



**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 529, Applicant
v. MERICK CONTRACTORS INC., WESTERN ELECTRICAL MANAGEMENT LTD. AND
WESTERN ELECTRICAL CONSTRUCTORS LTD., Respondents**

LRB File No. 331-13; February 5, 2015

Chairperson, Kenneth G. Love, Q.C.; Members: Don Ewart and Duane Siemens

For the Applicant: Drew Plaxton
For the Respondent Employer: Susan B. Barber, Q.C.
For the Respondents: Meghan McCreary

Common or Related Employer – Union seeks declaration that 3 Alberta Corporations are common or related employers – 2 Corporations registered to conduct business in Saskatchewan and 1 is not registered. Board reviews criteria for common or related employer designation and determines that businesses are not common or related businesses.

Common or related Employer – Discretionary power to declare businesses to be common or related employers – Board reviews labour relations purpose for declaration of common or related employer designation – Board determines that no sufficient labour relations purpose demonstrated.

Common or related Employer – Purpose of common or related Employer designation – Board reviews purposes of declaration of common or related employer which is to prevent erosion of bargaining rights granted to a trade union – Board reviews facts and determines that there has been no erosion of bargaining rights demonstrated by the Union which would justify a declaration of common or related Employer by the Board.

Appropriate Statutory Authority – Board reviews legislative provisions and determines that the provisions of *The Construction Industry Labour Relations Act* governs the present dispute.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Q.C., Chairperson:** The International Brotherhood of Electrical Workers, Local 529 (the “Union”), is certified as the bargaining agent for a unit of employees of Merick Contractors Ltd. (“Merick”) by an Order of the Board dated September

26, 2013, LRB File No. 096-13. The Union filed an application on November 27, 2013 alleging that the Respondents were related employers to Merick.

[2] For the purposes of this application, the parties were in agreement that the matter should be determined in accordance with the provisions of *The Trade Union Act* (the “Act”) and *The Construction Industry Labour Relations Act* (the “CILRA”) notwithstanding that these statutes were repealed by *The Saskatchewan Employment Act* (the “SEA”), when it was proclaimed on April 29, 2014.

[3] This application arose out of the earlier certification application of Merick.¹ The Union originally applied to certify Western Electrical Management Ltd. (“WEM”), but amended that application to name both Merick and WEM as the Employer. In that certification application, the Board determined that the employer for the purposes of the certification application was Merick. The Board also determined that an application by the Union to have WEM declared to be a related employer was premature in that neither of the corporations was a unionized entity at the time of application.

[4] In this application, the Union sought to have both WEM and Western Electrical Contractors Ltd. (“WEC”) declared to be related employers with Merick pursuant to Section 37.3 of *The Trade Union Act* (the “TUA”) and Section 18 of *The Construction Industry Labour Relations Act* (the “CILRA”).

Facts:

[5] WEM is an Alberta incorporated entity which is registered extra-provincially in Saskatchewan. In its corporate registry profile report, the nature of its business is noted to be “Electrical Contractor”.

[6] WEC is an Alberta incorporated entity which had been registered extra-provincially in Saskatchewan. That registration was inactivated on July 29, 1994. The Corporation has not been registered to conduct business in Saskatchewan since that date.

¹ See *IBEW, Local 529 v. Western Electrical Management Ltd. and Merick Contractors Inc.*, [2013] CanLII 55453 (SK LRB)

[7] Merick is an Alberta incorporated entity which is registered extra-provincially in Saskatchewan. In its corporate registry profile report the nature of its business is noted to be “Electrical Installations and Servicing”.

[8] Shareholders and Directors of the various corporations are as follows:

Corporation	Directors	Shareholders
Merick Contractors Ltd.	Robert Brian Hamill Jay Stanley Renouf Calvin John Wakelam	Robert Brian Hamill Jay Stanley Renouf Calvin John Wakelam
Western Electrical Management Ltd.	Klaus Reichwald Kenneth Rickbeil Gregory D. Sawatzky	GDS Investments Inc. ² Kenan Holdings Ltd. ³ Sorrel Enterprises Ltd. ⁴
Western Electrical Constructors Ltd.	Klaus Reichwald Kenneth Rickbeil Gregory D. Sawatzky	GDS Investments Inc. Kenan Holdings Ltd. Sorrel Enterprises Ltd.

[9] On June 3, 1991, Merick contracted with WEM to supply electrical workers to WEM for the performance by WEM of electrical contracts entered into by WEM. Under the terms of this contract, Merick acted as a labour broker for WEM to permit it to supply the necessary electricians and apprentices to perform electrical contracts that WEM may enter into from time to time.

[10] Witness testimony established that WEM was the predominate client for Merick. It provided labour almost exclusively to WEM. Merick did not do or seek any work for itself. Nor did Merick own any tools or equipment. Those were provided by WEM.

[11] Testimony also established that Merick provided non-unionized labour to WEM for electrical contracts performed within the southern part of Alberta. WEC was unionized in the northern part of Alberta and was the entity utilized by WEM for the performance of contracts in the northern part of Alberta. This arrangement is normal practice in Alberta and permitted by Section 192(3) of the Alberta *Labour Relations Code*, if the related company does not employ employees who perform work of the kind performed by members of the applicant trade union.

² The voting shareholder of which is Gregory Sawatzky

³ The voting shareholder of which is Kenneth Rickbeil

⁴ The voting shareholders of which are Lydia Reichwald and Klaus Reichwald

The Contracting Process between Merick and WEM:

[12] Testimony established that the process for securing work was that WEM would bid on electrical subcontracts. If a bid was successful, for work in southern Alberta or in Saskatchewan, WEM would engage the services of Merick to provide contract labour under the terms of its contract with Merick. Merick would advertise for electricians to perform the work and they would be engaged by and paid by Merick. All tools and equipment would be supplied by WEM. Merick would submit billings to WEM under its contract. Those billings would be processed by WEM (for a fee) and amounts would be paid to Merick to meet its obligations to its employees. Exhibits filed with the Board by the Union showed that these payments were processed very quickly by WEM.

The Electrical Sub-contract for the Saskatoon Police Station:

[13] WEM bid on, and was the successful bidder for, the electrical subcontract with EllisDon Corporation. A contract for the performance of this work was executed between the parties on January 9, 2012. Under the terms of this contract, Mr. Chris Nicholson was named as the Subcontractor Quality Control Representative for WEM.

