Saskatchewan
Labour Relations Board

CLR CONSTRUCTION LABOUR RELATIONS ASSOCIATION OF SASKATCHEWAN INC: **Applicant**

-and-

CONSTRUCTION AND GENERAL WORKERS' UNION, LOCAL 180: **Co-Applicant**

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL and REINFORCING IRON WORKERS, LOCAL 771 **Co-Applicant**

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 980 **Co-Applicant**

INTERNATIONAL UNION OF PAINTERS and ALLIED TRADES, LOCAL 739 **Co-Applicant**

INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS and ASBESTOR WORKERS, LOCAL 119 **Co-Applicant**

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 529 **Co-Applicant**

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2038 **Co-Applicant**

LRB File Nos. 030-16 and 103-16; July 12, 2016
Chairperson, Kenneth G. Love Q.C.; Members: Jim Holmes and Allan Parenteau

For the Applicant:	Dwayne W. Chomyn.Q.C.
For the first 4 named Co-Applicants:	Gary Caroline
For the last 3 named Co-Applicants:	Crystal L. Norbeck

Reference of Dispute – Parties ask Board to provide answers to questions posed by Parties related to the proposed construction of a potash mine - Parties request Board to provide advanced ruling on questions posed by Parties based upon presumed fact scenario.

Reference of Dispute – Board reviews authority for provision of advance rulings by Board – Board determines that it has authority

to make advance rulings, but that authority should be used sparingly.

Reference of Dispute – Board considers parties request for advance ruling – Board determines that advance ruling should not be given because there is no dispute between the parties capable of resolution by the Board, the questions posed are hypothetical, the advance ruling seeks legal advice from the Board to allow the parties to better order their affairs, and the rulings requested would require the Board to overrule or distinquish a decision of the Court of Queen's Bench – Board declines to provide advance ruling in these circumstances.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love Q.C., Chairperson:** The Applicant, CLR Construction Labour Relations Association of Saskatchewan Inc., ("CLR") is the Representative Employers' Organization for the following Trade Divisions pursuant to Division 13 of *The Saskatchewan Employment Act* (the "SEA"):.

Bricklayer/Tilesetter
Carpenter
Cement Mason/Plasterer
Electrical
Elevator Constructor
Insulator
Labourer
Millwright
Operating Engineer
Painter
Plumber/Pipefitter
Roofer-Sheet Metal
Sheet Metal
Teamster

[2] The Co-Applicants are Trade Unions certified to represent employees within the above noted Trade Divisions.

[3] The Applicants and the Co-Applicants have applied to the Board pursuant to section 6-110 of the *SEA* requesting that the Board provide the parties with an advance ruling or

opinion with respect to provisions of the *SEA* and the potential impact of those provisions upon a potential industrial development which may occur in Saskatchewan over the next several years, being the development of a multi-billion dollar development of a new potash mine by BHP Billiton ("BHP") near Jansen, Saskatchewan.

The Questions Posed by the Parties

[4] The Application raises two questions: They are:

1. Are unionized employees in a trade division working on a project (the "Project Employees") pursuant to a project agreement subject to inclusion in a strike or lockout related to the collective bargaining of the trade division collective agreement;
2. Can a strike or lockout be engaged in without the Project Employees".

Facts:

[5] The parties agreed to a joint statement of facts which was included with the Application filed with the Board on February 22, 2016. A copy of that application is attached hereto as Appendix "A".

"

RELEVANT STATUTORY PROVISIONS

[6]

Lockouts and strikes prohibited during term of collective agreement

6- 30(1) No employer bound by a collective agreement shall declare a lockout of employees bound by the collective agreement during the term of a collective agreement.

(2) No employee or union bound by a collective agreement shall, during the term of a collective agreement:

(a) counsel a strike against the employer bound by the collective agreement; or

(b) declare, authorize or participate in a strike against the employer bound by the collective agreement.

Purpose of Division

6‑ 64(1) The purpose of this Division is to permit collective bargaining to occur in the construction industry on the basis of either or both of the following:

(a) by trade on a province-wide basis;

(b) on a project basis.

Project agreements

6‑ 67 Notwithstanding section 6-66, a collective agreement that is to be effective during the term of a project may be negotiated among:

(a) one or more unions;

(b) if applicable, one or more representative employers' organizations; and

(c) one or more project owners.

General powers and duties of board

6‑ 103(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.

