UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS), Applicant v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2038, and EVRAZ WASCO PIPE PROTECTION CORPORATION, Respondents

LRB File Nos. 002-17, 202-16 & 275-16; February 10, 2017

Vice-Chairperson, Graeme G. Mitchell Q.C.; Members: Bert Ottenson and Steven Seiferling

For the Applicant:	Heather M. Jensen
For the Respondent:	Crystal L. Norbeck
For the Respondent Employer	Lynsey Gaudin

Practice and Procedure – Intervenor Status – Union applies for direct interest intervenor standing in a certification application commenced by another union – Board reviews previous decisions respecting applications for direct interest intervenor standing in competing certification applications – Direct Interest Intervenor standing denied.

Practice and Procedure – Intervenor Status – Union sought direct interest intervenor standing on basis of evidence of support gathered after date first union's certification application filed with Board – Board applied its established practice that such evidence must be filed by date of filing of the first certification application or be in existence on that date – No such evidence presented – Direct Interest Intervenor standing denied.

Practice and Procedure – Intervenor Status – Union sought direct interest intervenor standing on basis that bargaining unit sought by the other union less appropriate than possible future bargaining unit – Direct Interest Intervenor standing denied.

REASONS FOR DECISION

OVERVIEW

[1] Graeme G. Mitchell, Q.C., Vice-Chairperson: International Brotherhood of Electrical Workers, Local 2038 ["IBEW"] filed an application for bargaining rights pursuant to section 6-9 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 ["*SEA*"] on September

12, 2016.[1] IBEW seeks to be certified as the bargaining agent for the following employees of Evraz Wasco Pipe Protection Corporation ["Evraz Wasco"]:

> *All Journeyperson electricians, electrical foremen and electrical general foremen employed by Evraz Wasco Pipe Protection Corporation in the Province of Saskatchewan south of the 51st parallel.*

[2] Subsequently, on December 9, 2016, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ["United Steelworkers"] filed its own application for bargaining rights pursuant to section 6-9. United Steelworkers also seeks certification as the bargaining agent for the following employees of Evraz Wasco:

> *All employees (including lead hands (team leaders)) employed by Evraz Wasco Pipe Protection Corporation in Saskatchewan except office, sales and professional staff, superintendents, assistant superintendents, managers and those employees at or above the rank of manager.*

[3] IBEW's application for certification was scheduled to be heard by the Board commencing on January 20, 2017.

[4] On January 4, 2017, United Steelworkers filed an application pursuant to section 20 of *The Saskatchewan Employment (Labour Relations Board) Regulations* ["*Regulations*"] requesting standing as an intervener in IBEW's application. In its application, United Steelworkers contended it should be granted status as a direct interest intervenor at the hearing of IBEW's certification application, as it, too, was involved in an organizing drive at Evraz Wasco's worksite.

[5] On January 10, 2017, IBEW filed a reply as mandated by section 20(4) of the *Regulations* opposing United Steelworkers application for intervener status. In view of this intervener application, all parties agreed that it should be heard at the outset of the hearing scheduled for January 20, 2017.

[6] At that time, the Board received submissions from both Ms. Heather Jensen, counsel for United Steelworkers and Ms. Crystal Norbeck, counsel for IBEW. Ms. Lynsey Gaudin, counsel for Evraz Wasco, appeared at the hearing but took no position respecting

[1] LRB File No. 202-16.

United Steelworker's intervenor application. At the conclusion of that hearing, the Board reserved its decision.

[7] These Reasons for Decisions explain why this Board unanimously concludes that United Steelworkers' application should be dismissed.

ISSUE

[8] The sole issue on this application is whether United Steelworkers should be granted intervenor status in IBEW's application to be certified as the bargaining agent for some of the employees at the Evraz Wasco workplace?