[14] Mr. Nicholson was a Superintendent for Merick. He had held that position for three (3) years. Prior to that he had worked as a foreman for Merick. He was then based in Saskatchewan and had responsibility for numerous projects in Saskatchewan, some which had been concluded, and some which were still underway, such as the Saskatoon Police Station.

[15] Mr. Nicholson was responsible for the hiring and firing of electrical workers utilized by Merick on the Saskatoon Police Station. He testified that he personally conducted about 90% of hiring interviews, with the balance being handled by Mr. Mel Hill. Mr. Nicholson testified that Merick was so desperate for electricians to work on the Saskatoon Police Station that the interviews were not extensive.

[16] Mr. Nicholson was also responsible for placement of advertising for electricians to work in Saskatchewan for Merick. On April 2, 2013, he authorized job

postings on saskjobs.ca for several journeyman electricians and apprentices. The Employer named in that advertisement was WEM. Mr. Nicholson was named as the contact with a contact email of cnicholson@westernelectrical.com. Mr. Nicholson testified that in placing this ad he was in error and the Employer should have been named as Merick. He posted another ad on May 16, 2013, this time the Employer was named as Merick. He was named as the contact with a contact email of merickhr@gmail.com.

[17] The Union called three (3) witnesses who worked on the project. These employees described the worksite at the Saskatoon Police Station. Some of them thought they were working for “Western” because they were given “Western” stickers for their hard hats and the work trailer had a “Western” sign on it. In addition, the vehicles used by the site supervisor, Mr. Hill and the Superintendent, Mr. Nicholson were labeled as “Western”. These witnesses did not, for the most part, distinguish between WEM and WEC as separate entities.

[18] Mr. Perillat, one of the three (3) Union witnesses, testified that he was given a business card by Mr. Hill that identified him as a field supervisor for WEC. He also testified that he was given “Western Electrical” gloves and a “Western Electrical” long sleeve shirt. He also testified that the tools, ladders, etc., were stenciled with “Western”.

[19] The Union was certified to represent employees of Merick by Order dated September 26, 2013. The original application for certification by the Union had been filed on April 16, 2013. Some issue was taken with Mr. Nicholson’s explanation of the two ads he had posted on saskjobs.ca. The Union attempted to establish that the change between the two ads was motivated by the certification application having been filed. Mr. Nicholson’s testimony was that the ads were changed as a result of his being advised by Mr. Cal Wakelam of his error, which he subsequently corrected. We accept his explanation of this change.

[20] The evidence established that the progress on the electrical subcontract was falling behind in the spring of 2013, which was the reason for the job ads. That concern persisted throughout the time the certification application was before the Board and also continued after the certification was granted. Ms. Desiree McCaffrey testified for the Union regarding her role in attempting to find sufficient electrical workers to satisfy the

requisitions made by Merick. Ms. McCaffrey is the dispatcher for the Union and is the person responsible for the provision of Union electricians to contractors who requisition them through the hiring hall.

[21] Ms. McCaffrey testified that she did her best to supply the necessary electrical workers, but was unable to provide a sufficient number. She testified that if the Union was unable to fill a requisition for electrical workers, the Employer could then hire “off the street”. She testified in those circumstances, if an employee was hired “off the street”, the Union would need to be advised in order that that person could have the paperwork done to admit them to union membership. She testified that Merick was engaged in hiring “off the street” because she saw names on the Union dues remittances for persons she was not aware of. Ms. McCaffrey acknowledged that the Union was having problems satisfying requisitions from other Employers as well.

Concept Electric, Dobbyn Electrical Services Ltd. and Tarpon Electric:

[22] The Board heard testimony from Union witnesses that suggested that Concept Electric⁵ (“Concept”), Dobbyn Electrical Services Inc.⁶ (“Dobbyn”) and Tarpon Electric, (“Tarpon”) supplied labour to WEM as a part of the Saskatoon Police Station Project. Invoices were produced from Concept and Dobbyn. Additionally, a statutory declaration was provided with respect to subcontract work performed by Dobbyn. The only mention of Tarpon was in the evidence of Christopher Debecker, who testified for the Union. None of the other witnesses referred to Tarpon.

[23] The parties went through a complex discovery process which was overseen by former Board Chairperson, Beth Bilson. In her report to the Board, Ms. Bilson specifically directed the parties to disclose⁷ any “agreements and related documentation between ...Tarpon Energy Services Ltd”.

[24] The statutory declaration given by Dobbyn was declared on March 5, 2013. The invoice from Dobbyn was dated April 13, 2013. The Purchase Order attached to this invoice was for the supply and installation of a lightning rod system using Thompson

⁵ Described on their invoices as being a part of Concept Group Ltd., through 101200672 Saskatchewan Ltd. operating as Concept Saskatchewan.

⁶ An Alberta corporation

Lighting and Protection Equipment, which was for a total of \$213,255.00. That total was made up as follows:

Supply of Lighting Protection cable	\$17,100.00
Supply material and labour	\$186,000.00
GST	<u>\$10,155.00</u>
Total	\$213,255.00

[25] The invoice was a partial billing for the supply of the class 2 lighting protection cable in the amount of \$9,600.00. This invoice was addressed to WEM.

[26] Concept's invoice was dated November 22, 2013. It was stated to be for "Labour Only" for new police station during weeks of Nov. 22 to Dec. 5, 2013. In the amount of \$11,430.10.⁸ The invoice was for the provision of the services of two (2) journeymen electricians and three (3) apprentices during the weeks of Nov. 22 – 28, 2013 and Nov. 29 – Dec. 5, 2013. This invoice was addressed to WEM.

[27] Siemens Canada Limited ("Siemens") and Fibertel Communications Canada Inc. ("Fibertel") also sub-subcontracted with WEM for the supply and installation of certain components of the electrical subcontract awarded to WEM by EllisDon. The Siemens Contract was dated January 5, 2012 and was for:

all security work/components/commissioning/testing/programming except for the installation of conduit and wire. Systems to include CCTV, Access Control, Intercom Systems, Watch Tour System, Duress Alarms, Audio Monitoring, Parking Duress Systems, Door Detention Control Systems and Security Integration.

[28] Fibertel's sub-subcontract was dated July 5, 2012 and was for "all structured cable including but not limited to – supply, installation, testing and commissioning as described in the tender documents".

[29] No objection was taken by the Union to the sub-subcontracts for Siemens or Fibertel.

⁷ See point #15 of Ms. Bilson's report dated May 28, 2014

⁸ The billing also included the sum of \$218.50 paid for a permit (plus markup) obtained from the City of Saskatoon.

