverado Site Services Ltd. and 1630959 Alberta Ltd. as the Respondent employer that ought to be subject to their certification Orders. See: LRB File No. 264-13. On the other hand, the Labourers did not name EllisDon Civil Ltd., EllisDon Inc. and PME Inc. The Labourers now also seek leave to add these three (3) corporate entities as named Respondents to their applications.

**[6]** By way of applications bearing LRB File Nos. 351-13, 022-14 and 023-14, the corporate Respondents, EllisDon Civil Ltd., EllisDon Construction Ltd., EllisDon Construction Services Ltd. and PME Inc., respectively, seek to have all allegations against them summarily dismissed. In addition, EllisDon Inc. resists being added as a party to these proceedings.

**[7]** In summary, if the applicant trade unions are successful, there will be eleven (11) corporate Respondents to their applications. If all of the disputed Respondents are removed, there will be six (6) remaining corporate Respondents, namely; EllisDon Corporation, EllisDon Industrial Services Inc., EllisDon Energy Services Inc., Golderado Contracting Corp., Silverado Site Services Ltd. and 1630959 Alberta Ltd.

**[8]** A preliminary application with respect to the addition and/or removal of Respondent parties from these proceedings was heard by the Board on March 31, 2014.

**[9]** Having reviewed the pleadings, it is not patently obvious that any of the disputed corporations can be excluded as potential respondents from these proceedings. These Reasons for Decision are limited to that preliminary determination.

**Facts as Alleged in the Pleadings:**

**[10]** The applications that were filed by the applicant trade unions in these proceedings are confusing and not entirely consistent. Nonetheless, it is upon the allegations set forth in the unions' applications that we must base our determinations.

**[11]** The allegations of the applicant trade unions with respect to EllisDon Inc. are:

- (a) That EllisDon Inc. is an inter-related company with EllisDon Corporation, operating under common direction and/or control;
- (b) That either EllisDon Inc. or EllisDon Corporation, or both of them, are successors to the collective bargaining obligations imposed by this Board on Ellis-Don Limited;
- (c) That EllisDon Inc. is the "directing mind" of EllisDon Civil Ltd.;
- (d) That EllisDon Inc. acquired PME Inc., Golderado Contracting Corp. and Silverado Site Services Ltd. in or about 2012, and that it did so for the purpose of avoiding collective bargaining obligations;
- (e) That EllisDon Inc. provides centralized services and strategic direction to its various operating arms, including EllisDon Civil Ltd., Golderado

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

- (f) That 1630959 Alberta Ltd. has employed employees in the Province of Saskatchewan; and
- (g) That Ellisdon Inc. has refused to recognize the applicant trade unions or their respective collective agreements.

**[12]** The allegations of the applicant trade unions with respect to PME Inc. are:

- (a) PME Inc., together with Golderado Contracting Corp. and Silverado Site Services Ltd. were acquired by EllisDon Inc. or EllisDon Corporation in or about 2012;
- (b) PME Inc. was acquired by EllisDon Inc. or EllisDon Corporation for the purpose of avoiding collective bargaining obligations;
- (c) That PME Inc. is the “titular” head of Golderado Contracting Corp., PME Inc., Silverado Site Services Ltd. and 1630959 Alberta Ltd.;
- (d) That 1630959 Alberta Ltd. has employed employees in the Province of Saskatchewan;
- (e) That PME Inc., together with 1630959 Alberta Ltd., are inter-related company with EllisDon Inc. and/or EllisDon Corporation, operating under common direction and/or control; and
- (f) That PME Inc. has refused to recognize the applicant trade unions or comply with their respective collective agreements.

**[13]** The allegations of the applicant trade unions with respect to EllisDon Civil Ltd. are:

- (a) That EllisDon Civil Ltd. is a corporation owned and/or controlled by EllisDon Inc. and/or EllisDon Corporation;
- (b) That EllisDon Civil Ltd. was formed for the purpose of avoiding collective bargaining obligations; and
- (c) That EllisDon Civil Ltd. has refused to recognize the applicant trade unions or comply with their respective collective agreements.

**[14]** The allegations of the applicant trade unions with respect to EllisDon Construction Ltd. are that:

- (a) EllisDon Construction Ltd. is a corporation owned and/or controlled by EllisDon Inc. and/or EllisDon Corporation;
- (b) That EllisDon Construction Ltd. was formed for the purpose of avoiding collective bargaining obligations; and
- (c) That EllisDon Construction Ltd. has refused to recognize the applicant trade unions or comply with their respective collective agreements.

