



SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE and DEPARTMENT STORE UNION, LOCAL 568, Applicant v. K-BRO LINENS SYSTEMS INC., Respondent and THE SASKATCHEWAN ASSOCIATION OF HEALTH ORGANIZATIONS INC., HEALTH SHARED SERVICES SASKATCHEWAN and REGINA QU'APPELLE HEALTH REGION, Respondent Employers

LRB File No. 350-13; May 26, 2016

Chairperson, Kenneth G. Love, Q.C.; Members: John McCormick and Joan White

For the Applicant Union: Larry Kowalchuk

For the Respondent K-Bro Linens Systems Ltd: Larry Seiferling, Q.C.

For the Respondents Saskatchewan Association of Health Organizations Inc., Health Shared Services Saskatchewan, and Regina Qu'Appelle Health Region: Leah Schatz

Common or Related Employer – Board provides supplemental reasons following judicial review of prior decision wherein the Court determined that Board had failed to provide reasons with respect to Common or Related Employer arguments.

Common or Related Employer – Board reviews indicia of common or related employer relationship and arguments by union respecting aspects of common or related employer – Board finds parties are not common or related employers.

SUPPLEMENTAL REASONS FOR DECISION

Background:

[1] Kenneth G. Love, Q.C., Chairperson: The Board issued a decision¹ on August 26, 2014 in respect of the application made by the Saskatchewan Joint Board, Retail

¹ [2014] CanLII 63989 (SKLRB)

Wholesale and Department Store Union, Local 568 (“RWDSU”) regarding the closure of the laundry services operated by the Regina Qu’Appelle Health Region (“RQHR”) and the contracting out of that service to K-Bro Linens Systems Inc. (“K-Bro”). That decision was taken for judicial review by RWDSU and was, with one exception, upheld by the Saskatchewan Court of Queen’s Bench².

[2] The Court of Queen’s Bench found that the Board had failed to provide adequate or any reasons with respect to whether or not K-Bro was a common/related employer with some or all of the other Respondents. At paragraph [65] and [66] of the Court’s decision, the Court says:

[65] There is, however, nothing in the Decision that would enable me to conclude that the Board decided this issue, and if so, on what basis. With respect, I do not agree with the respondents that the Board’s conclusion that none of the respondents other than K-Bro are common employers means that none of them could be common employers with K-Bro. Accordingly, and even if it is assumed that the Board considered this issue, the Decision does not meet the reasonableness standard, which calls for justification, transparency and intelligibility.

[66] The question of whether K-Bro is a common and/or related employer with RQHR, at least, is the core issue arising in the context of the s.37.3 application. This application is, after all, related to the contracting out of laundry services through the MSA. Although I strongly suspect, based on the Board’s reasoning as a whole, that it either found or would have found that that K-Bro is not a common employer, that decision is for the Board. In the language of Komolafe, it is not my role to supply the reasons that the Board might have given, as to do so would turn the jurisprudence on its head. I cannot connect the dots, as there are no dots on the page.

[3] The matter was remitted back to the Board. At paragraph [71] of his decision, the Judge remitted the question back to the Board in the following terms:

[73] The one exception is the Board’s failure to explain how it dealt with the issue of whether K-Bro was a common and/or related employer with any of the other respondents. Given that this was a central issue on the application, I am referring this matter back to the Board to enable it to make that decision. If the Board decides that K-Bro is a common and/or related employer with one or more of the other respondents, it will then be for the Board to decide what further relief should be granted to the applicant.

² [2015] SKQB 300

[4] Upon receipt of the Court's decision, the Board determined to provide the parties an opportunity to be heard in respect to the Court's remittance to the Board. RWDSU applied to the Board to provide additional evidence to the Board or to re-open its case. The Board denied that request in its decision dated April 19, 2016. However, during the hearing of this matter, counsel for RWDSU pointed out two (2) points related to that decision. The first was that in paragraph [8] of that decision, the Board referenced a request for information dated April 8, 2016. That date should have been April 7, 2016. Additionally, the Board took this communication as being correspondence between counsel for the various parties. Counsel for RWDSU pointed out that he had copied the Board with this correspondence in order that the Board would be aware of the information he had requested. While received by the Board, this information was not before the Board when it conducted its telephone hearing. Nothing turns on these corrections, however, the Board will issue a corrigendum to its April 16, 2016 decision to correct the date of the information request.