Summary of other witness testimony:

[30] The Board heard from numerous other witnesses. As noted above, the Union introduced evidence from some of the employees of Merick who described the confusion that they had with respect to who their employer was.

Testimony of Allan Brown

[31] The Union also provided testimony from Mr. Allan Brown who was a labour relations officer with the Southern Alberta Institute of Technology ("SAIT"). Prior to joining SAIT, Mr. Brown had been an organizer and the assistant business manager for Local 424 of the Union in Alberta.

[32] Mr. Brown testified that WEC had been unionized with the Union (Local 424) since the 1940's. He testified that in 1985, WEM was spun off from WEC and that WEM began using Merick as their labour broker in the southern part of Alberta. He described an organizing drive that he participated in on behalf of Local 424 in respect to Merick and WEM in 2003. That organizing drive was unsuccessful due to a lack of support for the Union.

[33] Mr. Brown described the directing minds of WEM and WEC to be Mr. Ken Rickbeil. He described the directing mind of Merick to be Mr. Cal Wakelam. He described Mr. Wakelam as being a foreman/general foreman on WEM jobs. His testimony was that Merick was a "labour broker".

[34] Mr. Brown also testified that when he was trying to organize a voluntary recognition of Merick, that he dealt with Mr. Rickbeil, not Mr. Wakelam.

Testimony of Desiree McCaffrey

[35] Ms. McCaffrey is the dispatcher for the Union. She described the problems that she encountered in filling dispatch requests from Chris Nicholson of Merick following certification of Merick by this Board. She acknowledged that an employer could hire "off the street" 48 hours after the Union was unable to fill a manpower requisition. She noted that she was aware that there were some "off the street" hires by Merick because there were names which showed up on the dues remittance lists that she was not aware of.

[36] She testified that filling manpower requests was a problem for other employers besides Merick. She testified that she had not had a dispatch request with respect to any of Tarpon Electric, Dobbin Electric or Concept Electric. She testified that the use of Concept Electric may have been a breach of the collective agreement which could have been the subject of a grievance.

Testimony of Paul Janetzky

[37] Mr. Janetzky was the business manager for the Union. He testified that he was aware of the problems which the Union was having filling the dispatch requests made by Merick. He testified that he was unaware of when Concept Electric was on the work site. He testified that no Merick employee lost their job as a result of Concept Electric being on the work site. He testified that the Union did not file a grievance regarding Concept.

[38] Mr. Janetzky also testified regarding a meeting he had had with Mr. Peddle and Mr. Nicholson on the worksite concerning the supply of electricians to Merick. He testified that he did not guarantee that the Union would supply all of the electricians needed by Merick, but testified that the Union should be able to supply sufficient electricians.

Testimony of Chris Nicholson

[39] Mr. Nicholson has been a Superintendent with Merick for three (3) years. Prior to that he was a foreman with Merick. He has been a journeyman electrician for nine (9) years and is stationed in Regina, Saskatchewan. In addition to managing the Saskatoon Police Station job, he was also engaged on several projects in Regina. He testified that he had never worked with either WEM or WEC.

[40] Mr. Nicholson characterized the relationship between Merick and WEM as Merick being a sub-contractor to WEM. He testified that he took instruction from Mr. Darrell Caster who was the Project Manager for WEM. He described the work at the Saskatoon Police Station as being mainly (80%) installing conduit and pulling wire.

[41] Mr. Nicholson testified that he worked with Mr. Mel Hill, the site foreman on the Saskatoon Police Station site. At the height of the work he stated that they had sixty

(60) electricians working on the project. As noted above, he also testified regarding the placement of advertisements for electricians to work on the project.

[42] He testified that he was solely in charge of the hiring and discharge of employees. When employees were hired or fired, he would advise Cal Wakelam of that fact. He testified that he discussed the scope of the work to be performed with Darrell Caster. He advised that WEM supplied all of the materials and tools for the job except for electrician'. WEM also provided hard hats, his vehicle and IT support for the project.

[43] Mr. Nicholson testified that he was experiencing difficulty finding sufficient experienced electricians to perform the work and that the project was falling behind due to manpower shortages. He testified that he spoke to Cal Wakelam concerning the manpower shortage.

[44] He testified that Merick could have done the work which was done by Tarpon and Concept. Tarpon was engaged by WEM as a subcontractor to install all Uninterruptable Power Supply batteries and chillers. Concept was engaged from June to December 2013, mainly hanging lights and installing penthouse security.

[45] He testified that he co-ordinated work with Tarpon and Concept, but did not supervise their work.

[46] He also testified regarding the difficulty he had obtaining electricians from the hiring hall after Merick was certified to the Union. He testified that he had to bring five (5) employees to Saskatoon from Regina to help with the work. He said that he provided the names of these employees to the Union.

[47] In cross examination, Mr. Nicholson confirmed that all the jobs that he had worked on for Merick were subcontracts from WEM.

Testimony of Cal Wakelam

[48] Mr. Wakelam is the President of Merick. He was formerly a foreman for WEC. He described the business of Merick as being a labour broker, supplying labour to electrical projects. He testified that the principle client of Merick is WEM. He further testified that they sometimes do work for other contractors. Mr. Wakelam testified that

Merick does communication and warehouse projects in Alberta, but specializes in commercial office towers, etc.

[49] He testified that he was approached by Mr. Ken Rickbeil to come to work for a new company they had set up, Merick Contractors. He stated that in November of 1992, he bought half of shares in Merick from Ken Rickbeil and that Anthony Jackson bought the other half of the shares. Mr. Jackson's shares were subsequently sold by him to Mr. Renouf and Mr. Hamil. He testified that he was the President of Merick. He also testified that neither he nor Mr. Renouf or Hamil had any interest in WEM or WEC. He says that he works as a site rep for WEM, but is paid by Merick.

[50] Mr. Wakelam testified that Merick has no office other than a workspace in his home. He testified that Merick's payroll is processed for a fee by WEC. Darlene Nichols assembles payroll information and sends it to Ceridian to process the cheques. He further testified that there is no staff at the Company's office. He meets with clients on the job sites. His wife occasionally helps out in the home office.

[51] Mr. Wakelam testified that Merick contracts on a cost plus 1.5% with WEM. Wage rates for electricians are negotiated directly between himself and the President of WEM.⁹

[52] Mr. Wakelam testified under cross-examination that he worked for WEC for sixteen (16) years. He testified that Merick was set up to be a non-union contractor. He also testified that he paid \$100.00 for the shares he purchased in Merick.

