

March 25, 2014

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Dear Sirs and Madams:

**RE: LRB File No. 352-13 - Application for Summary Dismissal
in Respect of LRB File No. 320-13**

Background

The Retail, Wholesale and Department Store Union, Local 568 (the “Union”) represent a unit of workers employed by the Regina Qu'Appelle Health Region (RQHR) at its laundry services department in Regina. On November 14, 2013, the Union filed an application with the Saskatchewan Labour Relations Board (the “Board) alleging RQHR was implementing, or was about to implement, a technological change affecting a significant number of laundry workers. The Union also alleged that a number of unfair labour practices were being committed concomitant with the implementation of that technological change. The Union’s application was designated LRB File No. 320-13. In its application, the Union named

four (4) respondents, namely; RQHR, the employer of the subject employees; Saskatchewan Association of Health Organizations (“SAHO”), the designated agent of RQHR for purposes of collective bargaining; 3s Health, a corporate entity with delegated responsibility for certain administrative and support services for RQHR (including laundry services); and K-Bro Linen Systems Inc. (the “K-Bro Linen” or the “Applicant”).

On December 31, 2013, K-Bro Linen made application to this Board for summary dismissal of the Union’s claim against it in LRB File No. 320-13. In its application, K-Bro Linen alleges that there is nothing (i.e.: neither fact nor pleading) in the Union’s application from which it could be concluded that it had committed any violation of *The Trade Union Act*, involving technological change or otherwise or that it otherwise ought to be a respondent to the Union’s allegations in LRB File No. 320-13.

In accordance with the process outlined by the Board in its decision in *Construction Workers Union, Local 151 v. Nicole Wilson, et. al.* (LRB File No. 049-13, decision dated May 28, 2013), the Board initially considered K-Bro Linen’s application for summary dismissal to determine whether or not K-Bro Linen’s request was one that could be appropriately dealt with through written submissions and an *in camera* process. A panel of the Board met on February 11, 2013 and, having read K-Bro Linen’s application for summary dismissal, determined that this request was one which could be dealt with *in camera* (without the need for a formal hearing).

As a consequence of this finding, the Board Registrar wrote to the Union seeking submissions on the Applicant’s request that the claims against it in LRB File No. 320-13 be summarily dismissed. On February 24, 2014, the Union filed written submissions with the Board.

A panel of the Board met on March 21, 2014 to determine if the Union’s application bearing LRB File No. 320-13 should be summarily dismissed as against the Applicant, K-Bro Linen. Having now considered the submissions of both the Applicant and the Union, we find that the Applicant’s application for summary dismissal is well-founded. For the reasons that follow, we were not satisfied that the Union’s application discloses allegations that, if proven, could reasonably support a conclusion that K-Bro Linen was in violation of *The Trade Union Act* based on the allegations set forth in the Union’s application.

Jurisprudence of the Board on Applications for Summary Dismissal:

The Board recently¹ adopted the following as the test to be applied by the Board in respect of its authority to summarily dismiss an application (with or without an oral hearing) as being:

1. In determining whether a claim should be struck as disclosing no arguable case, the test is whether, assuming the applicant proves everything alleged in his claim, there is no reasonable chance of success. The Board should exercise its jurisdiction to strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.
2. In making its determination, the Board may consider only the application, any particulars furnished pursuant to demand and any document referred to in the application upon which the applicant relies to establish his claim.

In other words, in considering whether or not an impugned application ought to be summarily dismissed, the Board assumes that the facts alleged in that application are true or, at least, provable.

The Facts alleged in the Union's Application:

The Union alleges the following facts in its application:

- a) *The Applicant represents workers employed by Regina Qu'Appelle Health Region ("RQHR") at its Laundry Services Department in Regina, Saskatchewan except the Manager of Laundry Services, Production Coordinator and the Confidential Secretary to the Manager of Laundry Services.*
- b) *RWDSU 568 is the certified bargaining agent for the employees of the RQHR in the city of Regina in the Laundry Services Department and has a collective agreement with Saskatchewan Association of Health Organizations ("SAHO") representing the RQHR for the period of April 1, 2008 to March 31, 2012. The parties to that collective agreement are currently in negotiations to renew said agreement, attached as Exhibit A.*
- c) *The Respondent SAHO is the statutory designated employer organization and collective bargaining agent for the health sector employers in the Province including the Respondent the RQHR.*
- d) *The Respondent 3sHealth ("3S") is a delegate of the Respondent RQHR which provides to the Respondent RQHR inter alia, shared administrative and support services including payroll, employee benefits administration, group purchasing, and other services including laundry services.*
- e) *On May 29, 2013 3S publicly announced that a decision had been made to create a provincial laundry service for Saskatchewan Provincial health care providers including the Respondent RQHR.. The announcement indicated that a new central laundry plant will be built, owned and operated in Regina by K-Bro Linen Systems ("K-Bro"), contingent on the successful completion of labour relations consultations and subsequent contract negotiations with K-Bro. It was estimated that*

