UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant v. K-BRO LINEN SYSTEMS INC., Respondent Employer

and

SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION and SEIU-WEST, Proposed Intervenors

LRB File Nos.: 072-14 & 094-14; February 17, 2015
Vice-Chairperson, Steven Schiefner; Members: Mr. Maurice Werezak and Ms. Joan White

For the Applicant Union:	Ms. Dawn M. McBride
For the Respondent Employer:	Mr. Larry F. Seiferling, Q.C.
For the Proposed Intervenors:	
RWDSU:	Mr. Larry W. Kowalchuk
SEIU-West:	Mr. Gary L. Bainbridge

Practice and Procedure – Intervenor Status – Trade unions seek standing to intervene in certification applications of another union – Board finds that proposed intervenors do not have direct interest in proceedings – Board not satisfied that circumstances exist sufficient for granting exceptional intervenor status – Board determines that none of the issues that proposed intervenors wish to advance involve questions of public law for which the Board requires assistance – Intervenors standing denied.

The Saskatchewan Employment Act, s. 6-112(4).

REASONS FOR DECISION – PRELIMINARY MATTERS

[1] **Steven D. Schiefner, Vice-Chairperson**: On January 21, 2015, the Saskatchewan Labour Relations Board (the "Board") heard an application by the Saskatchewan Joint Board, Retail, Wholesale and Department Store Union ("RWDSU") and SEIU-West to intervene in a certification application filed by the United Food and Commercial Workers, Local 1400 (hereinafter "UFCW"). The Board declined to give standing to either RWDSU or SEIU-West in UFCW's certification application. These are our Reasons for that Decision.

Background:

[2] On April 9, 2014, UFCW applied to this Board to become the certified bargaining agent pursuant to *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "*Act*") to represent the employees (excluding supervisors and management) of K-Bro Linen Systems Inc. ("K-Bro Linen" or the respondent employer). UFCW's certification application was designated LRB File No. 072-14. K-Bro Linen is a private company retained by Health Shared Services Saskatchewan ("3sHealth") to provide laundry services to the health regions in the province.

[3] In processing UFCW's certification application, the Board's Registrar determined that RWDSU may have an interest in UFCW's application. RWDSU represents a unit of laundry workers employed by Regina Qu'Appelle Health Region ("RQHR") at its laundry services department in Regina and, at that time, had filed a number of applications with the Board involving its laundry workers. A copy of UFCW's certification application was forwarded to RWDSU and it was afforded the opportunity to complete and file a Reply to UFCW's certification application, which it did on April 21, 2014. In its Reply, RWDSU alleged the following:

> a. *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union ("the Union") has a certification covering all employees in or in connection with the laundry located in the City of Regina assigned to Local 568.*
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> b. *The Union has an application for successorship/common employer/related employer that was filed with the Labour Relations Board (LRB File No. 350-13) that involved the alleged employer named in this certification application as well as other related/common employers.*
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> c. *LRB File No. 350-13 is scheduled to be heard by the LRB on June 12 and 13, 2014.*
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> d. *This application seeks to represent employees that are currently represented by the Union in Regina, that issue being part of LRB File No. 350-13.*
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> e. *The proposed and presently planned laundry in Regina to be operated by the alleged employer involved a projected workforce of over 300 employees at that location.*
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> f. *The proposed and presently planned operation of the alleged employer also included employees being employed at locations outside Regina which have yet to be employed and at locations currently certified for that work by unions other than the Union and the applicant.*
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> g. *The alleged employer, alone and/or in concert with 3S Health, SAHO and the Government of Saskatchewan has previously attempted and continues to seek to avoid the presently certified Unions, including the Union, from continuing to*

represent workers employed to provide laundry and related services to the health care system in Saskatchewan.

h. *Prior to the announcement alleging that the alleged employer will deliver laundry services to the health care system, the P.S.E.S. Act covered only employers in the public service as defined including all presently unionized employees represented in that sector by the Union and other unions, excluding therefore a private company like the alleged employer.*

i. *After the partnership of and/or transfer of laundry services to the alleged employer, the Government amended the P.S.E.S. Act to include private sector employers who would provide, amongst other services, laundry services to the healthcare system, now including the alleged employer.*

j. *The Healthcare system in Saskatchewan is financed and administered by the Government of Saskatchewan through various statutes and through a system of administrative structures, the vast majority of which are unionized with unions other than the applicant.*

k. *This application is evidence reflecting a coordinated government legislative and administrative action to deny unionized laundry workers their freedom of association rights guaranteed and protected by the Human Rights Code and S.2 (b) and (d) of the Charter of Rights and Freedoms.*

l. *This application is consistent with the concept of raiding as defined in the Trade Union Act and is therefore, improper and outside the appropriate time limits in the Trade Union Act.*

j. *This application is contrary to the principles reflected in the Trade Union Act and is contrary to the promotion of good faith labour relations public policy in the healthcare sector and generally.*

[4] At the time UFCW filed its certification application with the Board, RWDSU had three (3) matters pending before the Board relevant to these proceedings.

[5] The first application was filed on November 14, 2013 and bears LRB File No. 319-13. In this application, RWDSU alleges that the Saskatchewan Association of Health Organizations ("SAHO"), 3sHealth and RQHR engaged in various unfair labour practices arising out of the decision to cease operating regional laundry services (and particular the RQHR regional laundry service) and instead to retain K-Bro Linen to create and provide a provincial laundry service. In this application, RWDSU also alleged that the named Respondents had committed an unfair labour practice by refusing to disclose information desired by RWDSU related to that transaction. K-Bro Linen is not named as a Respondent in this application. This application has not yet been determined by this Board and is scheduled to be heard on March 9 & 10, 2015.

[6] RWDSU's second application was also filed on November 14, 2013 and bears LRB File No. 320-13. In this application, RWDSU named SAHO, 3sHealth, and RQHR as Respondents. In addition to these parties (and of significance to these proceedings), RWDSU named K-Bro Linen as a Respondent in this application. The substance of this application is allegations by RWDSU that RQHR is implementing, or is about to implement, a technological change affecting a significant number of laundry workers; workers represented by RWDSU. In this application, RWDSU has alleged that a number of unfair labour practices are or have been committed concomitant with the implementation of that technological change by one (1) or more of the named respondents. Although K-Bro Linen was originally named as a respondent in LRB File No. 320-14, the Board granted an application by K-Bro Linen that RWDSU's claims against it in this particular application be summarily dismissed. See: *K-Bro Linen Systems Inc. v. Retail, Wholesale and Department Store Union, Local 568, et. al.,* (2014) 242 C.L.R.B.R. (2d) 202, LRB File No. 352-13 (letter reasons dated March 25, 2015). The allegations of RWDSU against SAHO, 3sHealth, and RQHR (i.e.: the other named respondents) remain to be determined by this Board and this application is also scheduled to be heard on March 9 & 10, 2015. However, as noted by this Board in the above captioned decision, it was this Board's opinion that K-Bro Linen had no bearing on the question of whether or not the decision to close the subject laundry services was a technological change or whether or not the other named respondents have complied with the statutory obligations flowing associated with the implementation of technological change.

[7] RWDSU's third application was filed on December 20, 2013 and bears LRB File No. 352-13. In this application, RWDSU alleged that a transfer or sale of a business had occurred within the meaning of s. 37 of *The Trade Union Act* and sought various declarations that K-Bro Linen and/or 3sHealth and/or RQHR were successors and/or common and/or related employers. In this application, RWDSU sought a declaration from this Board that K-Bro Linen was bound by RWDSU's collective agreement. In addition, RWDSU sought an order of the Board directing K-Bro Linen to offer employment to all members of RWDSU's bargaining unit and to provide training on the operation of its new proposed new laundry facility (yet to be constructed in Regina). This application was heard by the Board and dismissed on August 26, 2014. See: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, Local 568 v. K-Bro Linen System Inc., et. al.,* 2014 CanLII 63989 (SK LRB), File No. 350-13.

[8] Mr. Brian Haughey testified on behalf of the RWDSU in its application for intervenor status. Mr. Haughey testified that RWDSU has recently filed an application for judicial review of the Board's decision in LRB File No. 350-13. Mr. Haughey testified that RWDSU believes the Board erred in its determination that K-Bro Linen is not a successor to the laundry business previously operated by RQHR and a related or common employer with SAHO, 3sHealth and/or RQHR. In cross-examination, Mr. Haughey admitted that RWDSU does not represent any employees of K-Bro Linen nor does RWDSU have a pending application for certification of its employees.

[9] In addition to RWDSU's interest in UFCW's application, on May 9, 2014, SEIU-West filed an application to intervene. SEIU-West's application was assigned LRB File No. 094-14. The basis of SEIU-West's application to intervene in UFCW's certification application is as follows:

> *SEIU-West represents laundry service workers employed (and formally employed) by the Saskatoon Health Region, and up to and including March 28, 2014 those workers did the same work in Saskatoon as that now being done by the employees of K-Bro Linen Services, pursuant to a certification order held by SEIU-West.*
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> *The request by the Union in the within application for a province-wide certification order may trench on the laundry services work being performed by SEIU-West's members in areas outside of Saskatoon's municipal boundaries (Humboldt, for example), and should a certification order be granted to the Union it should be confined to the City of Saskatoon, as per the Board's longstanding practice.*
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> *Further, SEIU·West seeks a more particularized description of the employees in the proposed bargaining unit to ensure that the certification order covers no in-facility work, as such work is currently captured by the description of SEIU-West's bargaining unit described in the above certification order.*

[10] Ms. Shawna Colpitts testified on behalf of SEIU-West. Ms. Colpitts testified that SEIU-West represents laundry workers in four (4) regional health authorities. Ms. Colpitts outlined the history of SEIU-West's involvement in representing laundry workers in each of these health regions. Ms. Colpitts noted that, over the years, the regional health authorities have progressively contracted out more and more of the work historically performed by its laundry workers to third-parties, such as K-Bro Linen. Ms. Colpitts also testified that members of SEIU-West now routinely interface with employees of K-Bro Linen as soiled laundry is collected and transported out of health care facilities for cleaning and then returned. Also, SEIU-West members also continue to provide some limited laundry services within certain health care

facilities. Ms. Colpitts testified that SEIU-West is concerned that employees of K-Bro Linen will begin doing the work historically reserved for members of its bargaining unit within health care facilities. In cross-examination, Ms. Colpitts admitted that the scope of work done by members of SEIU-West is defined by collective agreement and, if the regional health authorities violate that agreement, SEIU-West has the option of pursuing its claims through the grievance process set forth in that agreement.

[11] Finally, UFCW's certification application is not disputed by K-Bro Linen. However, this certification application has been held in abeyance by the Board pending the disposition of RWDSU's successorship application. With the dismissal of LRB File 350-13, UFCW's certification application is now scheduled to be heard by the Board on March 18 & 19, 2015.

Argument on Behalf of the Parties:

[12] Mr. Larry Kowalchuk argued that his client, RWDSU, has a "direct" interest in UFCW's certification application because RWDSU believes that this Board got it wrong in LRB File No. 325-13 and that K-Bro Linen is a successor to its collective bargaining rights and/or a common or related employer with SAHO and/or 3sHealth and/or RQHR. Mr. Kowalchuk noted that RWDSU has taken steps to appeal this Board's decision and argues that, until such time as its application for judicial review is heard and determined by the reviewing court, it continues to have a real and substantial interest in UFCW's certification application. In this regard, Mr. Kowalchuk noted that a component of the remedial relief desired by RWDSU in its succesorship application is that K-Bro Linen honour RWDSU's collective agreement and hire its members. Mr. Kowalchuk argued that granting UFCW's certification application would seriously undermine the Board's capacity to grant RWDSU's desired remedial relief in its successorship application. Mr. Kowalchuk argued that these circumstances either gave RWDSU a "*direct interest*" in UFCW's certification application or, at least, status an "*exceptional intervenor*". In support of this position, Mr. Kowalchuk relied on this Board's decision in *Construction Workers Union (CLAC), Local 151 v. Tercon Industrial Works Ltd., et. al. & Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers, et. al.*, 205 C.L.R.B.R. (2d) 247, 2012 CanLII 2145 (SK LRB), LRB File Nos. 097-10, 098-10, 116-10, 117-10 & 134-10.