Facts:

[5] The facts related to this matter are well set out in the Board's decision of August 26, 2014 and in the Court's decision of September 23, 2015. We will, however, refer to such facts as necessary during our analysis of this matter.

Relevant statutory provision:

[6] Relevant statutory provisions are as follows:

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.

RWDSU's arguments:

[7] The Union sought to rely upon a decision³ from the Saskatchewan Information and Privacy Commissioner wherein the Commissioner had reviewed the Master Services Agreement (“MSA”) between K-Bro and Health Shared Services Saskatchewan (“3S Health”) at the request of another Union who requested production of the report from the Sunrise Regional Health Authority. The Union argued that this decision was a precedent binding the Board.

[8] RWDSU relied upon its submissions to the Court of Queen’s Bench concerning the issue of related/common Employer, a copy of which was provided to the Board. The Union argued that all that was required was that it satisfy the third criteria outlined by the Board in its decision in *Wayne Bus*⁴, that is whether or not the entities under consideration are “under common control and direction”.

[9] RWDSU argued that 3S Health was in control of K-Bro because it had the contractual right to enforce the MSA, including the right to ensure key personnel of K-Bro remained with K-Bro and that the MSA clearly established the operating conditions related to the laundry service such as quality, timeliness, and other standards. The MSA also specifies that the agreement may, in certain circumstances, be terminated.

[10] RWDSU also argued that the parties identified themselves as “partners” in the provision of linen services. This, it argued, was an indicia of common/related employer status, arguing that Section 37.3 must be given a broad interpretation.

[11] RWDSU also made arguments directed to the issue of *anti-union animus*, including arguments that the parties sought to avoid RWDSU being the bargaining representative for the laundry employees.

Respondent K-Bro's Arguments:

[12] K-Bro argued that the Information and Privacy Commissioner’s report was of no bearing on this matter. K-Bro argued that the report was not between the parties before the Board and merely determined that the MSA was a document controlled by Sunrise Health District and it should, therefore, be disclosed to the Applicant Union.

³ [2015] CanLII 44162 (SKIPC)

[13] K-Bro argued that a finding of common/related Employer would not assist the RWDSU. All that finding would do, they argued, would be to determine who should sit with K-Bro at the bargaining table. K-Bro argued that bargaining rights do not move with a common/related employer declaration.

[14] K-Bro also argued that a mere contractual relationship does not provide direction or control over employees. K-Bro, it argued, operates independently of the persons with whom they contract.

[15] K-Bro argued that the criteria set out in *Wayne Bus and Labourers' International Union of North America v. York Condominium Corporation et al.*⁵ show that there is no common/related employer relationship between any of the parties and K-Bro.

Respondent 3S Health and RQHR arguments:

[16] 3S Health and RQHR argued that the Union must bear the onus of proof with respect to this application which is to show that 3S Health, RQHR, K-Bro, or any or all of them are related/common employers. It relied upon the Board's formulation of the test for related/common employer found in *Comfort Cabs Ltd. (Re:)*⁶ and *Re: Regina (City)*⁷.

[17] 3S Health and RQHR also relied upon the Board's decision in *Beaver Foods Ltd. (Re:)*⁸ as setting out the criteria for determining the extent of influence over labour relations by the parties.

[18] 3S Health and RQHR argued that they were clearly not common/related employers with K-Bro as that relationship failed all of the established tests for common/related employer.

[19] Finally, 3S Health and RQHR argued that there was no labour relations purpose in making such an order even if the criteria were satisfied.