[53] Mr. Wakelam testified that the directors of Merick meet 3-4 times a year. Profits from the company are divided among the directors. He testified that 98% of the work Merick does is for WEM. Merick's wage rates are \$3-\$4 lower than union rates.

[54] He further testified that Merick employed some warehouse workers who worked in a warehouse operation owned by WEM. He also testified that WEM has no employees, but he didn't know why that was.

⁹ See Union's Book of Authorities #2 at Tab 26 for current agreement

Testimony of Darrell Caster

[55] Mr. Caster testified that prior to January 1, 2014 he was the senior project manager for WEC, a position which he had held for 19 years. On January 1, 2014 he became an employee of WEM. Prior to January 1, 2014, the costs for his services were charged back to WEM by WEC.

[56] Mr. Caster was the overall manager of the Saskatoon Police project for WEM. He arranged for contracts with Ellis-Don to be signed and also hired the necessary sub-contractors to perform the work. Merick was one of those sub-contractors. He testified that he was in contact with Chris Nicholson on a daily basis.

[57] He testified that Tarpon Electric was subcontracted to provide labour services when Merick was unable to supply sufficient workers for the project. Tarpon's employees were from Calgary and were paid both travel and a living away allowance while working in Saskatoon. He testified that Concept Electric was hired by him as a result of manpower shortages as well. He testified that they had not previously done work with this contractor, but hired them to provide 3-5 people to work at the site.

[58] Under cross-examination, he testified that it was not his decision to engage Merick on this contract, but that decision was made by Shaun White, who is now the President of WEM. He also testified that the hiring of Concept was on the recommendation of Chris Nicholson. He further testified that Tarpon was hired for its specialty in the installation of Uninterruptable storage batteries and with chillers. He also testified that Mr. Nicholson was the eyes and ears of WEM on the site.

Testimony of Greg Sawatsky

[59] Mr. Sawatsky is the Chief Financial Officer for WEM and the Controller for WEC. He is a chartered accountant. He testified that as of January 1, 2014, there was a change in management. Scott White replaced Mr. Rickbeil as President of WEM and Mathew Rogers replaced him as CFO and controller as a part of the succession plan for the companies.

[60] He noted that WEC was struck off the corporate registry of Saskatchewan and was not active in Saskatchewan. He noted that WEC had 35 – 40 employees,

depending on projects in Edmonton. WEC was described by him as a labour broker for union contractors in Alberta.

[61] Mr. Sawatsky described the relationship between WEM, WEC and Merick. WEM searches out jobs. When they get a job in Edmonton, they hire WEC to provide the necessary labour. When they get a job in southern Alberta, they hire Merick to provide the labour. WEC provides payroll and accounting services to Merick for a fee (\$25,000 - \$30,000 annually).

[62] When WEM obtains a contract as described above, it hires sub-contractors, including Merick to complete the work. Mr. Sawatsky testified that WEM has hired other non-union shops to sub-contract work that WEM has obtained.

[63] Under cross-examination, Mr. Sawatsky acknowledged that WEM and WEC are related insofar as they have common shareholders and directors. He also acknowledged that Ken Rickbeil had been involved in Merick before he (Sawatsky) become involved with WEC. WEM was created in 1984, has no tradespeople, but he wasn't sure why that was the case.

[64] He testified that the deal with Merick was the same as with any sub-contractor other than the majority of the work for WEM goes to either WEC or Merick. He acknowledged that 95% of the work goes to WEC or Merick. He advised that there was no written agreement between WEM and WEC similar to the deal between WEM and Merick.

[65] He acknowledged his understanding that if WEM hired tradespeople that WEM and WEC would be common employers in Alberta. WEM doesn't hire tradespeople and was to have no employees in Alberta.

[66] He acknowledged that WEM and WEC have the same offices and have some common employees. He acknowledged that the cost plus amount was based on what would be a fair return for yearly services. The charge backs to Merick by WEC were based on a rough guess of how much time was spent on Merick work by WEC staff. He stated that WEC also does a charge back to WEM for services provided to WEM.

Relevant statutory provision:

[67] Relevant statutory provisions are as follows:

The Trade Union Act

37.3(1) On the application of an employer affected or a trade union affected, the board may declare more than one corporation, partnership, individual or association to be one employer for the purposes of this Act if, in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by or through those corporations, partnerships, individuals or associations.

37.3(2) Subsection (1) applies only to corporations, partnerships, individuals, or associations that have common control or direction on or after October 28, 1994.

...

The Construction Industry Labour Relations Act

18(1) On the application of an employer or a trade union affected, the board may declare more than one corporation, partnership, individual or association to be one unionized employer for the purposes of this Act and The Trade Union Act where, in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by or through those corporations, partnerships, individuals or associations.

(2) Repealed. 2000, c.69, s.11.

(3) In exercising its discretion pursuant to subsection (1), the board may recognize the practice of non-unionized employers performing work through unionized subsidiaries.

(4) The effect of a declaration pursuant to subsection (1) is that the corporations, partnerships, individuals and associations:

- (a) constitute a unionized employer in a specified trade division;*
- and*
- (b) are bound by a designation of a representative employers' organization pursuant to section 9.1 or 10 or by a determination of a representative employers' organization pursuant to section 10.3.*

(5) The board may make an order granting any additional relief that it considers appropriate where:

- (a) the board makes a declaration pursuant to subsection (1); and*
- (b) in the opinion of the board, the associated or related businesses, undertakings or activities are carried on by or through more than one*

corporation, partnership, individual or association for the purpose of avoiding:

- (i) the effect of a designation or determination of a representative employers' organization with respect to a trade division; or
- (ii) a collective bargaining agreement that is in effect or that may come into effect between the representative employers' organization and a trade union.

(6) Where the board is considering whether to grant additional relief pursuant to subsection (5), the burden of proof that the associated or related businesses, undertakings or activities are carried on by or through more than one corporation, partnership, individual or association for a purpose other than a purpose set out in subclause (5)(b)(i) or (ii) is on the corporation, partnership, individual or association.

(7) An order pursuant to subsection (5) may be made effective from a day that is not earlier than the date of the application to the board pursuant to subsection (1).

...