Board may determine dispute on consent

6‑ 110(1) A union representing the employees in a bargaining unit may enter into an agreement with an employer to refer a dispute or a category of disputes to the board.

(2) Two or more unions certified for an employer, or in the case of Division 13 for two or more employers, may enter into an agreement with the employer or employers to refer a dispute respecting the jurisdictional lines between or among the bargaining units to the board.

(3) On a reference made in accordance with subsection (1) or (2), the board shall hear and determine any dispute referred to it by any party to that agreement.

(4) A finding of the board as a result of a hearing pursuant to this section:

(a) is final and conclusive;

(b) is binding on the parties with respect to all matters within the legislative jurisdiction of Saskatchewan; and(c) is enforceable as a board order made pursuant to this Part.

PRELIMINARY MATTERS

[7] There were two Preliminary Matters which arose in respect to this application. The first was an application by The Boilermaker Contractors' Association for intervenor status with respect to the application. The second preliminary matter was initiated by the Board in respect to its jurisdiction under section 6-110 to deal with the questions posed.

The Application to Intervene:

[8] The Boilermaker Contractors' Association applied on May 9, 2016[1] to intervene in this application. The Boilermaker Contractors' Association is the Representative Employers' Organization which represents unionized employers in the Boilermaker Trade Division.

[9] The hearing of this matter was heard on May 12, 2016. The Board was advised that as of the date of the hearing, the union or unions who represented the workers within the Boilermaker Trade Division had neither responded to the application nor had they been served with the application for intervenor status.

[10] Counsel for the Applicant in this matter was also counsel for the Boilermaker Contractors' Association. The Board determined that any representations on behalf of the Boilermaker Trade Division would be adequately represented through the arguments advanced on behalf of the Applicant in this matter.

[11] Because the union or unions representing Boilermakers had not been served, and because counsel for the Applicant was also counsel for the Boilermaker Contractors Association, the application for intervenor status by the Boilermaker Contractors' Association was denied.

[1] LRB File No. 103-16

The Jurisdiction of the Board:

[12] The parties were united in their submissions that the Board had the jurisdiction to deal with the questions posed to them by the parties, notwithstanding that there was no dispute or disagreement between them that they sought to have resolved.

Arguments of the Parties re: Jurisdiction of the Board

[13] Mr. Caroline, on behalf of the first 4 named Co-Applicants filed a written brief which we have reviewed and found helpful. In it, he argued that the Board had jurisdiction to hear and determine this matter under both its authority in section 6-110 and by virtue of its general and incidental authority granted pursuant to section 6-103 of the *SEA*.

[14] He argued that the definition of the word "dispute" as used in section 6-110 should be given a broad interpretation and not linked to the common dictionary definition of a dispute being "an adversarial disagreement or difference", but rather that of "a logical argument" or "an oral or written discussion of a subject in which arguments for and against are put forward and examined".

[15] These broader definitions, he argued were in keeping with the overall scheme of *The Saskatchewan Employment Act* and the Board's role as a dispute resolution body whose purpose was to encourage labour relations stability and harmony through the process of collective bargaining[2].

[16] He also noted that several other provincial labour boards have specific authority to make determinations which the Board was being asked to consider in this case.. He argued that the Board should assume this authority under its incidental jurisdiction under section 6-103.

[17] Ms. Norbeck, on behalf of the last 3 named Co-Applicants also argued that the Board had jurisdiction to hear and consider this application. In her written brief, which we have reviewed and found helpful, she argued that the Board had authority under both sections 6-103 and 6-110 to determine the questions asked.

[18] She argued that the answer to such questions fell within the incidental powers granted to the Board under section 6-103 or under section 6-110 which outlines a process by

which the Board may hear matters which have been referred to the Board by mutual agreement. These two provisions, when read together, she argued, clearly established the Board's jurisdiction.

[19] Mr. Chomyn, on behalf of the Applicant, also argued, in his written brief, which we have reviewed and found helpful, that the Board's authority and jurisdiction with respect to this matter was found within sections 6-103 and 6-110 of the *SEA*.

[20] He argued that the Board had already confirmed its jurisdiction with respect to making advance rulings under *The Trade Union Act*[3]. He argued that the Board had accepted that it had the authority to provide advance rulings based upon its decision in *Re: Saskatchewan Gaming Corp.*[4]

[21] Mr. Chomyn argued that the facts with respect to this matter have been sufficiently crystallized and that a determination by the Board will serve a significant labour relations purpose. In support, he cited *Cope Construction and Contracting Inc.*[5]

[22] Mr. Chomyn also argued that the scheme and purpose of the *SEA,* as demonstrated by decisions by this Board under former *Trade Union Act*[6] confirmed the Board's authority under section 6-103.