Majority Analysis and Decision:

⁴ [1999] CLB 15572, 54 C.L.R.B.R. (2d) 161, LRB File No. 363-97 at page 18

⁵ [1977] OLRB Rep. October 645

⁶ [2015] S.L.R.B.D. No. 5 at para 61

⁷ [1999] Sask. LRBR 238

⁸ [2009] 172 CLRBR 133

[20] In its August 26, 2014, the Board provided the following by way of rationale for its determinations respecting common/related employer:

The Nature of the Relationship between 3sHealth, SAHO and RQHR

[77] We are satisfied from the evidence presented that the Employer of the employees at the Regina laundry facility is RQHR. RQHR is the successor Employer to Regina District Health Board which this Board designated as the Employer in its Order dated March 14, 1997. That Order should be updated to reflect the changes in how health care is organized in the Province.

[78] The evidence is clear that prior to the reorganization to create 3sHealth and the new SAHO, that the Saskatchewan Association of Health Organizations were established by the various health regions in the Province to provide centralized services to all of the health regions. As early as 1959, a health care corporation (called at that time, the Saskatchewan Health-Care Association) was formed pursuant to a private bill known as An Act to Incorporate Saskatchewan Hospital Association. The objects for which that corporation was incorporated were numerous, but included "(g) to subscribe to and become a member of or incorporate with any other society or association...whose objects in whole or in part are similar to the objects of the corporation", and "(l) to establish, operate and manage employee benefit schemes for its officers and employees and for the officers and members of its members".

[79] Over time, we understand that the organization became the Saskatchewan Association of Health Organizations which was re-organized as noted above. 3sHealth took over the majority of the functions of the Saskatchewan Association of Health Organizations with SAHO being mandated to look after labour relations matters.

[80] While RQHR has an involvement in both 3S Health and SAHO through its chairperson being a member of the governing council, RQHR does not control either 3sHealth or SAHO as that direction is taken from the governing council which is comprised of:

- (i) the Chair of the Board of Directors of each regional health authority established pursuant to The Regional Health Services Act(Saskatchewan) ("RHA") and the Saskatchewan Cancer Agency ("SCA");
- (ii) the Affiliate Representatives (non-voting) appointed pursuant to the process in Section 5.6 below.

[81] The Regional Health Services Act establishes twelve (12) health regions in the Province. Accordingly, RQHR has only a one (1) in twelve (12) say in the governance of 3sHealth and SAHO. No health region controls 3sHealth and SAHO. A majority (7) of the health regions provide the direction to these entities and make appointments to the board of directors of 3sHealth and SAHO.

[82] In keeping with its mandate, 3sHealth (see paragraph 6.2 of the restated Bylaw) intends to provide services to its customers (as defined therein) "under formal service agreements". Accordingly, 3sHealth is a contractor to, inter alia the various health regions providing ongoing and new services, such as the

study of and delivery of a new laundry system for the province under its mandate to provide “shared services to the Saskatchewan Health sector and to certain healthcare organizations outside of Saskatchewan”.

[83] SAHO, as well, provides services and acts as bargaining agent for, *inter alia* the various Health regions and provides other Labour Relations services, in accordance with its mandate.

[84] In *Wayne Bus* the Board outlined the inquiry that was necessary under both Sections 37.3 and 2(g)(iii). At paragraph 128, the Board said:

The inquiry under each of ss, 2(g)(iii) and 37.3 of the Act is directed to determining the “true employer(s)” for labour relations purposes of the employees in question. A functional analysis to identify the actual seat of fundamental control or direction of the activities that determine employment and working conditions of the employees must be undertaken in both instances using similar criteria. The results of the exercise may identify more than one “common” employer exercising fundamental control or direction. A detailed examination of the relationship between the entities involved and their relationship to the work place must be undertaken using various criteria outlined below.

[85] The criteria adopted by the Board were taken from the Ontario Labour Relations Board’s decision in *Labourers’ International Union of North America v. York Condominium Corporation et al.* The criteria adopted with respect to Section 2(g)(iii) were as follows:

- (a) The party exercising direction and control over the employees performing the work.
- (b) The party bearing the burden of remuneration.
- (c) The party imposing discipline.
- (d) The party hiring the employees.
- (e) The party with the authority to dismiss the employees.
- (f) The party who is perceived to be the employer of the employees.
- (g) The existence of an intention to create the relationship of employer and employee.