18.1 In relation to any proceeding brought pursuant to section 18, the board may:

- (a) order prehearing procedures, including prehearing conferences that are held in private, and direct the times, dates and places of the hearings for those procedures;
- (b) make any examination of records and any inquiries that the board considers necessary;
- (c) at any stage of a proceeding, compel any person to provide information or produce records and things that may be relevant to a matter before the board, after providing the parties an opportunity to make representations;
- (d) authorize an investigating officer to exercise any of the powers set out in clauses (a) to (c) on behalf of the board.

Union's arguments:

[68] The Union took the position that Section 37.3 of the *Act* was the governing provision in this case. It adopted the test set out by the Board in *Amalgamated Transit Union, Local 588 v. City of Regina and Wayne Bus*.¹⁰ The Union also argued that it is irrelevant that WEM has no employees citing *General Truck Drivers and Helpers, Local Union Nos. 31 and 213 v. Goodman Motor Transport Company (1973) Ltd.*,¹¹ a decision of the *Canada Labour Relations Board*.

¹⁰ [1999] SLRBD No. 21

¹¹ 10 CLRBR (NS) 1

[69] The Union also argued that it was not necessary for the two enterprises to carry on the same activities to be related, relying upon the Ontario Labour Relations Board decision in *J.H. Normik Inc.*¹² It argued that a similar relationship to that described in *Normik* should be found in this case.

[70] The Union argued that the most important task for the Board was determining who exercised “fundamental control” over the employees in question. It cited *UFCW, Local 1400 v. Canadian Salt Company Limited et al.*¹³ in support of its argument that the criteria for finding of common employer as described in *Amalgamated Transit Union, Local 588 v. City of Regina and Wayne Bus.*¹⁴

[71] The Union argued that the history of Merick, WEM and WEC should be weighed to determine if they are related. It argued that this was particularly important in the context of construction where contracts are often of limited duration.

[72] The Union argued that WEM bore the ultimate responsibility for remuneration and that Merick is nothing more than a clearing house charging a percentage over cost. They argued that Merick did little more than receive job applications and dispatch employees for WEM. It also argued that Merick’s participation in the hiring and firing process was illusory insofar as the on site supervisors are, in reality, employees of WEM.

[73] The Union argued that the employees on site thought that their employer was WEM as Merick had no on site existence. They argued that ads were placed for WEM employees, albeit that changed once the employer became aware of the Union’s interest in organizing the employees.

[74] The Union further argued that both Merick and WEC are only labour brokers and that primary control comes from WEM. They argued that even though Merick did perform some of the functions that are performed by an employer, the common direction and control of the three corporations is obviously with the minds of WEM. In the Union’s submission, this was an appropriate case for the Board to declare the entities to be related or common employers.

¹² [1979] OLRB Rep 1176

¹³ [2010] SLRBD No. 19

¹⁴ [1999] SLRBD No. 21

[75] The Union argued as well that the Board should not embrace the Alberta experience with respect to related or common employers since the Alberta legislation contains provisions,¹⁵ that the Saskatchewan legislation does not.

[76] The Union also cautioned against the Board not making a declaration due to the completion of the work for which the initial certification was made. It argued that protracted litigation should not be available as a sword to attack collective bargaining rights. The Union argued that WEM and Merick intend to continue to pursue further work in Saskatchewan and it further argued it would be reasonable to assume that they would use their existing corporate structure to do so. It also argued that the Union's bargaining rights would be eroded if a declaration was not made.

[77] The Union provided that the Board should remain seized of the determination of any loss suffered by the Union due to the sub-contracting of electrical work to other companies.

WEM and WEC's arguments:

[78] Based upon the Board's decisions in *Dewar Western Inc. (Re:)*¹⁶ and *Edgewood Forest Products Inc. (Re:)*,¹⁷ WEC argued that there is no need to determine whether or not it is a common employer with WEM or Merick because WEC does not perform work in Saskatchewan and is not registered to conduct business in Saskatchewan.

[79] WEM argued that it was not engaged in associated activities or related businesses, undertakings or other activities with Merick. Nor, they argued, were WEM and Merick operated under common control or direction. Relying upon this Board's decision in *Graham Construction and Engineering Ltd. (RE:)*,¹⁸ WEM took the position that CILRA governed this situation rather than the *Act*.

[80] Based upon that presumption, WEM argued that there were two tests prescribed under CILRA. These were the "common control and direction" test from section 18(1)(a) of CILRA and the "sufficiently related" test set out in 18(1)(b) of CILRA. WEM

¹⁵ See Alberta Labour Relations Code s. 192, RSA 2000 CH L-1

¹⁶ [1999] SLRBD No 27

¹⁷ [2013] SLRBD No. 2

¹⁸ [1998] SLRBD No. 58

argued that the threshold tests set out in Section 37.3 of the *Act* were similar, but not as broad insofar as the language used by the legislature.

[81] Relying upon the Board's decision in *North American Construction Group Inc.*,¹⁹ WEM and WEC argued that the 5 indicia adopted by the Board from the Ontario Labour Relations Board decision in *Walters Lithographing Company Co. Ltd.*²⁰ should be applied. They also argued that the view taken by the Alberta Labour Relations Board in *Hansuk v. The Bakery and Confectionary and Tobacco Workers Union, Local 252*,²¹ should be followed.

[82] WEC and WEM also argued that economic dependence does not mean that the two entities are related and commonly controlled. In support of that proposition, they cited *City of Saskatoon, C.U.P.E., Local 59 and Saskatoon Economic Regional Development Authority Inc.*²²

[83] WEC and WEM also argued that, even if it was found that WEM and/or WEM and Merick are common employers, there was no labour relations purpose in making a declaration of common employer in this situation. Relying upon comments from the Board in *Wayne Bus*²³ and *North American Construction Group Inc.*,²⁴ they argued that the Board should not automatically make a declaration. They argued that such a declaration was required when there was a valid labour relations purpose for the order, generally when there is evidence that the union and its members need protection from the erosion of their bargaining rights resultant from employer manipulation of the business form. They argued that no such evidence was present in this case.

[84] They argued, relying again on *North American Construction Group Inc.*,²⁵ that a declaration of common employer should not be used to expand bargaining rights and that a delay in seeking to protect its rights may be fatal to a union's common employer application. They argued that there was no evidence that any bargaining rights granted to the Union were being eroded.