Analysis and Decision re: Jurisdiction

[23] For the reasons which follow, we are of the opinion that, while in appropriate cases, the Board possesses the authority to provide declaratory opinions, the facts in this case are not sufficiently "crystalized" and even though the reasons advanced by the Applicant and Co-Applicants are significant and important, we do not believe the Board can provide the certainty sought by the parties as their rationale for seeking the Board's assistance. We therefore decline to make the declarations and orders sought and dismiss the application. This is a unanimous decision of the Board.

---

[2] See *Canadian Linen Supply Co. (Re:)* [1990] SLRBD No. 23 per Hornung, Chairperson
[3] R.S.S. 1978 c. T-17 (repealed)
[4] [2001] S.L.R.B.D. No. 71
[5] [2009] O.L.R.D. No. 2545
[6] Supra note 3

[24] In its decision in *Re: Saskatchewan Gaming Corp.*[7] the Board determined that it had the authority, in the context of a successorship application to make an advance ruling on successorship applications. At paragraph 22, the Board says:

> ***22*** *Finally, an interpretation that allows the Board to make advance rulings can be more efficient in carrying out the labour relations purpose of s. 37*[8] *than an interpretation that resists such rulings. This is tempered, however, by the realization that advance rulings may not be a total panacea and may result in more litigation.*

[25] In its reasoning in support of the ability to provide advance rulings, the Board relied upon and adopted the British Columbia Labour Relations Board decision in *First Commercial Management Inc. and United Food and Commercial Workers' International Union, Local 1518*[9] and the decision of the Alberta Labour Relations Board in *Revelstoke Companies Ltd. and United Food and Commercial Workers Local 401 and Edmonton Co-operative Association Ltd.*[10] .

[26] In *Revelstoke Companies*, then Chairperson Sims of the Alberta Board drew the authority for making an advance ruling from two provisions in the Alberta statute. The first was the general authority of the Board to "make or issue any orders, decisions, notices, directives, interim directives, declarations or certificates it considers necessary". The second was the power given to the Board to resolve differences "concerning the application or operation" of the Act.

[27] Section 6-103 provides the Board with ancillary powers to be utilized in support of or in assistance to its general authority to adjudicate labour relations disputes or with respect to the specific powers granted to it under the *SEA*. Section 6-110 provides the Board with a more specific authority to deal with and resolve "disputes" referred to it by parties to that dispute. These powers are similar (albeit with somewhat different wording) to the powers considered by Chairperson Sims in *Revelstoke Companies*.

---

[7] [2001] S.L.R.B.D. No. 71
[8] Which section was the successorship provision of the now repealed Trade Union Act.
[9] B.C.L.R.B. No. 213/93
[10] [1986] Alta L.R.B.R. 96.

[28] In our analysis of the ancillary powers granted to the Board by section 6-103, we are instructed by the Supreme Court of Canada[11] to follow the modern rule of statutory interpretation as enunciated in Driedger on Construction of Statutes[12] which is:

> *Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.*

[29] We are required by this provision to read the provision in its context. Section 6-110 is one of the provisions of Subdivision 3 of Division 16 wherein the Board is granted specific powers to adjudicate and make orders with respect to specific areas of labour relations. Apart from the general authority and powers given in section 6-103, the Board is granted specific authority to make orders and determinations regarding:

1. Whether or not an application has been made in whole or in part on the advice of or as a result of influence of or interference or intimidation by, the employer or employer's agent[13];
2. The power to accept or reject evidence transpiring or occurring after the date on which an application is filed with the Board[14];
3. The power to enforce its orders and decisions[15]

[30] These powers are, in and of themselves, ancillary to the general power granted by the *SEA* in respect of the determination by the Board of matters under its jurisdiction in respect of labour relations and are in addition to the other specific authority given to the Board in respect of, for example, determination of successorships, certification, and rescission. They are examples of the grant of specific authority to the Board where the general or ancillary powers granted to the Board were thought by the legislature to be unclear.