[86] In respect of Section 37.3, the criteria to be examined were:

- (a) There must be more than one corporation, partnership or association involved;
- (b) These entities must be engaged in associated or related businesses, undertakings or other activities; and
- (c) These entities must be under common control or direction.

[87] By virtue of the amendment to *The Trade Union Act* in 2005, a fourth criteria was added by virtue of ss. 37.3(2) which is that the provision of ss 37.3(1) applies only to a corporation, partnerships, individuals, or association that has common control or direction on or after October 28, 1994.

[88] The Board determined in *Re: Edgewood Forest Products*,^[41] at paragraph [52] that an analysis of the threshold requirements of s. 37.3 is required to be conducted before turning to an analysis of the factors from *York Condominiums* (*supra*).

[89] *Clearly, the first criteria that there be more than one corporation, partnership or association involved is met with respect to the 3sHealth, SAHO, and RQHR scenario. The second criteria would also be satisfied in that they are clearly engaged in associated or related businesses, undertakings or other activities that is the provision of services (laundry) in the Health care sector.*

[90] *The third criteria is not, however, satisfied insofar as 3sHealth, SAHO and RQHR is concerned. They are not under common control or direction. That may be true insofar as 3sHealth and SAHO are concerned, but they are not under common control with RQHR. RQHR has its own control and direction through its Board established under The Regional Health Services Act. Nor, as noted above, does RQHR control or direct either 3sHealth or SAHO.*

[91] *It is equally clear from the evidence that 3sHealth and SAHO have no ability to direct or control the laundry service at RQHR. While 3sHealth and SAHO may assist RQHR in respect of central services and Labour Relations matters that relationship does not amount to control or direction over the laundry services operated by RQHR.*

[92] *There is a clear disconnect between RQHR and both of 3sHealth and SAHO. Both 3sHealth and SAHO provide services to RQHR, but neither is controlled or directed by RQHR.*

[93] *This result also pertains in the analysis of the York Condominium factors. In that respect, it is RQHR who exercises direction and control over the employees performing the work. It is not 3sHealth or SAHO. RQHR bears the burden of remuneration, not 3sHealth or SAHO. RQHR is responsible for discipline, hiring and dismissal of employees not 3sHealth or SAHO. RQHR is not only perceived as being the employer of the laundry employees, but, by this analysis, is the employer. Finally, there is no intention to create a relationship of employer and employee as between laundry workers and 3sHealth or SAHO.*

[94] *Based on this analysis, 3sHealth and SAHO are not a related employer, nor are they the true employer of the employees of the laundry service at RQHR.*

[21] However, as pointed out by Mr. Justice Barrington-Foote, this rationale failed to make any connection between the three entities referenced in these paragraphs and K-Bro.

Is K-Bro a Related/Common Employer with any or all of 3S Health, RQHR or SAHO?

[22] As noted in paragraph [88] of our previous decision, the analysis of this question must begin with an analysis of the threshold requirements of s. 37.3 which analysis must be conducted before turning to an analysis of the factors from *Labourers' International Union of North America v. York Condominium Corporation et al (supra)*. That threshold analysis is found in the factors outlined by this Board in *Wayne Bus*. At paragraph 128 of *Wayne Bus*, the Board said:

The inquiry under each of ss, 2(g)(iii) and 37.3 of the Act is directed to determining the “true employer(s)” for labour relations purposes of the employees in question. A functional analysis to identify the actual seat of fundamental control or direction of the activities that determine employment and working conditions of the employees must be undertaken in both instances using similar criteria. The results of the exercise may identify more than one “common” employer exercising fundamental control or direction. A detailed examination of the relationship between the entities involved and their relationship to the work place must be undertaken using various criteria outlined below.