¹⁹ [2013] SLRBD No. 23

²⁰ [1971] O.L.R.B. Rep 406

²¹ [1987] Alta. L.R.B.R. 420

²² [1998] SLRBD No. 32

²³ [1999] Sask. LRBR 238

²⁴ [2013] SLRBD No. 23

²⁵ [2013] SLRBD No. 23

[85] Finally, relying upon *Cabtec Manufacturing Inc.*,²⁶ they argued that a declaration of related or common employer should not be made in response to a legitimate business decision made by an employer. They argued that where it can be shown that there was a *bona fide* purpose for using contractors other than the unionized contractor there is no legitimate labour relations purpose to support a common or related employer designation.

Merick's arguments:

[86] Merick also argued that Sections 18 and 18.1 of CILRA were the applicable provisions for this situation. It too relied upon *Graham Construction and Engineering Ltd. (RE:)*.²⁷

[87] Merick also argued that this was not an appropriate case for the Board to exercise its discretion to make a common employer declaration. It also supported the arguments of WEM and WEC with respect to the tests to be applied and relied upon the same cases as those put forward by WEM and WEC.

[88] Merick argued that there was no common ownership or financial control between Merick and WEM or WEC. They argued that Merick controls all aspects of the conditions of employment and WEM or WEC have no control over those employees.

[89] Merick pointed to the provisions²⁸ of the Labour Supply Agreement between the parties to show the control exercised by Merick over its employees. It also argued that Merick and WEM or WEC do not hold themselves out to be one single integrated organization.

[90] Like WEM and WEC, Merick also argued in the alternative, that if a common employer relationship were found that the Board should decline to make a declaration. These arguments also echoed those of WEM and WEC. Merick argued that there was no valid labour relations rationale for making a related or common employer designation.

²⁶ [2008] SLRBD No. 7

²⁷ [1998] SLRBD No. 58

²⁸ See paragraphs 3 through 8

Analysis and Decision:

[91] This application raises a number of issues for determination. These are:

1. Is this application governed by sections 18 and 18.1 of CILRA or do the provisions of section 37.3 of the *Act* also come into play?
2. Are WEM, WEC, Merick, or any of them common employers?
3. If WEM, WEC or Merick are common employers, should the Board exercise its discretion and not make a common employer declaration?
4. Has the Union suffered compensable loss as a result of the engagement of Tarpon Electric, Concept Electric and Dobbyn Electric?

What is the appropriate statutory authority for this application?

[92] WEM, WEC, and Merick argue that the governing legislation in this matter is the CILRA. The Union argues that the provisions in CILRA and the *Act* should be utilized together. For the reasons which follow, we are of the opinion that the provisions of the CILRA govern these proceedings.

[93] The CILRA establishes a unique bargaining scheme for the construction industry. It provides for sectorial bargaining among trade divisions as determined by the Minister and appoints employer organizations to bargain collectively with these trade divisions.

[94] In support of their position, WEM, WEC and Merick cited this Board's decision in *Graham Construction and Engineering Ltd. (RE)*.²⁹ In that decision, the Board unanimously held that Section 18 of the CILRA should govern the question of related employers in the construction industry while Section 37.3 of the *Act* applies to other sectors.

[95] In its decision, the Board analyzed both section 18 of the CILRA and section 37.3 of the *Act*. It concluded at page 721 as follows:

Section 37.3 of the TUA sets out a threshold test that is similar to the test set out in s.18(1)(a) of the CILRA, 1992, that is, the "common

²⁹ [1998] SLRBD No. 58

control or direction” test. However, s. 37.3 of the TUA is not as broad in its language as s. 18(1) in the CILRA, 1992 because it does not contain the second test, that is, the “sufficiently related” test which we describe above.

The second area of divergence between the related employer provisions in the CILRA, 1992 and the TUA relates to their general application. Section 18(2) of the CILRA, 1992 limits the application to s. 18(1) to corporations, partnerships, individuals and associations that commence carrying on business, undertakings or other activities in the construction industry after the coming into force of the CILRA, 1992, which was proclaimed in force on September 22, 1992....

[96] The Board noted that the provision in Section 37.3(1) of the *Act* excepted, from the application of Section 37.3, businesses, undertakings, or other activities which became associated or related after October 28, 1994. This difference was enlarged when Sub Section 18(2) was repealed in 2000.³⁰ As a result of that amendment to the CILRA, the exception for activities prior to September 22, 1992 was removed insofar as the Construction industry was concerned.

[97] At page 718, the Board recognized that both provisions had a similar remedial goal which was to limit “the ability of unionized employers to engage in the practice of double breasting”. The Board went on to say, however, that “[T]hey achieve this goal, however, by using slightly different criteria and a different time frames for applying those criteria”.

[98] The Board also noted that the provision in Section 18 of the CILRA came first and that Section 37.3 of the *Act* was added later. The provisions governing the construction industry were first to limit the extent of “double breasting” in that industry, with provisions added later for other industries in the *Act*.

[99] Accordingly, we support the conclusions reached by the Board in *Graham Construction and Engineering Ltd. (RE:)*,³¹ that the provisions of the CILRA should govern this application.

³⁰ S.S. 2000 c. 69 s. 11

³¹ [1998] SLRBD No. 58

Are WEM, WEC, Merick, or any of them common employers?

[100] WEM and WEC have acknowledged that they are related entities. The question which we must therefore determine is whether or not Merick is related to either of them in accordance with Section 18 of the CILRA.

[101] Most of the cases cited by the Union, WEM, WEC, and Merick were determined by the Board pursuant to section 37.3 of the Act. Only *Dewar Western Inc. (Re:)*³² and *North American Construction Group Inc.*³³ were cases which involved the construction industry.³⁴ *Dewar* is of limited assistance because it did not deal with the issue of common employer other than its finding at paragraph 6 where it says:

The Board finds that the employer of the employees in question is Dewar. We find that Dewar Industrial is also not the employer of the employees in question. It is not necessary for the Board to determine if Lakeland is a related employer to Dewar through common ownership or direction as there is no evidence before the Board that Lakeland has performed work in Saskatchewan. If Lakeland commences work in Saskatchewan, it may be that the Union has a good argument to make that it is a related employer within the meaning of s. 18 of The Construction Industry Labour Relations Act, 1992, S.S. 1992, c. C-29.11. At the present time, however, this aspect of the application is premature.

[102] In *North American Construction*, the Board did review the criteria for common employer designation. Based upon those criteria, the Board was satisfied that the named companies were operated under common control and direction. However, the Board was not satisfied that a sufficient labour relations purpose would be fulfilled by granting a common employer designation.