**[15]** The allegations of the applicant trade unions with respect to EllisDon Construction Services Inc. are that:

- (a) EllisDon Construction Services Inc. is a corporation owned and/or controlled by EllisDon Inc. and/or EllisDon Corporation;
- (b) That EllisDon Construction Services Inc. was formed for the purpose of avoiding collective bargaining obligations; and
- (c) That EllisDon Construction Inc. has refused to recognize the applicant trade unions or comply with their respective collective agreements.

**[16]** In their applications, the applicant trade unions essentially allege that all of the named corporate Respondents are part of a one (1) large corporate enterprise involving

numerous inter-related divisions, all having common direction and/or control. It is further alleged that this corporate structure has been created for the purpose or is being used to avoid collective bargaining obligations arising out of valid certification Orders held by the Carpenters, the Ironworkers and the Labourers.

**Analysis on the Preliminary Issue:**

**[17]** Our analysis of the appropriate Respondents to the unions' applications involves consideration of two (2) questions:

- (a) Does this Board have jurisdiction over the disputed Respondents?
- (b) Do the allegations set forth in the applications of the applicant trade unions establish an arguable case?

Does this Board have jurisdiction over the disputed Respondents?

**[18]** The first issue to be determined is whether or not this Board has jurisdiction over any of the disputed Respondents. It is common ground that, if we do not have jurisdiction over the disputed Respondents because they are foreign corporations, they should not be named as Respondents.

**[19]** This Board's practice with respect to foreign respondents was considered by this Board in *United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp. and Wal-Mart Store Inc., et. al.*, [2010] C.L.R.B.R. (2<sup>nd</sup>) 56, 2009 CanLII 60425 (SK LRB), LRB File No. 194-04. In this case, Wal-Mart Store Inc., the US parent company of Wal-Mart Canada Corp., sought to be removed as a named respondent from proceedings before this Board. Wal-Mart US argued that the Board did not have jurisdiction over a non-resident, foreign corporation in the absence of evidence that it was conducting business in the Province of Saskatchewan. The applicant trade union in that case, UFCW, 1400, argued that the test for the Board's jurisdiction is not the *situs* of the company's incorporation or the location of its head office, it is whether or not there exists a "sufficient nexus" between the company (irrespective of its origins) and employees in the Province of Saskatchewan. Although the Board agreed that Wal-Mart US ought to be removed as a named respondent from the union's application, it agreed with the union as to the appropriate test for determining whether or not the Board has jurisdiction over a disputed respondent:

*[29] After carefully considering the argument of the parties, and the limited authority on point, we are satisfied that in some instances the Board can have jurisdiction over a non-resident, foreign corporation, such as Wal-Mart US. There is authority for the proposition that this Board's jurisdiction over a company is not determined by the origin of that company, the location of its head office, or whether or not it attorns to the jurisdiction. In this regard, the Board agrees with counsel for the Union that this Board's jurisdiction over a company arises on the basis of a sufficient nexus between that company and employees in the Province of Saskatchewan. See: Pyramid Electric Corp, supra, and Servall Transport Limited, supra.*

*[30] On the other hand and with all due respect, the Board has concluded that the original panel's decision was precedential and amounted to a significant policy adjudication which the Board wishes to clarify and change. Specifically, the original panel erred in allowing the Union's application in successorship to continue against Wal-Mart US in the absence of an allegation (or any evidence) that it was the employer of any of the employees in Moose Jaw, Saskatchewan. While the Act permits the Board to pierce the corporate veil (for example, to make determinations as to whether or not corporations are related or common employers and as to who is the "true" employer in the case of a principal and contractor), with the original panel's decision to dismiss the Union's allegations related to conspiracy, there was no longer a basis or requirement for the Board to look behind the corporate veil of the Respondents. The Union was not alleging that Wal-Mart US was the employer of any of the employees in Moose Jaw; rather, the Union was alleging that Wal-Mart US was a party to transactions that resulted in Wal-Mart Canada becoming the successor to the Union's collective bargaining rights in Moose Jaw. Of particular significan[ce], the Board notes that the Union's security demand (served June 29, 2004) was not made on Wal-Mart US; it was made upon Wal-Mart Canada.*

**[20]** In the present case, the disputed Respondents: namely, EllisDon Inc., EllisDon Civil Ltd., EllisDon Construction Ltd., EllisDon Construction Services Inc. and PME Inc.; each take the position that they are foreign corporations, similar to Wal-Mart US in the *Wal-Mart* case, and argue that this Board does not have jurisdiction over them. All of the disputed Respondents state that they are not registered to do business in the Province of Saskatchewan and they note that there is no allegation suggesting that they are. They state that they have never carried on business in Saskatchewan; that they do not employ any employees in the Province of Saskatchewan, and that there are no allegations that any of them have performed work or employed employees in Saskatchewan. The disputed Respondents argue that, even if they are the successors to collective bargaining obligations to the unions in Saskatchewan, it is premature for this Board to make a finding of Successorship, if there is no allegation (or evidence) that the disputed Respondents have conducted business in Saskatchewan. Furthermore, the disputed Respondents argue that, even if this Board concluded that all or some of them operate under common direction and control (with successors to the unions' collective bargaining obligations), it is not theoretically possible for there to be an erosion of the applicant



trade unions collective bargaining rights' if none of the disputed Employers have carried on business in Saskatchewan. In other words, even if we concluded that all or some of the disputed corporations operate under common direction and control, there would be no labour relations purpose in making a common or related employer designation.

**[21]** PME Inc. argues that it is not possible for it to be successor to the collective bargaining obligations arising out of the unions' certifications Orders because there is no allegation in any of the pleadings that any work has been transferred to it. Furthermore, PME Inc. argues that any application to apply the union's certification Orders to it could only expand the bargaining rights currently held by the unions, which would be contrary to the principles set forth 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. (2<sup>nd</sup>) 168, 2013 CanLII 60719 (SK LRB), LRB File No. 051-13.

**[22]** The unions reject the assertions that the disputed Respondents have never carried on business nor employed employees in Saskatchewan and argue that it would be premature to release any of the disputed Respondents until this Board has had an opportunity to determine whether or not the disputed Respondents are associated or related business operating under common direction and control. In the alternative, the unions argue that it is not necessary to have employees in the Saskatchewan to become subject to a common employer designation or to be a successor. Simply put, the unions argue that the status of the disputed Respondents can only be determined after a full hearing and proper examination of the evidence.

**[23]** In our opinion, none of the disputed Respondents are foreign corporations in the sense that term was used by the Board in the *Wal-Mart* case. In that case, the pleadings established that Wal-Mart US was a foreign corporation; not just to Saskatchewan; but to Canada. Wal-Mart Canada Corp. was formed by Wal-Mart US precisely for the purpose of operating in Canada and there was no allegation (nor any evidence) that Wal-Mart US was operating in Canada other than through its Canadian subsidiary. In that case, the Board pronounced a policy position that, when faced with a Canadian corporation (that is an actual employer of workers in Saskatchewan) and that corporation's international parent company (which is not an actual employer), the Board would prefer the Canadian corporation as the proper respondent to its proceedings to the exclusion of the foreign corporation. In doing so, the

Board cited a number of practical reasons for doing so, as well as the desire to avoid unnecessary complicating its proceedings with the involvement of foreign corporations particularly so where they had no apparent connection to the proceedings. As indicated, none of the disputed respondents are foreign corporations in that sense.

**[24]** The fact that the disputed corporations are not registered to do business in Saskatchewan is not the test of whether or not this Board has jurisdiction over them. The test is whether or not the pleadings establish a sufficient nexus between the disputed Respondents and employees working in this Province.

**[25]** While the pleadings in these proceedings are not the apex of clarity, the unions have plead that each of the disputed Respondents have a nexus to employees working in Saskatchewan on the basis of either successorship or status as common or related employers or that they are the controlling mind of the putative employer of the subject employees. Unlike Wal-Mart US in the *Wal-Mart* case, there are allegations upon which a connection or relationship with employees in Saskatchewan could be sustained by the Board (even if those connections or relationships appear remote at this stage). As such, we are satisfied that a sufficient nexus exists to grant this Board jurisdiction over the disputed corporations.

Do the allegations set forth in the applications of the trade unions establish an arguable case?

**[26]** In the present case, the disputed Respondents all take the position that the applications that have been filed by the applicant trade unions do not establish an arguable case against them and do so for essentially the same reason that they took the position that this Board did not have jurisdiction over them.

**[27]** The applicant trade unions argue that summary dismissal ought to be an extraordinary remedy that should only be granted in the clearest of cases. In the present case, the unions argue that their pleading establish an arguable case and ask that any doubt or confusion that may exist in the pleadings should be resolved in favour of having the matters proceed to hearing. Simply put, the unions argue that the status of the disputed Respondents can only be determined after a full hearing and proper examination of their evidence.

**[28]** The appropriate test for determining whether the claims against the disputed Respondents should be summarily dismissed is no arguable case. To apply this test, we

assume that the applicant trade unions are able to prove the allegations set forth in their respective pleadings. If, upon making this assumption, we are satisfied that there is no reasonable chance that the applicant trade unions will obtain any relief involving the disputed Respondents, the Board may summarily dismiss the claims against them. The Board has resolved to exercise its jurisdiction to strike on this ground only in plain and obvious cases. See: *International Brotherhood of Electrical Workers, Local 529, et. al. v. KBR Wabi Ltd. et. al.*, [2013] 226 C.L.R.B.R. (2<sup>nd</sup>) 48, 2013 CanLII 73114 (SK LRB), LRB File Nos. 188-12, 191-12 to 193-12 and 198-12 to 201-12.

**[29]** At this point in the proceedings, we have made no determinations as to whether or not there is a successor to the collective bargaining obligations arising out of the unions' certification Orders. We have not identified the nature of the business that was being carried on by Ellis-Don Limited in Saskatchewan while it was certified and/or whether there was a discernable continuity of that particular business into the hands of any of the named Respondents. Even if we agree with the position advanced by the disputed Respondents, namely that it is premature to name any of them as successors until such time as they actively employ employees in this Province (an argument that has considerable merit), it is clear that there are employees working here. It is difficult, based on the limited information available to the Board at this stage in the proceedings, to know who is the true employer of those employees. As such, it is not plain and obvious that the disputed Respondents can be excluded as potential successors.

**[30]** Furthermore, even if we agree that there can be no erosion of the collective bargaining rights held by the applicant trade unions if the disputed Respondents have not yet conducted any business in this Province (an argument that is supported by this Board's determination in *North American Construction Group Inc., supra*), there are nonetheless employees working in the Province and the applicant trade unions allege that all of the named Respondents, including the disputed Respondents, are part of a unified group of privately held companies whose internal corporate relationships are unknown. In the construction sector, a deeper examination is sometimes required to establish the identity of the true employer of employees; particularly so in the case of employers who operate within a more complex corporate structure or who have a number of related or interrelated corporate entities.

**[31]** As this Board noted in *International Union of Painters & Allied Trades, Local 739 v. PAFHQ Construction GP Ltd.*, [2014] 238 C.L.R.B.R. (2<sup>nd</sup>) 57, 2013 CanLII 83873 (SK LRB), LRB File Nos. 108-13 & 125-13, it is not unusually (nor unlawful) for employers to operate within a complex corporate structure utilizing operating subsidiaries or related companies to deliver their services and/or to support their operations. It is also not unusual (nor unlawful) for those corporate entities to use one (1) identity to solicit, bid on and acquire work, while using another identity to perform that work; sometimes with subtle distinctions not immediately apparent to an outside observer. It is not unusual (nor unlawful) for employers to compartmentalize their operations while maintaining, some ongoing form of integration (officially and unofficially) at the strategic and/or management level. It is not unusual (nor unlawful) for employers to place a cloak of simplicity around what can be a very complex organization relationship. However, when employers choose to operate within such complex corporate structures, the true nature of the relationships between inter-related companies is not always readily apparent.

**[32]** Having reviewed the applications and other material filed by the applicant trade unions, we are not able to conclusively exclude any of the disputed Respondents at this stage of the proceedings. The fact that it may well be difficult to establish that the disputed Respondents are successors to the collective bargaining obligations arising out of their certification Orders or that they have any relationship to any of the work being performed in Saskatchewan does not mean that such relationships do not exist. In our opinion, in light of what appears to be the complex corporate structure within which all of the named Respondents operate, we are not satisfied that the allegations of the applicant trade unions can be summarily dismissed against any of the disputed Respondents. Simply put, we are not satisfied that it is plain and obvious that the allegations involving the disputed Respondents have no chance of success.

**Conclusion:**

**[33]** For the foregoing reasons, we find:

- (a) That the application by the Carpenters to add EllisDon Inc. as a potential successor and EllisDon Energy Services Inc. as a potential related or common employer is granted;

- (b) That the applications by the Ironworkers and the Labourers to add EllisDon Inc., EllisDon Civil Ltd., and PME Inc. as potential successors and/or related or common employers is granted; and
- (c) That the applications for summary dismissal by EllisDon Civil Ltd., EllisDon Construction Ltd., EllisDon Construction Services Ltd. and PME Inc. are dismissed.

**[34]** Board members John McCormick and Mike Wainwright both concur with these Reasons for Decision.

**DATED** at Regina, Saskatchewan, this **3rd** day of **June, 2014**.

**LABOUR RELATIONS BOARD**

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Steven D. Schiefner,  
Vice-Chairperson