[23] Also, as noted in our earlier decision, the threshold requirements of section 37.3 which must be reviewed are:

- (a) *There must be more than one corporation, partnership or association involved;*
- (b) *These entities must be engaged in associated or related businesses, undertakings or other activities; and*
- (c) *These entities must be under common control or direction.*

[24] In addition to these criteria, there is the statutory requirement⁹ that the “corporations, partnerships, individuals or associations” have common control on or after October 28, 1994. Additionally, because a declaration under section 37.3 is within the Board’s discretion, there must be a sufficient labour relations purpose for the issuance of a common employer declaration. That is generally to prevent the erosion of bargaining rights, not to expand bargaining rights.¹⁰

[25] In the previous decision, the Board addressed the inter-relationship between 3S Health, RQHR and SAHO. There is no need for further analysis of this determination. What we have been directed to review is the relationship, if any between K-Bro and any or all of 3S Health, RQHR or SAHO.

Is there more than one Corporation, Partnership or Association Involved?

[26] The answer to this question is affirmative insofar as there are at least two (2) and possibly four (4) entities involved.

⁹ Section 37.3(1)

¹⁰ See *International Brotherhood of Electrical Workers, Local 529 v. Merick Contractors Inc., Western Electrical Management Ltd, and Western Electrical Constructors Ltd*. [2015] CanLII 19981 (SKLRB)

Are these Entities Engaged in Associated or Related Businesses?

[27] In the previous decision, the Board determined that both RQHR and K-Bro were engaged in the laundry business *albeit* there was no transfer of business between the two, but rather the RQHR had determined to undertake the provision of clean laundry for its hospital operations through a contract with K-Bro. Neither 3S Health or SAHO are in the same position, as neither of them are involved in the laundry business in any way. 3S Health acted as the agent for the various health regions in arranging for the proposal call and other aspects of the contracting out of the laundry service, but at no time has it been engaged in that business. Similarly, SAHO is involved as the bargaining agent for health regions and performs labour relations duties for the regions. It does not, however, conduct a laundry business in any form.

Is there Common Control or Direction

[28] Only K-Bro and RQHR survive to be evaluated in respect of the third criteria. Furthermore, the previous decision of the Board determined that none of 3S Health, RQHR, or SAHO satisfied the common direction and control criteria. This leaves us to consider whether K-Bro and RQHR are under common control and direction. The analysis of common control and direction is normally done at a high level. The Board in *Labourers' International Union of North America v. York Condominium Corporation et al.*¹¹ adopted the factors set out by the Ontario Labour Relations Board in *Walters Lithographing Company Co. Ltd*¹² Those criteria are:

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

[29] There is clearly no common ownership. 3S Health, RQHR and SAHO are public bodies. K-Bro is a publically traded corporation. There is no commonality of ownership. Nor is there financial control of K-Bro by any of the entities. K-Bro finances its own activities and the

¹¹ [1977] OLRB Rep. October 645

¹² [1971] O.L.R.B. Rep 406

only financial contribution it receives is the fee paid for the provision of laundry services. Whether or not it can perform those services for the set fee paid is for K-Bro to consider and it takes all of the financial risk.

[30] There is no common management between any of the parties.

[31] There is some interrelationship of operations as necessitated by the provision of the laundry services by K-Bro. Nor was there a transfer of employees.

[32] There is no centralized control of labour relations. Each party remains responsible for its own labour relations.

[33] Notwithstanding RWDSU's arguments to the contrary, there is no evidence to show that K-Bro represents itself to be a single integrated enterprise with any of 3S Health, RQHR or SAHO.

[34] We cannot, therefore, conclude that K-Bro is under common control or direction of any of 3S Health, RQHR or SAHO.

[35] On a lower level analysis, RWDSU argues strenuously that K-Bro is controlled by virtue of the terms of MSA. It argued that RQHR controlled¹³ the MSA. RWDSU also argued that RQHR maintained financial control over K-Bro through the MSA since by virtue of the MSA, RQHR must pay for laundry services (hence, RWDSU argues that RQHR carries the burden of remuneration) and also provides financial support¹⁴ for K-Bro to operate the laundry. While such a micro analysis would not usually be undertaken by the Board, we believe it to be necessary to address any of the arguments advanced by RWDSU.

[36] RWDSU also argued, *inter alia*, that common control and direction were shown by:

1. *3s Health (and by extension, RQHR) can require K-Bro to do things to meet the standards (quality) that they assess, which may cost K-Bro money in complying with those standards.*

¹³ Based upon its interpretation of the Information and Privacy Commissioners finding that the Health Regions controlled the document for privacy purposes.

¹⁴ Citing the provision of the MSA which would allow for an adjustment to the financial terms of the agreement should a successorship have been found.

2. *3s Health (and by extension, RQHR) maintains responsibility for adjusting rates for laundry services provided according to CPI increases.*
3. *3s Health (and by extension, RQHR) has the ability to control key personnel of K-Bro, which it argued retains the fundamental control over labour relations.*
4. *K-Bro is required to comply with all security, safety and administrative and operational rules and policies which are applicable to the laundry services being performed.*
5. *K-Bro is required to implement a safety program that is mutually agreed to.*
6. *3s Health (and by extension, RQHR) maintains managerial oversight of laundry services.*
7. *3s Health (and by extension, RQHR) and K-Bro are required to inform each other on any management changes to key personnel.*
8. *The relationship between 3s Health (and by extension, RQHR) was described publically as a "Partnership".*
9. *K-Bro has agreed to embrace "LEAN" methodologies.*
10. *3s Health (and by extension, RQHR) maintains sole ownership of data, files, and business records, including those initiated, originated or manipulated by K-Bro.*
11. *That 3s Health (and by extension, RQHR) and K-Bro are indistinguishable to the general public and operate under the overarching organization of the health regions.*

[37] With respect, we do not agree with the arguments made by RWDSU in respect to the control and direction exercised by 3s Health (and by extension, RQHR) over K-Bro. 3s Health (and by extension, RQHR) are public institutions involved in the health care sector in Saskatchewan. Their purpose is to provide and/or facilitate the provision of health care services within the Province of Saskatchewan. One aspect of those health care services is the operation of hospitals which require clean linens for their operation and the cleaning of dirty linens resultant from their operations. As noted in our previous decision, the Board found that while the hospital regions continued to require laundry services, they have determined to have those services performed by a third party under contract.

[38] In respect to point 1 above, 3s Health (and by extension, RQHR) maintains the responsibility to ensure that the citizens of Saskatchewan get value and quality service from their laundry supplier. As such, they would prescribe standards for the quality of the service, its timeliness, as well as operational factors which might disrupt the provision of the service. This is what the MSA does. Nothing in the MSA provides control over K-Bro as to how it meets the required standards and timelines. That is left to K-Bro to manage and control.

[39] In respect of point 2 above, the provisions of the MSA cited by RWDSU do not have the impact for which they argue. The fact that 3s Health (and by extension, RQHR) is required to pay for the services provided is to be expected. Once the amount of payment is set (or adjusted in accordance with the formulae contained in the MSA), it is left to K-Bro to operate the service. It bears the operational risk that it must provide the services, as specified, and if it can do so for less than the payment amount, it will have a profit for its shareholders. If not, then it bears the loss as well.

[40] RWDSU, in point 3 above, also argues that common direction and control is shown by 3s Health (and by extension, RQHR)'s control of key personnel. That is contained in Article 5, Schedule "L" of the MSA. That provision, in full reads as follows:

5. Changes to Key Personnel

The parties acknowledge that there will be changes to personnel in both organizations during the Term due to retirement, job role changes, resignations, terminations and other reasons. Each party agrees that it shall:

- (a) keep the other party reasonably informed of any changes to Key Personnel;*
- and*
- (b) ensure that replacement Key Personnel have the skills and qualifications reasonably necessary to carry out the responsibilities of that position under the Agreement.*

[41] Nothing in this provision is indicative of any common control or direction. It appears, rather to have a sound commercial basis.

[42] Point 4 of RWDSU's argument above refers to clause 2.10 of the MSA wherein K-Bro agrees to comply with all laws which govern its operations. This is to be expected. In particular, K-Bro covenants to comply with Workers Compensation legislation, Income tax

legislation and CPP and Employment Insurance Legislation. There is a strong commercial rationale for these provisions other than any aspects of control or direction.

[43] In point 5 above, RWDSU argues that the implementation of a safety program is an indicia of control. We disagree. Safety is a legal responsibility of any operator such as K-Bro.

[44] The managerial control argued by RWDSU in points 6 and 7 above, relates to a provision of the MSA which precludes K-Bro from further sub-contracting out the work. That is, 3s Health (and by extension, RQHR) is ensuring that the work is performed by the party with whom they have contracted.

[45] RWDSU argues that the parties have self-identified as “partners” which therefore brings them into the statutory provisions. Again, we disagree. The use of the term “Partner” in this case is to signify that they are working together towards a common goal, which is the provision of clean linen for hospital use, not a legal arrangement between the parties.

[46] In point 9, RWDSU suggests that K-Bro is being compelled by 3S Health, RQHR or SAHO to adopt “lean” principles, which should be considered as control of K-Bro by one or all of these entities. Again, we disagree. Prudent business persons would normally embrace the principles espoused by “lean” to provide better service at lower cost.

[47] In point 10, RWDSU argues that by virtue of the control of data and its ownership, we should determine that K-Bro is controlled or directed by 3S Health, RQHR or SAHO. This would follow directly from the fact that the linen service is being contracted out. The control of this information would be required in the event that a new service provider was engaged or if the parties determined to again process linens “in house”.

[48] Finally, in point 11 above, RWDSU suggests that the parties are indistinguishable to the general public. There is no evidence of confusion as to the identity of the parties or their individual standing with the general public.

[49] We therefore conclude that K-Bro is not a common/related employer with any or all of 3S Health, RQHR, or SAHO. Having made this determination based upon the first 3 of the criteria for determining whether or not an order should be made under Section 37.3, we find it unnecessary to deal with whether or not these entities were under common control or direction

prior to October 28, 1994 or whether the Board should exercise any discretion with respect to making a declaratory order.

DATED at Regina, Saskatchewan, this **26th** day of **May, 2016**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson

Member McCormick dissents from these Reasons as follows:

[50] I would like to provide the following reasons to support my dissenting position on this file.

[51] The first issue to be clarified is the relationship between the Health organizations. I believe that the 3SHealth, SAHO, and RQHR are not independent entities. These organizations work as a whole, and would not exist otherwise. These organizations provide healthcare for all of Saskatchewan, funded by the taxpayers of Saskatchewan.

[52] The issue of “laundry” service for the Healthcare groups in Saskatchewan was a concern for Saskatchewan Healthcare. They had a need to upgrade or to build a new Laundry facility, to handle laundry services for Saskatchewan Healthcare. The Saskatchewan Government through “its” various Healthcare services providers, made a decision that it was better to have a 3rd party build a laundry facility that would meet the needs of the Health regions.

[53] The Healthcare groups, including RQHR, decided that they would form another level of Healthcare administration (3SHealth) to assist them through the process of having their Laundry services provided. Through this process the road to change began.

[54] But what never changed was the “Obligation” to provide clean laundry to the various Health regions, including RQHR. In fact, there were strict conditions negotiated with the service provider that was selected, K-Bro.

[55] K-Bro would continue to use the laundry carts that RQHR was using, and RQHR would provide K-Bro with the linens that RQHR was already using. K-Bro would only have to replace the carts and the linens as required at the direction of the Healthcare Saskatchewan, which included RQHR. There were strict guidelines that K-Bro had to follow that were set out by RQHR for quality control, established by RQHR.

[56] For the purpose of determining 37.3(1) I strongly believe that the test for Related Business has been met in this case.

Common Control

[57] The Saskatchewan Healthcare, which includes 3SHealth, SAHO, RQHR, and any other Healthcare region that needs laundry services, can and will be done by K-Bro. There was not an option for K-Bro to reject any new Healthcare region in Saskatchewan that needed Laundry service.

[58] So a reasonable person would assume if Saskatchewan Health could demand K-Bro to add more laundry clients, it would mean K-Bro needs more staffing, or more hours, which would not be in the control of K-Bro.