[103] In the *North American Construction* case, the Board adopted the criteria set out by the Ontario Labour Relations Board in *Walters Lithographing Company Co. Ltd.*³⁵ Those criteria are:

1. *Whether or not there is common ownership and/or financial control;*
2. *Whether or not there is common management;*

³² [1999] SLRBD No. 27

³³ [2013] SLRBD No. 23

³⁴ It may be questionable if *Dewar* is, indeed, a construction case since the work being performed at the Husky upgrader may now be considered to be maintenance work which is no longer covered by the CILRA

³⁵ [1971] O.L.R.B. Rep 406

3. *Whether or not there is an interrelationship of operations, including the transfer of employees;*
4. *Whether or not there is centralized control of labour relations; and*
5. *Whether or not the employers represent themselves to the public as a single integrated enterprise.*

[104] In *North American Construction*, the Board did not specifically deal with these criteria, but, nevertheless, declined to make the requested order on the basis that there would be no labour relations purpose in making it.

[105] In *Adams, Canadian Labour Law* (2nd edition), at paragraph 8.420, the author discusses, in general terms, the preconditions which must be met before a labour board will consider exercising their discretion to declare businesses to be related.

There must be more than one enterprise (and employer) involved; the enterprises must be associated or related; and the enterprises must be under common control or direction. Absent this essential unity of economic activity, there will be no finding of relatedness although this does not require that the primary activities of each enterprise be the same.

[106] Analyzing the *Walters Lithography* criteria, we have concluded that:

1. *There is no common ownership as between Merick and either WEM or WEC. However, WEM or WEC exercises financial control over Merick with respect to setting of wage rates, charges for services rendered, and the amount of the mark up paid.*
2. *There is no common management between WEM, WEC or Merick. However, management functions such as payroll and accounts receivable processing is performed contractually by WEC for Merick.*
3. *There is some interrelationship between WEM and Merick as a result of Merick being the preferred supplier of employees for WEM projects. However, there is no transfer of employees involved.*
4. *There is no centralized control of labour relations. The evidence was clear that Merick was left on its own to obtain the necessary qualified workmen to perform the sub-contract.*
5. *The Union took the position that the workers identified their employer as "Western" from the tools and materials on site and the work equipment (hard hats, gloves, tee shirts etc.) which were provided to them. Similarly, both Chris Nicholson and Mel Hill carried cards which identified them as site supervisors for WEM. Additionally, Chris Nicholson originally advertised for employees under WEM's name.*

Was there common ownership and/or financial control?

[107] It is clear that there was no direct ownership or control as between WEM, WEC and Merick. When Merick³⁶ was incorporated, it was owned by Kenneth Rickbeil and Joachim Merten. Mr. Wakelam acquired his shares in the company in November of 1992 and Messrs. Hamil and Renouf acquired their shares sometime later. As at the date of this application, there was no commonality of ownership or direction between Merick and either WEM or WEC.

[108] It was equally clear, however, that Merick was highly dependent upon WEM for its livelihood. Estimates varied as to the amount of work done by Merick for WEM, but Mr. Wakelam was only able to point to one instance when Merick had done work for another entity.

[109] The evidence from both Mr. Wakelam and Mr. Sawatsky was that labour rates were determined annually by discussion between WEM and Merick. The agreement also required that Merick perform the contract in a:

...professional manner promoting Western's goodwill and reputation, and in accordance with Western's policies and procedures as in effect from time to time and in accordance with such reasonable general direction as Western may from time to time specify and at such location as Western may specify and during such hours as Merick may determine from time to time, acting reasonably and with due regard for the needs of Western.³⁷

Was there common management?

[110] The evidence with respect to this issue is clear. There was no common management between Merick and either WEM or WEC. However, some of the management functions, such as payroll and accounts receivable were handled by WEC for a fee. This arrangement does not, however, in our opinion lead to a finding of common management as between the entities.

³⁶ The corporate name seemingly being an amalgam of the names Merten and Rickbeil.

³⁷ See section 3 of the Agreement to Supply Labour Services

Was there an interrelationship of operations, including the transfer of employees between the entities for which a common relationship was to be found?

[111] The evidence in this case clearly showed that, while there was a form of dependent relationship, there was no co-mingling or inter-mingling of operations. Nor was there any transfer of employees between Merick and WEM or WEC.

[112] WEM had no employees in the time period under consideration. WEC employed unionized employees in the northern part of Alberta. None of these WEC employees were transferred to the employ of Merick. The evidence established that Merick was responsible for the hiring of all necessary tradespeople, who they tried to recruit from Saskatchewan. Once Merick was unionized, it sought employees from the union hiring hall.

Was there centralized control of labour relations?

[113] In respect of this criteria, the evidence was also clear that there was no centralized control of labour relations between the various entities. WEM had no employees and hence required no labour relations control. WEM was not involved in the labour relations of Merick. Merick was not involved in any labour relations with respect to WEC or WEM.

Did they represent themselves to the public as a single integrated enterprise?

[114] It is clear from the evidence that Merick was not identified on site as the contractor. The contractor on the site was WEM. WEM was the sub-contractor to Ellis-Don on the project and engaged Merick as a sub-sub-contractor to do the work, presumably with the consent and knowledge of Ellis-Don under the terms of the sub-contract for electrical work.

[115] The Union was confused as to who was the employer, and initially made its application for certification in the name of WEM. However, it amended that application when Merick took the position that it was the employer and the certification was made in the name of Merick. During that process, the Union reserved the right to make this application to have WEM or WEC named as common employers with Merick.

[116] Nevertheless, the division between WEM and Merick was apparent. They were clearly seen as two entities, not a single integrated enterprise. Nor was WEC seen as being a single integrated enterprise with Merick.

[117] Identification of workers on site could have been better. Tools and equipment owned by WEM or WEC (merely marked as “Western”) were utilized. Similarly, hard hats, gloves and other work gear were given to Merick employees that identified them as Western employees. It was confusing at best, and could be seen as having been deliberately misleading, insofar as who was performing the contractual responsibility on site.

The Purpose for Common Employer provisions:

[118] In *North American Construction*, at paragraph 60, the Board commented on the purpose behind section 18 of the CILRA.