[31] The best example of this is section 6-104 which is a new provision introduced when the *SEA* was enacted. It was introduced to allow the Board to deal with issues which had arisen between a replacing union and a replaced union wherein a large number of employees determined to seek a new bargaining representative. Numerous disputes arose between the

---

[11] See *Rizzo v. Rizzo Shoes Ltd.* [1998] 1 S.C.R. 27 at para 21
[12] 3rd Ed. Butterworths per Ruth Sullivan
[13] See section 6-106
[14] Section 6-107

parties arising out of the rescission and subsequent certification of the replacement union. Those disputes could presumably have been referred to the Board under the predecessor to section 6-110, but that required that both parties consent to the reference. In that instance, the parties were unable to agree to refer the disputes to the Board. The legislature then determined that the Board should have specific authority in respect of such issues.[16]

[32] Similarly, section 6-105 allowed the Board to deal with a potentially hypothetical situation where an employer sought to create an out of scope position, but the employer and the union could not agree as to whether the position should be excluded. In this section, the legislature provided specific authority for the Board to make a provisional determination regarding the position.

[33] The parties argue that the word "dispute" as used in section 6-110 should be given a broad interpretation and not linked to the common dictionary definition of a dispute being "an adversarial disagreement or difference", but rather that of "a logical argument" or "an oral or written discussion of a subject in which arguments for and against are put forward and examined".

[34] As noted above, the Alberta statute utilizes the term "difference" as between the parties. Those terms, while not totally interchangeable, having a dispute with someone would encompass a difference with that person. We agree with the Applicants and Co-Applicants that the term dispute can be interpreted, within the context of the Act to include an adversarial disagreement or difference.

[35] We must, however, take care that any dispute or difference between the parties is a live or active dispute and not one which is merely academic. This caution was expressed by Chairperson Sims in *Revelstoke Companies*[17] where he quoted from the decision of the British Columbia Labour Relations Board in *P.P.E. Industries Canada Ltd. v. Glaziers Architectural Metal Mechanics and Glassworkers, Local 1527*[18]. The B.C. Board said at p. 217:

> *The Board will exercise it discretion to issue declaratory opinions only when it considers it necessary and proper to do so. The Board will rarely*

---

[15] Section 6-108
[16] It may be that that a successful argument may have been made that the determination of those matters, arising out of a change in bargaining rights could have been dealt with by the Board under its ancillary jurisdiction, however, no such arguments were advanced to the Board.
[17] See page 101
[18] [1983] 3 C.L.R.B.R (NS) 214,

> *proceed under this section of the code in the absence of any live or real dispute between the parties or when the difference has become merely academic: Utah Mines Ltd. and Office and Technical Employees' Union, Local No. 15 and International Union of Operating Engineers, Local 115, BCLRB No. 147/74.*
> *On no previous occasion has the Board exercised its declaratory power to render in advance a determination of whether an anticipated transaction would or would not result in a successorship within the meaning of s. 53.*

[36] Also, at page 104, former Chairperson Sims analyzed the authority of the Courts to issue declaratory judgments. He quoted from Sarns, *The Law of Declaratory Judgments*[19] at pages 16 as follows:

> *While the Court has an extremely wide jurisdiction, it will not entertain an action or a motion seeking relief where there is no dispute between the parties, or where the dispute does not reveal any difficulty with respect to the rights vested in one of the parties. Proof of a dispute is in effect proof that judicial intravention is not only helpful but indeed necessary for resolution of the issue.*

[37] Former Chairperson Sims then quoted from the same source with respect to the restriction against determining future rights. He quotes from page 19 of Sarns as follows:

> *What interest can a party profess in seeking judicial determination of rights which may never accrue, or exclude him when they do, or be devoid of value for reasons of death, insolvency or change of circumstances? Unless there is actual prejudice to present right, the applicant must wait for his claim to ripen with the happening of the event. Even the consent of all parties who may reasonably be expected to be affected by future rights may be insufficient to confer upon the applicant adequate interest to sue.*

[38] Finally, at page 106, former Chairperson Sims says:

> *We agree with the B.C. Board that such advanced rulings should only be given in special circumstances where some independent labour relations purpose would be served by making the advanced ruling. We agree with the suggestion from Whistler Village Inn that ordinarily parties:*
>
> > *…Have to protect themselves with whatever contractual or financial arrangements they have at their disposal … we are*

[19] 1978 Carswell Chapter III

> *reluctant to be drawn into situations where we are essentially acting as legal advisor to guide someone … in making labour relations decisions.*

[39] In the case at hand here, we are being asked to provide a ruling upon which the parties can rely in ordering their future affairs in respect of the development of a significant industrial undertaking. For the reasons which follow, we must decline to answer the questions posed by the parties in this case.

There is no dispute between the parties

[40] As noted above, it is fundamental to the granting of declaratory relief by the Courts or the giving of an advance ruling by a labour relations board that there be a dispute between the parties capable of resolution by either a declaration from the Courts or through the determination of the issue by the Board and the issuance of an order by the Board.

[41] In the context of a dispute or difference, there will be an established fact pattern on which the Board can apply the law and its existing jurisprudence to reach a decision and determination. In the case vernacular, this is having a “crystalized” fact situation.

[42] All we have been presented with in this case is a hypothetical. That is, if the Potash Mine receives requisite approval to proceed, and if, there is a project agreement entered into by the parties and, if that agreement contains a no-strike, no-lockout provision, then, what would be the impact should a strike or lock-out occur under the province-wide collective agreement regarding the construction industry?

[43] The factual basis put forward by the parities is hypothetical in the extreme. It does not form a sufficient basis for the giving of an advance ruling. Any number of changes in circumstances could occur from the time the advance ruling is given to the time that the result, for which the advance ruling seeks protection for, actually occurs. There can be no certainty of the facts and hence, no certainty as to the result. Any advance ruling could not have the binding effect sought by the parties before us, that is, that our ruling would preclude any industrial action under a project agreement in the event of an industrial action under the provincial construction agreement.

[44] Were there a definite dispute or difference between the parties under which one party had rights which were denied by the other party and there was a labour relations purpose in the Board making a determination, that dispute of difference could be referred to the Board.

The Question seeks a legal opinion from the Board.

[45] Again, as noted above, the Board cannot be drawn into situations where it is being asked for legal opinions to allow the parties to structure their relationship. That is not the function of the Board. The Board is an adjudicative tribunal established to adjudicate and resolve labour relations disputes. As noted in the *Whistler Village Inn* case reference by former Chairperson Sims, it is up to the parties to protect themselves "with whatever contractual or financial arrangements they have at their disposal".

[46] This Board cannot allow itself to be drawn into situations where it is acting as legal advisor to the parties, advising them as how to best structure their relationship. The parties have competent counsel who are aware of the statutory provisions of the *SEA* as well as the Board's jurisprudence. These are not unsophisticated parties. They have both the financial and intellectual acumen to properly protect themselves from any perceived threats to the viability of this project.

The answer sought would require this Board to overrule or distinguish a decision of the Court of Queen's Bench

[47] In their arguments, the parties urged the Board to distinguish the Court of Queen's Bench decision in *CLR Construction Labour Relations Association of Saskatchewan v. International Association of Heat and Frost Insulators and Asbestos Workers (Local 119)*[20]. In that decision, Mr. Justice Smith determined that the International Association of Heat and Frost Insulators and Asbestos Workers (Local 119) was precluded from declaring a legal strike unless the collective agreements for both the commercial and industrial sectors had expired.

[48] The parties urge in their submissions that this decision should be distinguished because it did not deal directly with a project agreement which the parties urged the Board to treat as a separate and distinct form of collective agreement. It is, however, this decision which is the genesis of this application to the Board as it creates uncertainty as to how the provisions of

[20] 2014 SKQB 318 (CanLII)

the *SEA* might be interpreted by a Court in the future should there be an application for injunctive relief by either party in the event of a strike or lockout during construction of the proposed potash mine.

[49] With respect, the Board is not an appellate body for decisions made by Her Majesty's Court of Queen's Bench. Additionally, the power to regulate unlawful strikes and lockouts falls under the jurisdiction of the Court of Queen's Bench. In the event of any future industrial action, proceedings would be required before the Court of Queen's Bench not this Board.

[50] For the above reasons, the Board declines to exercise its limited discretion to provide an advance ruling in this case. There is no secure factual ground for the application and as a result, the Board is being asked to walk on water to grant the application. Secondly, there is no actual dispute or difference between the Applicant and Co-Applicants in this matter. They are in agreement as to the result they hope to achieve. Thirdly, the question posed by the parties would require the Board to provide an opinion, not resolve a dispute; and finally, the parties ask the Board to exceed its jurisdiction by overruling or attempting to bind the Court of Queen's Bench by its decision.

[51] The Application is accordingly dismissed.

DATED at Regina, Saskatchewan, this **12th** day of **July, 2016**.

LABOUR RELATIONS BOARD

Kenneth G. Love Q.C.
Chairperson