¹ See: *International Brotherhood of Electrical Workers, Local 529 et al. v. KBR Wabi Ltd. et al.* LRB File Nos.: 188-12, 191-12, 192-12, 193-12, 198-12, 199-12, 200-12 & 201-12

the new service would be fully implemented in about two years and assume control of all laundry and linen services presently operated and controlled by the RQHR within its jurisdiction, in addition to the other such services in the province of Saskatchewan.

f) *RWDSU 568 currently provides health care laundry services to the areas under the care and control of RQHR, including the city of Regina.*

g) *In addition, health care laundry services are provided by members of the CUPE and SEIU in Regional Health Authorities presently outside the jurisdiction of the RQHR.*

h) *Based on the announcement of May 29, 2013, on June 3, 2013, Mr. Haughey served notice to bargain a workplace adjustment plan pursuant to Section 43(8) of the Trade Union Act. The notice was served on the CEO of 3sHealth, Mr. Andrew Will, attached as Exhibit B.*

i) *Mr. Haughey, pursuant to Section 43 (8.2) of the Trade Union Act, requested disclosure of information for the purposes of understanding exactly what the Employer's technological change would consist of, its reasons and plans, as well as the effects on the terms and conditions of employment and the legal rights of its members.*

j) *On July 2, 2013 together with the other unions affected, the Applicant received a highly redacted copy of documents called 3sHealth Provincial Laundry and Linen Services Business Case, attached as Exhibit C.*

k) *On August 1, 2013 Mr. Haughey sent an e-mail, attached as Exhibit D, to Mr. Will furthering his request for disclosure because the July 2nd Business Case did not provide the information requested on June 3, 2013.*

l) *On August 16, 2013 Mr. Haughey received a response to his June 3rd letter and August 1st e-mail from Mr. Will, attached as Exhibit E. The response included a package of information, and referred to Exhibit C as having complied with the Applicant's request for information.*

m) *In addition to Mr. Haughey's June 3rd request, the Applicant tabled its proposals October 28, 2013 for a workplace adjustment plan, attached as Exhibit F, and requested that collective bargaining with respect to the workplace adjustment plan be included in the current round of collective bargaining.*

n) *Mrs. Fenske, negotiator for SAHO, informed Mr. Haughey at the bargaining table that they did not have to and will not bargain a workplace adjustment plan, claiming that the technological change had not yet occurred.*

o) *The extensive redacting of the information provided to the Applicant on July 2, 2013 hide all aspects of the disclosure request that relate to the essential issues required in order to bargain collectively in an informed and good faith manner.*

p) *Shortly after the May 29, 2013 announcement was made, a document surfaced publicly that consisted of a letter dated August 2, 2013, directed to the president of UNITE HERE Local 41, from Larry Seiferling, Q.C., attached to a draft 10-year collective agreement with K-Bro, "involving the laundry services". The 10-year draft collective agreement between UNITE HERE and K-Bro provides for wages that are significantly lower than those currently paid to the Applicant's members pursuant to its collective agreement and the collective agreements with CUPE and SEIU.*

q) *The status of that collective bargaining attempt is unknown and was and has not been disclosed to the Applicant by the tendering party (RQHR/3S/SAHO and/or the government of*

Saskatchewan) who was/is involved in the tendering of the alleged project for a new laundry in Regina and the negotiating of any contract(s) awarded thereunder to K-Bro.

(q) *The UNITE HERE does not represent nor is it certified to represent any employees of any health authority including the RQHR in the province of Saskatchewan.*

(r) *The Applicant has not been informed of the purpose/nature of/content of the alleged negotiations between K-Bro and any parties including the RQHR/SAHO/3S/government of Saskatchewan.*

(s) *There was improper consultation with the Applicant and its members by the government of Saskatchewan and/or its agents including RQHR/SAHO/3S/K-Bro with respect to the legal and constitutionally protected rights of the Applicant and its members under the Trade Union Act and/or other statutes such as the Public Services Essential Services Act. [sic all]*

Does the Application disclose an Arguable Case as against K-Bro Linen Systems?

In our opinion, the Union's application does not disclose an arguable case that K-Bro Linen is in violation of *The Trade Union Act* of the nature alleged by the Union nor that it ought to be named as a party to the allegations contained in LRB File No. 320-13. The substance of the Union's application is that RQHR and/or 3s Health is implementing (or about to implement) technological change within the meaning of s. 43 of *The Trade Union Act*. The alleged technological change involves an alleged decision by RQHR and/or 3s Health to close its laundry department and thereafter obtain laundry services on a provincial-wide basis from K-Bro Linen. The Union understands that K-Bro Linen intends to build a new central laundry plant in Regina and operate that facility. The Union understands that this new facility will be operational in approximately two (2) years and will become responsible, by contract or otherwise, for the provision of laundry services currently operated by RQHR and/or 3s Health. The Union also understands that K-Bro Linen has had communications with another trade union with respect to the representation of its employees.

The balance of the Union's allegations in LRB File No. 320-13 involve alleged unfair labour practices arising out of the implementation of that technological changes and/or failures on the part of the RQHR and/or 3s Health and/or SAHO including disclosure of information and failure to bargain a workplace adjustment plan.

Whether or not the change intended to be implemented by RQHR and/or 3s Health in the provision of laundry services is a technological change within the meaning of *The Trade Union Act* and whether or not the other named respondents have complied with the obligations flowing from this section must be determined by the Board. However, those determinations have nothing to do with K-Bro Linen. Section 43 of *The Trade Union Act* is a notice provision designed to forewarn affected employees and their union of impending technological change. Section 43 does not prevent employers from implementing technological change. However, should an operational change be of the type and of the magnitude prescribed by the *Act*, several obligations arise for an

employer, including notice requirements and an obligation to engage in collective bargaining with respect to a workplace adjustment plan.

Simply put, s. 43 provides the union with an opportunity to bargain provisions in the employee's collective agreement (assuming there is no existing provisions in their agreement dealing with technological change) to assist those employees to mitigate the consequences of the subject technological change. While an employer must clearly explain the changes it intends to implement, together with when those changes will be implemented, and identify which of its employees will be affected by those changes, s. 43 does not require an employer to justify its decision to implement the subject technological change. Section 43 is about providing notice and an opportunity to bargain collectively with respect to the effect of that change (in the event provision for technological change is not already included within the affected employee's collective agreement). In our opinion, it is plain and obvious that K-Bro Linen has no bearing on the question of whether or not the decision to close the subject laundry services is a technological change or whether or not the other named respondents have complied with the obligations flowing from *The Trade Union Act* associated with the implementation of the subject change.

In its arguments, the Union asserts that K-Bro Linen is a "successor" and/or under common control and direction with the other named respondents. Thus, the Union argues that the Applicant should remain as a named respondent. In our opinion, this argument must fail. The Union's application is about technological change. In its application, it has not alleged successorship or that K-Bro Linen operates under common direction and control with the other named respondents or that it is a related employer with any of them. These are not the kind of allegations that can be said to flow by implication from an alleged violation of s. 43 of *The Trade Union Act*. Allegations of this nature must be specifically pled. Furthermore, such allegations are more properly the subject of a separate application so as not to conflate what are very distinct issues.

We note that the Union has also alleged that K-Bro Linen has engaged in improper communications with a rival trade union and that this represents a violation that is relevant or related to the alleged technological change. In our opinion, this allegation of fact does not support the conclusion that K-Bro Linen ought to be a respondent to 320-13. Whether or not K-Bro Linen is a successor to or otherwise bound by the collective bargaining rights held by the Union is an unanswered question. Irrespective of how this question may ultimately be answered, it is plain and obvious that the impugned conduct of K-Bro Linen is not relevant to the technological change issue. In our opinion, the impugned conduct of K-Bro Linen is only relevant as a corollary to a successorship application or a common employer application. If K-Bro Linen is not a successor to or bound by the collective bargaining obligations enjoyed by the Union, then there is nothing in *The Trade Union Act* that would prohibit it from communicating with another trade union. It can not seriously be argued that the Union enjoys some form of monopoly on the right to represent laundry workers in the City of Regina.

Conclusion:

For these reasons, the Union's application bearing LRB File No. 320-13 by is hereby summarily dismissed pursuant to section 18(p) of *The Trade Union Act* as against the Applicant, K-Bro Linen. In our opinion, it is plain and obvious that the Applicant should not have been named as a respondent in LRB File No. 320-13. An appropriate Order will issue.

Yours truly,

Steven D. Schiefner,
Vice-Chairperson