In response to the complex and often murky realities of corporate organization, most Canadian jurisdiction have enacted legislation that authorizes labour boards to pierce the corporate veil and find that two (2) or more related businesses ought to be treated as one (1) common employer for the purposes of labour relations. Saskatchewan has such a provision for the construction industry in s. 18 of The Construction Industry Labour Relations Act, 1992. Many corporations operate in an associated or related fashion and these corporations may be operated under common direction and control for a variety of legitimate business reasons. However, if the purpose or effect of a corporate organization or reorganization is to avoid collective bargaining obligations (for example, by permitting the transfer of work that would normally be completed by a unionized company to a non-union a related company operated under common direction and control – a practice commonly known as “double breasting”), then this Board has authority pursuant to s. 18 to pierce the corporate veil, so to speak, and declare both employers to be one (1) for the purposes of collective bargaining. The effect of a common employer designation is to cause the employees of both the union and non-union employers to fall within the scope of a trade union’s bargaining unit. Obviously, it is a powerful tool granted by the legislature for the purpose of achieving a particular remedial effect.

[119] In *Graham Construction and Engineering Ltd. (RE:)*,³⁸ the Board described section 18 of CILRA and section 37.3 of the Act as *being remedial in nature, designed to prevent erosion of a trade union’s bargaining rights. At page 721, the Board says:*

³⁸ [1998] SLRBD No. 58

Both provisions are remedial provisions designed to prevent the erosion of a trade union's bargaining rights through the establishment of a new corporate entity (See Adams, Canadian Labour Law, 2nd ed. Para 6;510). Under the provisions, the Board can declare associated or related businesses to be one employer for the purposes of the two statutes. However, before the Board can make a declaration, it must apply the tests set out in the statutes to determine if the companies are indeed, "related".

[120] The tests described by the Board in Graham were:

1. The "common control and direction" test; and
2. The "sufficiently related" test.

[121] Applying these tests, along with the analysis of the criteria established in Walters Lithography leads us to the conclusion in this case that there is insufficient common control and direction between WEC, WEM and Merick to justify a declaration under section 18(1) of the CILRA. Nor are these entities sufficiently related to meet the second prong of the test outlined in Graham.

[122] We would therefore decline to make the requested order that Merick is related or associated with either WEM or WEC for the purposes of section 18(1) of the CILRA.

The Discretion not to order entities to be associated or related.

[123] Even if we had found that WEM and WEC were sufficiently related and were operated under common control or direction, we would have declined to make the requested order. For such an order to be made, there must be a sufficient labour relations purpose for doing so. In our opinion, no such reason exists in this case.

[124] In a recent decision³⁹ from the Manitoba Labour Relations Board, former⁴⁰ Chairperson, Hamilton at paragraph 6(d) of the decision described the Board's discretion to make a common employer declaration.

(d) The sole issue before the Board is whether it ought to exercise its acknowledged discretion under s. 59(1). In this regard, the jurisprudence of labour boards across Canada has consistently held that there must be a

³⁹ *UFCW, Local 832 v Sun Gro Horticulture Canada Ltd. and F.P.M. Peat Moss Co.* 249 C.L.R.B.R. (2d) 279 at p. 283.

⁴⁰ Now a Vice-Chairperson of the Manitoba Board

proper labour relations purpose for the issuance of a common employer declaration. It is accepted that the overriding purpose of such a declaration is to prevent an anticipated erosion of existing bargaining rights. Common employer declarations cannot be used to expand bargaining rights. The anticipated erosion of bargaining rights must be real and go beyond a speculation as to what might possibly occur. Therefore, an applicant must demonstrate that there is either an actual or potential erosion of [existing] bargaining rights (see Seamless Industrial Floor Coatings Ltd, and Marble, Tile & Terrazzo Local 31 92012) 211 CLRBR (2d) 310, [2012] O.L.R.D. No. 792, at paras. 15 and 16). There are numerous authorities confirming these principles. Their disagreement relates to how these principles apply to the facts of this case.

[125] As noted above, the purpose of section 18 is to preserve and protect the **existing** collective bargaining rights of employees who have chosen to be represented. It does not serve to expand or enlarge those rights.

[126] The only entity operational in Saskatchewan who employs electricians is Merick. WEM does not employ electricians and WEC is not registered to conduct business in Saskatchewan. As noted by the Board in *Edgewood Forest Products Inc. (Re):*⁴¹

[84] Furthermore, any declaration under section 37.3 would be ineffective insofar as C & C Wood Products Ltd. is concerned. They are not registered to conduct business in Saskatchewan, nor do they carry on business here. For a declaration to be effective, C & C Wood Products Ltd. would have to attorn to this jurisdiction and register as an extra-provincial corporation for any declaration to be binding upon them.

[127] The Union did not, in our opinion, provide sufficient or any evidence that there would be an actual or potential erosion of bargaining rights granted to them in this province if a declaration was not made.

[128] Additionally, there must be a proper labour relations purpose for the issuance of a common employer designation. Again, in our opinion, no such proper labour relations purpose was provided by the Union.

[129] It is clear that the functions of WEM and Merick are different. WEM is the entity which bids and obtains work, supervises the work in accordance with the contractual arrangements, and provides materials for the work. Merick engages and provides labour to complete the work as a subcontractor. There is nothing inherently sinister or deceptive in this business organization. It is not a situation wherein the mischief sought to be prevented

by Section 18 of the *CILRA* is found. It is not a situation where a common employer is seeking to work in the same trade through two entities, one unionized and one not unionized (“double-breasted”).

[130] Both WEM and Merick were established well before this contract was put out for tender. They had operated in the fashion which they operated in Alberta for some time. There was no suggestion that WEM ever intended to perform electrical work or employ electricians for that purpose as a non-union contractor. Rather they intended to and remained a manager for electrical projects.

[131] All three corporations had operated in Alberta in this fashion for many years. WEM managed electrical projects, and WEC and Merick were [allowable] union and non-union entities [for Alberta purposes] who performed the electrical work. WEC is not registered to work in this province and there was no evidence to suggest that WEC had any intention of performing electrical work in the Province. As noted in *Edgewood*, a declaration concerning WEC would be futile and serve no proper labour relations purpose. That said, there were also no existing or prospective collective bargaining rights to be eroded.

[132] For these reasons, the Board dismisses the application for a common employer designation between WEM, WEC, and Merick or any of them. An order dismissing the application will accompany these reasons.

[133] We were asked by the parties to reserve on the question of any monetary loss suffered by the Union, including any losses suffered by virtue of the use of Concept, Tarpon and/or Dobbyn. We will do so. Those matters may be scheduled for hearing through the Board Registrar or through the Motions Day process.

⁴¹ [2013] SLRBD No. 2 at para. 84

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

DATED at Regina, Saskatchewan, this **5th** day of **February, 2015**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson