



**SASKATCHEWAN BUILDING TRADES COUNCIL, Applicant v. INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, LOCAL 119, WESTCOR SERVICES LIMITED, STEEPLEJACK INDUSTRIAL INSULATION LTD. and BROCK CANADA INC., Respondents**

**AND**

**CONSTRUCTION WORKERS UNION, CLAC LOCAL 151, Applicant v. INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, LOCAL 119, WESTCOR SERVICES LIMITED, STEEPLEJACK INDUSTRIAL INSULATION LTD. and BROCK CANADA INC., Respondents**

LRB File Nos. 145-15 & 158-15; October 19, 2015  
Chairperson, Kenneth G. Love, Q.C.; Members: Maurice Werezak and Greg Trew

For the Applicant, Saskatchewan Building  
Trades Council :

Mr. Gary Caroline

For the Applicant, Construction Workers Union,  
CLAC Local 151

Mr. Richard Steele

For the Respondent, International Association of  
Heat and Frost Insulators and Asbestos Workers  
Local 151

Mr. Greg D. Fingas

For the Respondent, Cornerstone Contractors  
Ltd.

Mr. Larry Seiferling, Q.C.

For the Respondents, Westcor Services Ltd.,  
Steeplejack Industrial Insulation Ltd. and  
Brock Canada Inc.

Mr. Christopher J. Lane

**Intervenor Status – Union files application for reconsideration of decision of the Board – Board receives two (2) applications to intervene – Board reviews and confirms previous jurisprudence with respect to the granting of intervenor status.**

**REASONS FOR DECISION**

**Background:**

[1] **Kenneth G. Love, Q.C., Chairperson:** The Board received applications from two (2) parties to intervene in respect of an application made by the International Heat and Frost Insulators and Asbestos Workers, Local 119 (“IA”) for the Board to reconsider its decision made in respect of LRB File No. 309-13<sup>1</sup>. One application was made by the Saskatchewan Building Trades Council on behalf of itself and its building trades members. (the “BTC application”)<sup>2</sup> The second was made by the Construction Workers Union, CLAC Local 151 (the “CWU application”)<sup>3</sup>.

[2] With the consent of the parties to the applications, the Board considered the applications for intervenor status *in camera* on October 9, 2015, having read written submissions from the parties in respect of the applications for intervenor status.

[3] For the reasons that follow, the Board will grant full intervenor status to the Construction Workers Union, CLAC Local 151, but does not grant any status to the Saskatchewan Building Trades Council on behalf of itself and its building trades members.

**Facts:**

[4] The facts underlying the original applications and the application for reconsideration are not at issue in these applications. There are two (2) salient facts related to the applications for intervenor status.

[5] The first salient fact is that as a result of the Board’s decision in LRB File No. 309-13, the Construction Workers Union, CLAC Local 151 became the certified bargaining agent for employees of Cornerstone Contractors Ltd. The Board issued its certification Order for those employees on June 15, 2105.

[6] The second salient fact is that the Saskatchewan Building Trades Council was not involved at any time with respect to the issues decided in LRB File No. 309-13, and did not apply for, nor was granted any intervenor status in respect of that matter.

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<sup>1</sup> [2015] CanLII 43777 (SKLRB)

<sup>2</sup> LRB File No. 145-15

<sup>3</sup> LRB File No. 158-15

**Relevant Statutory Provisions:**

[7] 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:*

*(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.*

**The BTC Application:****Proposed Intervenor's arguments:**

[8] The Saskatchewan Building Trades Council (BTC) argued that it should be granted "exceptional intervenor" status because in the special circumstances of the case for reconsideration, the BTC has a demonstrable interest in the matter and may be of assistance to the Board. The BTC also argued that both it and its affiliates have a direct interest in the matter because their bargaining rights are directly affected by the decision in respect of which reconsideration is being sought.

[9] Alternatively, the BTC argued that it should be granted "public law" intervenor status because its perspective is different from those of the other parties and its participation may assist the Board. The BTC also argued that their participation would not unduly delay the proceedings and that they would have a unique perspective on the policy issue sought to be reconsidered.

[10] The BTC further argued that their interest was different from the other parties directly involved in the decision and that the BTC could take an industry-wide perspective and make submissions on the profound effect that the Board's policy would have on its affiliates.

[11] The BTC also argued that its interest would be informed by its experience and expertise in the construction industry and not any political position.

**Cornerstone Contractor Ltd.'s arguments:**

[12] Cornerstone opposed the granting of intervenor status to the BTC. It argued that the BTC clearly did not fit in the category of direct intervenor, nor does it fit within the category of exceptional intervenor, and there is no basis for a public law intervenor status being granted. It also argued, particularly in the area of public law intervenor status, that the participation of BTC would delay the proceedings and add additional costs.

[13] Cornerstone also argued that the BTC could not add any meaningful arguments to the issue that could not otherwise be raised by the IA. It noted, as well, that the BTC also requested that the Board provide notice of the proceedings to other building trades who may also wish to participate. This additional participation, it argued, would greatly impact on the timeliness of the proceedings and the costs associated therewith.

**Westcor Services Ltd., Steeplejack Industrial Insulation Ltd. and Brock Canada Inc.'s arguments:**

[14] Westcor Services Ltd., Steeplejack Industrial Insulation Ltd. and Brock Canada Inc. (the "Brock Group") argued against the granting of intervenor status to the BTC. It argued that the BTC did not demonstrate any of the pre-conditions established by the Board for the grant of "exceptional intervenor" status.

[15] Furthermore, the Brock Group argued that the participation of the BTC (and any other notified trade union) would unduly delay the proceedings and would provide no benefit to the Board. The Brock Group argued that any benefit from the participation of the BTC could be gained through its affiliate, IA.

[16] The Brock Group also argued the Board should adopt an approach similar to that utilized in British Columbia and Alberta that the Board should balance the participation of a proposed intervenor against the need to ensure that intervenors are not added to assert positions that the parties themselves could present. In this case, it argued that the IA could fully represent any positions that the BTC would wish to present.

**International Heat and Frost Insulators and Asbestos Workers, Local 119 arguments:**

[17] IA took no position with respect to the application for intervenor status by the BTC.

**The CWU Application:****Proposed Intervenor's arguments:**

[18] The CWU argued that it should be granted "direct intervenor" status because their bargaining rights with Cornerstone are directly linked to the decision in this case. It argued that it had direct legal rights (its certification) affected.

**Cornerstone Contractor Ltd.'s arguments:**

[19] Cornerstone supported the granting of intervenor status to the CWU. It argued that the CWU clearly fit in the category of direct intervenor, due to its certification to represent the employees of Cornerstone for collective bargaining. Cornerstone argued that CWU would be directly impacted by any decision to reconsider the Board's decision in LRB File No. 390-13

**Westcor Services Ltd., Steeplejack Industrial Insulation Ltd. and Brock Canada Inc.'s arguments:**

[20] The Brock Group supported the granting of intervenor status to the CWU. It argued that the CWU would be directly impacted by any decision to reconsider the Board's decision in LRB file No. 390-13.

**International Heat and Frost Insulators and Asbestos Workers, Local 119 arguments:**

[21] IA took no position with respect to the application for intervenor status by the CWU.

**Building Trades Council's arguments:**

[22] The BTC took no position with respect to the application for intervenor status by the CWU.

**Analysis:**

[23] All of the parties were in agreement that the leading authority with respect to intervenor status was this Board's decision in *Communication, Energy and Paper Workers Union of Canada v. J.V.D. Mill Services*<sup>4</sup>. That decision established three (3) forms of intervention in matters before the Board. These were:

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.
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.

[24] In *J.V.D. Mill Services*, the Board also described its approach to granting of status to public law intervenors by drawing upon the principles adopted by the Court of Appeal in *R. v. Latimer*<sup>5</sup>. In *J.V.D. Mill Services*, the Board says at paragraphs 24 *et seq.*:

**[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*

<sup>4</sup> [2010] 199 C.L.R.B.R (2<sup>nd</sup>) 228, LRB File No. 087-10

<sup>5</sup> [1995] CanLII 3921 (SKCA)

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”.

**[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]:

*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), 1992 CanLII 116 (SCC), 88 D.L.R. (4<sup>th</sup>) 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.*

**[25]** Also, the granting of intervenor status to an exceptional intervenor or a public law intervenor is a matter of discretion for the Board. In *Construction Workers Union, Local 151 v. Tercon Industrial Works Ltd.*,<sup>6</sup> the Board said at paragraph [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.*

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<sup>6</sup> [2012] CanLII 2145 (SKLRB)

**The BTC Application:**

[26] The BTC does not claim any direct interest in the reconsideration matter. Rather, it seeks intervenor status as an exceptional intervenor or a public interest intervenor.

[27] To qualify as an exceptional intervenor, the BTC must demonstrate a genuine interest in the dispute involving similar rights or obligations that might be affected by a binding precedent, the existence of special circumstances that differentiate it from others who may have a similar interest, and that it can provide valuable assistance to the Board in considering the issues before it.

[28] None of these qualifications has been shown by the BTC. They do not claim to be engaged in any dispute which involves similar rights or obligations which might be affected by the decision which IA has sought to have reconsidered. Rather, it proposes that it can be of assistance to the Board with respect to policy development related to the impact of the decision on its members.

[29] The BTC is not a trade union, but is a body to which other trade unions, including IA, are affiliate members. It claims to act on behalf of these affiliates who might be impacted by the policy determination by the Board. However, apart from IA, who is directly impacted, and a party to the proceedings for reconsideration (being the Applicant), no other building trades affiliate union has sought to intervene in the issue. Rather, BTC suggests that it should be granted intervenor status and we should then canvas other of its affiliated members to see if they would also like to participate. This rather puts the cart before the horse.

[30] The BTC does not demonstrate the existence of any special circumstances that differentiates it from others who may have a similar interest. Rather, the opposite, insofar as its suggestion that we should canvas other of its affiliate members to see if they have any interest in participating in the process. If they truly were a body who were differentiated from those others who may have a similar interest, that suggestion would not likely be made.

[31] Finally, while claiming to be able to supply valuable assistance to the Board in considering the issue before it, the BTC has not demonstrated any differentiation between its position and that of its affiliate, IA. With respect, there does not seem to be any assistance which the BTC can add that cannot be provided by its affiliate, IA.



**[32]** In respect to the alternative argument that the BTC be granted public law intervenor status, we do not think it appropriate to grant such status. When we consider the principles applied by the Court of Appeal in *Latimer*, the application fails to meet those requirements.

**[33]** The BTC asks in its application that, if granted, we canvas additional parties to see if they wish to participate in the reconsideration hearing. We agree with the arguments provided by Cornerstone and Brock that this process would result in an undue delay in the processing of the reconsideration application. If additional parties had wished to intervene, they could have, and should have made an application to do so. Clearly the BTC was aware of the application for reconsideration of the Board's decision by one of its affiliate members and could already have communicated that fact to its other affiliates who could have joined in their application.

**[34]** On the issue of prejudice, there was no claim of prejudice by Cornerstone or Brock apart from their concern over additional cost. While that may not be an issue in Court proceedings where successful parties may be provided some relief through the award of costs, that avenue is not open to the Board. Accordingly, additional costs, which would primarily result from the inclusion of other affiliates from the BTC, are negative in this analysis.

**[35]** No suggestion is made that the intervention of the BTC would widen the *lis* between the parties. That would be consistent with the arguments that the IA is competent to make all of the necessary arguments in respect of the application for reconsideration.

**[36]** The greatest negative factor to be considered is the extent to which the position of the proposed intervenor is already represented by one of the parties. As noted above, IA, an affiliate of BTC, is a direct party and the applicant in the reconsideration. They are well able to represent the interests of the BTC in this matter.

**[37]** There were no arguments raised that the intervention of the BTC will cause the proceedings to become political.

**[38]** There is some merit to the arguments made on behalf of the Brock Group that the Board should adopt an approach similar to that utilized in British Columbia and Alberta, to balance the participation of a proposed intervenor against the need to ensure that intervenors are not added to assert positions that the parties themselves could present. We do not think it

necessary, however, to deal with this issue since, as noted above, we have already concluded that IA can adequately represent the interests of the BTC as one of its affiliates.

[39] For these reasons, we decline to grant intervenor status to the BTC. An appropriate order will accompany these reasons.

**The CWU Application:**

[40] There was no opposition to the granting of direct interest status to CWU. CWU is directly impacted by the application for reconsideration since its certification for the employees of Cornerstone flows directly from it.

[41] The Construction Workers Union CLAC, Local 151 shall be granted direct intervenor status in the application for reconsideration. An appropriate order will accompany these reasons.

[42] This is a unanimous decision of the Board.

**DATED** at Regina, Saskatchewan, this **19th** day of **October, 2015**.

**LABOUR RELATIONS BOARD**

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Kenneth G. Love, Q.C.  
Chairperson