[59] The agreement with K-Bro insisted that 3SHealth had the authority to approve who K-Bro hired to operate/manage the Laundry service on behalf of the Saskatchewan Healthcare. This fact allowed the health regions to control the operations, and implement their Safety standards upon K-Bro. (Under the MSA, K-Bro had to implement the Safety standards established by the Healthcare regions.) One can easily assume that by controlling the Manager they would control operations. So any clause that would allow 3SHealth/RQHR to approve ANY hiring would show common control of operations. When this case was first heard the laundry service was not in operation. But by ensuring they had control of the Manager that would be hired, Healthcare also ensured that any problems with labour concerns in the K-Bro operations would be dealt with through their hand picked manager.

[60] Furthermore, 3SHealth/RQHR would still have the staff that ships and receives the laundry to and from K-Bro. 3SHealth/RQHR still controls what is shipped and what is received, not K-Bro.

[61] The MSA agreement further indicates that 3SHealth/RQHR can at any time cancel the agreement with K-Bro. As stated above, 3SHealth can also add any Healthcare region to the Laundry services agreement, without the approval of K-Bro. With respect, I cannot see any reasonable person making any other decision than that the test for Section 37.3(1) has been met, given these facts.

[62] K-Bro, 3SHealth, RQHR should be deemed “Related Business” under Section 37.3(1).

[63] I would also like to comment on the process that was used to avoid the contractual obligations with RWDSU.

[64] RQHR was bargaining a new collective agreement with RWDSU. It would have been difficult to bargain given the fact that RQHR had no intention of honoring the Collective Agreement. RQHR already knew that there was a plan moving forward to eliminate the laundry positions represented by RWDSU. This fact is true, because during the hearing our panel heard that the only way the contract would be upheld, is if we found that RQHR was a successor/related Employer. 3SHealth and RQHR agreed to cover any contractual costs on behalf of K-Bro, if successor/related employer was enforced under the *Act*.

[65] That is surface bargaining at best.

ANTI UNION ANIMUS

[66] Further, during the hearing we also heard that Ms. McCurdy approached UNITE HERE, to see if they could work out a deal to represent the laundry workers at K-Bro. This was about two (2) years before K-Bro would even be in operation supplying laundry services for RQHR. My understanding is that K-Bro never approached RWDSU once about representing the laundry workers at the new facility. In my view K-Bro and 3SHealth/RQHR wanted to avoid RWDSU, but also didn't want to look like there was any *anti-union animus*. Both K-Bro and 3SHealth/RQHR tried to show that they were not opposed to a Union being involved with the Laundry services. K-Bro went shopping for their own union (Unite HERE), to avoid RWDSU and RQHR surface bargained with RWDSU knowing they had no intension of living up to any negotiated contract, unless forced to do so by the Saskatchewan Labour Relations Board.

[67] If RQHR had any real intentions of honoring a negotiated deal with RWDSU, they had the ability to negotiate a plan with K-Bro that would have included moving the RWDSU laundry workers over to K-Bro. After all, 3SHealth/RQHR had the ability to tell K-Bro whom they had to hire, same as the manager position.

[68] SAHO provided a legal opinion to RQHR and 3SHealth about various structuring choices for an Employer, as testified by Bernie Young. I would assume then that one of the options that would have been discussed would have been regarding the status of RQHR Laundry workers. SAHO, 3SHealth, and RQHR decided that it was best not to address the concerns that would absolutely arise by RWDSU laundry workers, unless they were forced to under the *Trade Union Act*.

[69] We need to be very concerned that K-Bro in their own documents admit that they would try and avoid any Union in its workplace, but in this case they went shopping for a Union. This was to show us as a Board, that they are not against Unions, as long as they get to select the Union they wanted. This cannot, and should not, be allowed as the “Right to Organize” and the “Freedom of Association” is being controlled by K-Bro and 3SHealth.

[70] The callous approach by 3SHealth/RQHR, and K-Bro during this process to provide laundry service to Saskatchewan Health is very concerning. They all disregarded or attempted to disregard long-term agreements with RWDSU and their members. There was a certification Order in place with RWDSU that stipulates whom the Employer is in this case. No matter how hard K-Bro, 3SHealth/RQHR tries to avoid this fact; I believe under Section 37.3(1) they are Related Businesses as defined under the *Trade Union Act*.

John McCormick, Board Member