[13] In addition, Mr. Kowalchuk argued that K-Bro Linen had engaged in anti-union animus by shopping around a copy of a proposed collective agreement to another union and not recognizing and negotiating with RWDSU with respect to the respondent employer's laundry

workers. Mr. Kowalchuk argued that the entire arrangement between SAHO, 3sHealth and K-Bro Linen was in furtherance of the Government of Saskatchewan's goal to privatize health care. Mr. Kowalchuck argued that the combined effect of these actions is to erode the bargaining rights of RWDSU's members by improperly transfer the work they perform to a third-party. Mr. Kowalchuk argued that, under these circumstances, the Board should very carefully examine UFCW's certification application and that RWDSU is particularly well suited to assist the Board in such an examination. For example, RWDSU argued that, if granted, the geographic scope of UFCW's certification Order should be confined to the specific geographic location where the current employees of K-Bro Linen are located. Mr. Kowalchuk argued that, as K-Bro Linen is not objecting to the Union's certification application, if RWDSU is not granted standing, there will be no one to assist the Board to ensure that UFCW's certification Order is properly limited so as to no interfere or trench on the rights of other trade unions to organize the employees of K-Bro Linen. To which end, RWDSU stated its desire to present evidence and argument to the Board in support of the position that UFCW's application to represent all employees of K-Bro Linen in the Province of Saskatchewan is inappropriate and should be geographically restricted. For these reasons, Mr. Kowalchuk argued that, at the very least, RWDSU should be granted standing as a "*public law intervenor*". In support of this position, Mr. Kowalchuk also relies on this Board's decision in *Tercon Industrial Works Ltd., supra.*

[14] Mr. Gary Bainbridge argued that SEIU-West should be granted standing as a "*public law intervenor*". SEIU-West was also concerned that UFCW's application for a "province-wide" certification Order should not go unopposed. Mr. Bainbridge indicates that SEIU-West desires to participate in UFCW's certification application and to assist the Board to ensure that any certification Order granted to UFCW in LRB File No. 072-14 be properly limited so as to not interfere or trench on the rights of any other trade union.

[15] Mr. Larry Seiferling, Q.C., on behalf of K-Bro Linen, opposed the granting of any standing to either of the proposed intervenors on the basis that neither has a legitimate claim to represent any of the employees in the proposed bargaining unit. Mr. Seiferling noted for the Board that SEIU-West does not claim to represent any of the employees in the bargaining unit that UFCW seeks to represent and took the position that, with the decision in LRB File No. 350-13, this Board has determined that RWDSU does not have any claim to the employees of K-Bro Linen. On this point, Mr. Seiferling argued that merely filling of an application for judicial review

does not stay this Board's decision in LRB File No. 350-13 nor does it revive RWDSU's claim that K-Bro Linen is a successor or otherwise bound by RWDSU's certification Order.

[16] Mr. Seiferling took the position that both of the proposed intervenors are "strangers" to his client's workplace. Mr. Seiferling argued that, based on the principles articulated by this Board in *Communication, Energy and Paperworkers Union of Canada v. J.V.D. Mill Services*, 1999 C.L.R.B.R. (2d) 228, LRB File No. 087-10, neither RWDSU nor SEIU-West has a sufficient interest in UFCW's certification application and/or K-Bro Linen's workplace to warrant being granted any form of standing to participate. Furthermore, Mr. Seiferling argued that doing so would unduly delay and complicate the proceedings; proceedings that have already been delayed pending the disposition of RWDSU's successorship application. Mr. Seiferling cautioned this Board that RWDSU seeks to re-litigate matters that have already been decided by this Board; or worse yet, RWDSU seeks to transform these proceedings into a political arena. Finally, Mr. Seiferling argued the fact that the work now being doing by employees of K-Bro Linen used to be done by members of RWDSU and/or SEIU-West is irrelevant to UFCW's desire to organize the workers of K-Bro Linen. For these Reasons, Mr. Seiferling argued that neither of the proposed intervenors should be granted standing and that UFCW's certification application should be processed and determined by the Board in the ordinary course.

[17] Finally, Ms. Dawn McBride, on behalf of UFCW, opposed the granting of any standing to either of the applicant trade unions and adopted many of the reasons advanced by the Respondent Employer. Of particular significance to UFCW was the delay that it had already experienced in the processing of its certification application. Ms. McBride noted that her client's application has been delayed by nine (9) months while RWDSU pursued its claims in successorship . UFCW argued that the associational rights of its members should not be further delayed merely because RWDSU disputes this Board's determination that RWDSU does not have any claim to the employees that it seeks to represent. Ms. McBride agreed with the employer's counsel that granting any form of standing to either RWDSU or SEIU-West would unnecessarily complicate the proceedings and could unduly delay and frustrate the right of the employees of K-Bro Linen to be represented by the trade union of their choosing.

[18] Written memorandums of law were filed by Mr. Seiferling and Ms. McBride, both of which have been read and for which we are thankful.

Relevant Statutory Provisions:

[19] The relevant provisions are contained in *The Saskatchewan Employment Act*, S.S. 2013, c.S-15.1 and read as follows:

> *6-112(4) Without limiting the generality of subsections (2) and (3), in any proceedings before it, the board may, on any terms that it considers just, order that the proceedings be amended:*
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> > *(a) by adding as a party to the proceedings any person that is not, but in the opinion of the board ought to be, a party to the proceedings;*
> >
> > *(b) by striking out the name of a person improperly made a party to the proceedings;*
> >
> > *(c) by substituting the name of a person that in the opinion of the board ought to be a party to the proceedings for the name of a person improperly made a party to the proceedings; or*
> >
> > *(d) by correcting the name of a person that is incorrectly set out in the proceedings.*

Analysis:

[20] In *J.V.D. Mills Services, supra*, this Board clarified its general approach to the granting of intervenor status in proceedings before the Board. In doing so, the Board cited with approval the analysis of Sheila M. Tucker and Elin R.S. Sigurdson in their article entitled *Interventions in British Columbia: Direct Interest, Public Law & 'Exceptional Intervenors'*, See: Canadian Journal of Administrative Law and Practice, Vol. 23, No. 2, June 2010. The resulting principles adopted by the Board as a result of this decision were summarized by the Board in *Tercon Industrial Works Ltd., supra,* as follows:

> *[31] In J.V.D. Mills Services #1, supra, this Board clarified its general approach to the granting of intervenor status in proceedings before the Board. In doing so, the Board reiterated the long standing principle that the granting of standing as an intervenor in any proceedings before the Board is a matter of discretion and that, generally speaking, the Board exercises its discretion based on the circumstances of each case, considerations of fairness (to the party seeking standing) and/or the potential for the party seeking standing to assist the Board (by making a valuable contribution or by providing a different perspective) without doing injustice to the other parties. The Board went on to identify and adopt three (3) forms of intervention recognized by this Board. These three (3) forms of intervention are summarized as follows:*
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> *1. **A Direct Interest Intervenor**; where the applicant seeking standing has a direct interest in the answer to the legal question in dispute in that it has legal rights or obligations that may be directly affected by the determinations of the Board.*

> 2. ***An Exceptional Intervenor****; where the applicant has a demonstrable and genuine interest in the answer to the legal question in dispute (i.e.: for example, if the party has a pending application before the Board on the same issue and thus has legal rights or obligations that may be affected by a binding precedent); and the applicant can establish the existence of "special circumstances" that differentiate it from others who may have a similar interest; and where that party can demonstrate that it can provide a valuable assistance to the Board in considering the issues before it.*
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> 3. ***A Public Law Intervenor****; where the applicant has no legal rights or obligations that may be affected by the answer to the legal question in dispute, but can satisfy the Board that its perspective is different or that its participation would assist the Board in considering a public law issue before it.*

[21] While RWDSU seeks standing under all of the identified forms, SEIU-West primarily seeks standing as a "*public law intervenor*".

Direct Interest Intervention

[22] In our opinion, neither RWDSU nor SEIU-West have a direct interest in the certification the employees of K-Bro Linen. Neither has filed an application to certify any of the subject employer's employees. The only relevant and applicable claim to these employees or the workplace of K-Bro Linen was contained in LRB File No. 350-13; being RWDSU's successorship application. However, with the dismissal of this application, this Board has concluded that RWDSU has neither a claim to the work being done by K-Bro Linen nor its employees. We agree with the position advanced on behalf of the Employer that the mere filing of an application for judicial review does not disturb this Board's finding that K-Bro Linen is not a successor nor does doing so revive RWDSU's claim to represent any of its employees. Unless and until a reviewing court directs otherwise, these matters have been determined by this Board.

[23] While it was appropriate and necessary to subordinate UFCW's certification application pending the outcome of RWDSU's claims in successorship, with this Board's determination in LRB 350-13, the landscape has change. In our opinion, it is no longer appropriate to subordinate the associational rights of the employees of K-Bro Linen and further delay UFCW's certification application while RWDSU seeks judicial review of our determination. While RWDSU has every right to pursue its interests in the courts, it is not appropriate for this Board to ignore or disregard its own determinations merely because they are subject to judicial review proceedings. In the event the reviewing court should deem it necessary and appropriate,

it will have its own authority to stay our proceedings and/or to direct that UFCW's certification application be again held in abeyance pending the outcome of RWDSU's claims. However, such direction must come from the courts; not from this Board.

[24] The members of RWDSU and SEIU-West may well be disappointed that the initiative of SAHO, 3sHealth and the health regions to modernize and centralize the laundry services provided to health care facilities has resulted in a decision to contract out much of the laundry work to a third party. However, this disappointment (as understandable as that disappointment may be) does not establish an interest in the work or the employees of that third party. A claim of standing as a direct interest intervenor must flow from the potential that the subject proceedings could have a direct impact on the party seeking standing. While RWDSU alleged such claims, with this Board's decision in LRB File No. 350-13, its claims have been dismissed. SEIU-West has never alleged any such claims. In our opinion, neither of the proposed intervenors could establish the requisite threshold for standing as a direct interest intervenor.

Exceptional Intervention

[25] To qualify as an "*exceptional intervenor*", the proposed intervenors must not only have a demonstrable and genuine interest to the legal questions in dispute in UFCW's certification application, but they must also satisfy the Board that an "*exceptional circumstance*" exists that differentiates them from others trade unions who may share a similar interest in the outcome of proceedings before the Board. In *J.V.D. Mills Services, supra*, and in *Tercon Industrial Works Ltd., supra,* this Board cautioned that under this form of intervention an intervenor must demonstrate, as the name would imply, circumstances that are "*exceptional*". In recognizing this form of intervention, the Board was not expanding the grounds for intervention but rather was merely recognizing that there have been in the past (and can be in the future) exceptional circumstances that justify granting standing to a party that does not qualify as either a "*direct interest intervenor*" or "*public law intervenor".*

[26] The interest of the proposed intervenors in these proceedings flowed from two (2) sources. Firstly, the combined desire of RWDSU and SEIU-West to limit the scope of any certification Order granted to UFCW so as to not negatively impact the scope of work of their members. Secondly, the desire of RWDSU to revisit and overturn the decision of this Board dismissing RWDSU's claims in successorship. With all due respect, these desires do not elevate

the interest of the proposed intervenors into the "*exceptional"*. Simply put, the circumstances of these proceedings are not that "*exceptional*". They certainly are not the kind of circumstances anticipated by this Board in either *J.V.D. Mills Services, supra*, or *Tercon Industrial Works Ltd., supra*, for the granting of standing as an exceptional intervenor. If these circumstances are exceptional, then every trade union in this province has an interest in the certification applications of their rivals and organizing has become a peer review process.

Public Law Intervention

[27] The final basis for seeking standing was that UFCW's certification application raised important matters of public law for which the proposed intervenors were uniquely situated to provide valuable assistance to the Board. In *J.V.D. Mills Services, supra*, this Board described its approach to applicants seeking standing as "*public law intervenors*" in the following paragraphs:

> **[24]** *Public Law (or often called Public Interest) intervenor status is granted when a court "is satisfied that the participation of the applicant may help the court make a better decision". Public Interest Standing has been recognized by the courts in Saskatchewan. The principles to be applied in determining whether to grant status to a public interest intervenor were set out by the Saskatchewan Court of Appeal in R. v. Latimer:*
>
> *a. Whether the intervention will unduly delay the proceedings?*
> *b. Possible prejudice to the parties if intervention be granted?*
> *c. Whether the intervention will widen the lis between the parties?*
> *d. The extent to which the position of the intervenor is already represented and protected by one of the parties? and*
> *e. Whether the intervention will transform the court into a political arena?*
>
> ***[25]*** *The Court in Latimer, supra, also noted that "[A]s a matter of discretion, the court is not bound by any of these factors in determining an application for intervention but must also balance these factors against the convenience, efficiency and social purpose of moving the case forward with only the persons directly involved in the "lis".*
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> ***[26]*** *The Board has also recognized that it must be cognizant of balancing the interests of the parties in having access to make representations to the Board and preserving the resources of the Board. As noted by the Board in Re: Merit Contractors Association at [page 124/125]:*
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> > *These statutes represent an embodiment of public policy, and a wide range of persons may have an "interest" in a broad sense, in bringing to our attention various issues which may arise in conjunction with the implementation of these policies. As both the courts and other tribunals like our own have concluded, however, some limits must be set in allowing the assertion of interests which are contingent in nature. In Canadian Council of Churches v. The Queen (1992), 88 D.L.R. (4th) 193, the Supreme Court of Canada expressed the concern in this way:*

> *. . . I would stress that the recognition of the need to grant public interest standing in some circumstances does not amount to a blanket approval to grant standing to all who wish to litigate an issue. It is essential that a balance be struck between ensuring access to the Courts and preserving judicial resources. It would be disastrous if the Courts were allowed to become hopelessly overburdened as a result of the unnecessary proliferation of marginal or redundant suits brought by well-meaning organizations pursuing their own particular cases certain in the knowledge that their cause is all important. It would be detrimental, if not devastating, to our system of justice and unfair to private litigants.*

[28] As indicated, both UFCW and K-Bro Linen resist the granting of any standing to the proposed intervenors, including public interest intervention. Their objections can be summarized in two (2) categories; firstly, that there are no public law issues to be decided in the within application for which the Board requires any assistance; and secondly, that granting standing to any of the proposed intervenors would violate some or all of the cautions expressed by Court in *R. v. Latimer*, 1995 CanLII 3921, 128 Sask. R. 195 at pp. 196 & 197.

[29] In our opinion, both of these objections are well founded. Simply put, it would be an abuse of process to permit RWDSU to launch a collateral attack on this Board's decision in LRB File No 350-13 by rearguing allegations that failed in that application in these proceedings. Furthermore, once RWDSU's successorship/related employer claims were removed from the equation by this Board's decision in LRB File No. 350-13, UFCW's certification becomes rather pedantic. There is no dispute between the parties as to the identity of the employer or the scope of the proposed bargaining unit. There is also no dispute as to exclusions. The only issues that remain are to be determined are; whether or not the majority of employees wish to be represented by UFCW; and whether or not the Board is satisfied the unit proposed by UFCW is appropriate for collective bargaining and consistent with the jurisprudence and practices of the Board. The proposed intervenors have no interest or say in the former and the Board needs little assistance with the latter. With all due respect to the concerns of the proposed intervenors and their members, UFCW's certification application is not dissimilar to many other certification applications that are routinely heard by this Board every year.

[30] In light of the significant delay which has already occurred in these proceedings, the cautions expressed by the Saskatchewan Court of Appeal in *R. v. Latimer, supra*, become more important. Having considered the argument of the parties, we are not satisfied that any of the issues identified by either RWDSU or SEIU-West give rise to an issue of public law to which intervention by the proposed intervenors would be of assistance to the Board.

Conclusion:

[31] For the foregoing reasons, the applications of the proposed intervenors seeking standing to participate in UFCW's certification applications was dismissed. It was (and continues to be) our opinion that none of the proposed intervenors have a direct interest in the matters arising in these proceedings nor could they establish the kind of circumstances necessary for the granting of exceptional intervenors status. Finally, none of the issues advanced by the proposed intervenors involve questions of public law for which this Board requires their assistance.

[32] Board Members Maurice Werezak and Joan White concur with these Reasons for Decision.

DATED at Regina, Saskatchewan, this **17th** day of **February, 2015.**

LABOUR RELATIONS BOARD

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Steven D. Schiefner,
Vice-Chairperson