RELEVANT STATUTORY PROVISIONS

[9] The provisions of the *SEA* most relevant to this application read as follows:

> ***6-9****(1) A union may, at any time, apply to the board to be certified as bargaining agent for a unit of employees appropriate for collective bargaining if a certification order has been issued for all or a portion of that unit.*
>
> *(2) When applying pursuant to subsection (1), a union shall:*
>
> *(a) establish that 45% or more of the employees in the unit have within the 90 days proceeding the date of the application indicated that the applicant union is their choice of bargaining agent; and*
>
> *(b) file with the board evidence of each employee's support that meets the prescribed requirements.*
>
> *. . . . . .*
>
> ***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.*
>
> *. . . . . .*
>
> ***6-112****(2) At any stage of its proceedings, the board may allow a party to amend the party's application, reply, intervention or other process in any manner and on any terms that the board considers just, and all necessary amendments must be made for the purpose of determining the real questions in dispute in the proceedings.*
>
> *. . . . . .*
>
> *(4) Without limiting the generality of subsections (2) and (3), in any proceedings before it, the board may, on any terms that it considers just, order that the proceedings be amended:*
>
> *(a) by adding as a party to the proceedings any person that is not, but in the opinion of the board ought to be, a party to the proceedings.*

[10] The provisions of the *Regulations* most relevant to this application read as follows:

> ***20****(1) In this section:*
>
> *(a) **"application to intervene"** means an application in Form 17 (Application to Intervene);*
> *(b) **"original application"** means an application made to the board pursuant to the Act and these regulations that is the subject of an application to intervene.*
>
> *(2) An employer, other person, union or labour organization that is served with a copy of an application pursuant to section 19 and intends to intervene in the proceedings before the board shall file a reply in Form 18 (Reply).*
>
> *(3) An employer, other person, union or labour organization that is not served with a copy of an application pursuant to section 19 and that intends to intervene in the proceedings before the board shall file an application to intervene.*
>
> *(4) All replies and applications to intervene must be filed within 10 business days after the date a copy of the original application was given to the employer, person, union or labour organization by the registrar*

ANALYSIS AND DECISION

Introduction

[11] The hearing of this application consisted entirely of oral submissions by counsel. Each counsel relied on previous decisions of this Board to support the particular position for which she advocated on behalf of her client.

[12] Counsel for the Applicant, United Steelworkers relied, in particular, on the following authorities:

- *Construction Workers Union (CLAC), Local 151 v Tercon Industrial Works Ltd., Westwood Electric, Ltd., Canonbie Contracting Ltd., Wilbros Construction Services (Canada) L.P. and Pyramid Corporation*, LRB File Nos. 097-10, 098-10, 116-10, 117-10 & 134-10, 2012 CanLII 2145 (SK LRB) ["*Tercon Industrial*"];
- *Saskatchewan Building Trades Council v International Association of Heat and Frost Insulators and Asbestos Workers, Local 119, Westcor Services Limited, Steeplejack Industrial Insulation Ltd and Brock Canada Inc*, LRB

File Nos. 145-15 & 158-15, 2015 CanLII 80543 (SK LRB) ["*Brock Canada*"];

- *United Food and Commercial Workers, Local 1400 v K-Bro Linen Systems Inc and Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and SEIU-West*, LRB File Nos. 072-14 & 094-14, 2015 CanLII 19984 (SK LRB) ["*K-Bro Linen*"];
- *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v 617400 Saskatchewan Limited o/a Sobeys*, LRB File No. 216-05, 2006 CanLII 62956 (SK LRB) ["*Sobeys*"], and
- *Health Sciences Association of Saskatchewan v Regina District Health Board*, LRB File No. 025-95 and 118-95, [1995] Saskatchewan Labour Report, 3rd Quarter 131 ["*Health Sciences*"].

[13] Counsel for the Respondent, IBEW relied, in particular, on the following authorities:

- *Communication, Energy and Paperworkers Union of Canada v J.V.D. Mill Services*, LRB File No. 087-10, 199 CLRBR (2d) 228 ["*J.V.D. Mill Services*"];
- *Construction Workers Association (CLAC), Local 151 v Salem Industries Canada Ltd.*, LRB File No. 033-86 & 044-86, [1986] Saskatchewan Labour Report, June 1986, at page 69 ["*Salem Industries*];
- *Penn-Co Construction Ltd. (Re)*, LRB File No. 187-89, [1990] Saskatchewan Labour Reports ["*Penn-Co*"];
- *Saskatchewan Joint Board, Retail, Wholes and Department Store Union v Saskatchewan Gaming Corporation – Casino Moose Jaw and Public Service Alliance of Canada, Saskatchewan Federation of Labour and Canadian Labour Congress*, LRB File No. 187-02, 2002 CanLII 52917 (SK LRB) ["*Casino Moose Jaw*"];
- *Health Sciences*, *supra*, and
- *Tercon Industrial*, *supra*.

[14] In *J.V.D. Mill Services*, *supra*, the Board took the opportunity to summarize its past practice respecting applications for intervenor status brought pursuant to the provisions of

The Trade Union Act, RSS 1978, c T-17 ["*TUA*"] and to clarify confusion that had emerged in the authorities. The Board stated at paragraphs 11 to 14:

> ***[11]*** *Intervenor status, whether granted by the Board or by a court, enables someone who is effectively a stranger to the application or litigation, to participate in the proceedings. Practice before the Board has generally recognized three distinct categories of persons interested and participating in the proceedings. These are (a) persons added as parties to the application (b) parties with a direct interest in the proceedings, and (c) public law intervenors. In decision of the Board, such parties have been variously referenced as "interested parties" or as "intervenors". The distinction between these two types of status has become blurred in their application. By this decision, the Board will attempt to clarify and rationalize both the distinction and its nomenclature.*
>
> ***[12]*** *The granting of intervenor status by the Board, or by the courts, is discretionary. Generally speaking, the courts exercise this discretion based on considerations of fairness (to the applicant or the party seeking status) and/or the potential to assist the court. Section 19(3) of the [TUA] allows that "the board may, upon such terms as it deems just" add parties to a proceeding. Courts rely upon their inherent jurisdiction to deal with application for intervenor status. The Board must rely upon its statutory authority in s. 19(3) of the [TUA], the direction given to the Board secretary/registrar in s. 16 of the regulations or in the circumstances referenced in s. 17 of the regulations, to entertain such applications.*
>
> ***[13]*** *In the article by Sheila M. Tucker and Elin R.S. Sigurdson entitled "Interventions in British Columbia: Direct Interest, Public Law & 'Exceptional Intervenors'" [(2010) 23 Can. J. Admin. L.& Prac. 183] as noted by the authors, the three forms of intervenor status can be described as follows:*
>
> > *(1) The applicant has a direct interest in the answer to the legal question in dispute in that it has legal rights or obligations that may be directly affected by the answer ("direct interest intervenor");*
> > *(2) The applicant has a demonstrable interest in the answer to the legal question in dispute in that it has legal rights or obligations that may be affected by the answer, can establish the existence of "special circumstances", and may be of assistance to the court [Board] in considering the issues before it ("exceptional intervenor"); and*
> > *(3) The applicant has no legal rights or obligations that may be affected by the answer to the legal question in dispute, but can satisfy the court [Board] that its perspective is different and its participate may assist the court [Board] in considering a public law issue before it ("public law intervenor").*
>
> ***[14]*** *As pointed out in this article, there appears to be a growing distinction to be drawn respecting the three distinct groups of persons seeking to add their voice to proceedings before the courts and before boards and tribunals such as this Board. Because of this, the Board has determined to provide these reasons related to the granting of status to parties before the Board for the guidance of future applicants seeking to join proceedings before the Board, and to distinguish those types of status and the terms on which they may be granted. We adopt the three categories of intervenor status as reflective of the categories of status that*

> *may be granted by the Board. Granting of status in any particular case, will, of course, e discretionary, and dependent upon the facts in each particular case.*

[15] Since these principles were announced in *J.V.D.Mills Services*, *supra*, the Board has endorsed them in a number of subsequent decisions, most notably, *Tercon Industrial Works*, *supra*, at para. 31; *Brock Canada*, *supra*, at para. 23, and *Re Saskatchewan Government Employees' Union*, 2016 CanLII 74494 ["*SGEU*"], at paras. 5 and 7. As well, it is important to acknowledge that both *Tercon Industrial Works*, *supra*, and *SGEU*, *supra*, adopted and applied the *J.V.D. Mills Services* analysis for purposes of the *SEA*.

[16] Counsel agreed that United Steelworkers' application fell into the first category of intervenors identified in *J.V.D. Mill Services*, *supra*, namely, direct interest intervenors. As described in that case a direct interest intervenor is someone having "a direct interest in the answer to the legal question in dispute" because its "legal rights or obligations…may be directly affected" by the determination of the particular dispute into which it seeks to insert itself.

[17] The Board in *Tercon Industrial*, *supra*, elaborated on this characterization somewhat at paragraph 36 as follows:

> *A claim of standing as a direct interest intervenor must flow from the potential that the subject proceedings could have a direct impact on the party seeking standing (for example, through the potential imposition of legal obligations upon them or an impact on certification rights they currently hold or are seeking to obtain).*

Position of United Steelworkers

[18] Counsel for United Steelworkers asserts that her client falls squarely within the parameters of this category of intervenor. She submitted that the certification application initiated by United Steelworkers in respect of all employees at the Evraz Wasco plant likely will be compromised were this Board to adjudicate IBEW's application without its participation. She characterized the situation in which her client currently finds itself as the "paradigmatic" example of when this Board should grant direct interest intervenor standing.

[19] Counsel acknowledged that the decision to grant intervenor status to an interested party is a discretionary one and when exercising this discretion she submitted that the Board's over-riding consideration should be fairness to all parties. As authority for this proposition, she invoked, among others, the following passage from *Tercon Industrial*, *supra*:

> ***[31]*** *In J.V.D. Mills Services #1, supra, this Board clarified its general approach to the granting of intervenor status in proceedings before the Board. In doing so, the Board reiterated the long standing principle that the granting of standing as an intervenor in any proceedings before the Board is a matter of discretion and that, generally speaking, the Board exercises its discretion based on the circumstances of each case, considerations of fairness (to the Party seeking standing) and/or the potential for the party seeking standing to assist the Board (by making a valuable contribution or by providing a different perspective) without doing injustice to the other parties.[Emphasis added.]*

[20] She acknowledged that the instant application qualifies as a "competing certifications" case, *i.e.* two (2) unions seeking to be certified as the exclusive bargaining agent for employees at a particular workplace. She further acknowledged that previous decisions of the Board such as *Health Services*, *supra*, and *Salem Industries*, *supra*, for example, demonstrate that the Board treats applications of this kind somewhat differently than other intervention applications. However, she suggested these authorities which date back at least two (2) decades should be read cautiously in light of more recent amendments to the *Regulations*.

[21] In addition to asserting that her client's legitimate interests in becoming the exclusive bargaining agent for employees at Evraz Wasco could be thwarted were IBEW's application adjudicated without the participation of United Steelworkers, counsel offered two (2) reasons why her client's participation in IBEW's application would be of particular assistance to the Board.

[22] First, United Steelworkers would argue that it is seeking to be certified as the exclusive collective bargaining unit for all employees of Evraz Wasco. It is a union that has operated in the construction industry for some time and, if it were certified, would bring stability to that workplace. In contrast, IBEW is seeking certification as the bargaining agent for only two (2) employees at that workplace. United Steelworkers contends that such a small bargaining unit would have the potential to create friction and instability in a multi-union workplace.

[23] Second, United Steelworkers would argue that Evraz Wasco does not qualify as a construction site which raises the real possibility that IBEW would be seeking certification for a bargaining unit consisting of only one (1) person. This Board she stated has consistently declined to certify a one (1) person bargaining unit.

[24] Counsel conceded that these arguments were also raised in the Reply filed by Evraz Wasco in IBEW's certification application, LRB File No. 202-16. However, she contended that United Steelworkers would bring a union perspective to those particular arguments. It was for precisely this reason, she submitted, that it should be allowed to participate at the hearing of IBEW's application.

Position of IBEW

[25] Counsel for IBEW argued that the tenor of United Steelworkers' argument attempted to minimize the Board's previous decisions respecting intervenor applications in competing certification cases. She asserted that where a second certification application has been filed it should only be processed if it can be shown that the second union's support predated the filing of the first certification application. Counsel cites *Salem Industries*, *supra*; *Penn-Co Construction*, *supra*, and *Casino Moose Jaw*, *supra*, for that proposition.

[26] Counsel relied most heavily on this Board's decision in *Health Sciences*, *supra* as it involved, in her words "substantially identical circumstances" to those in this matter.

[27] In *Health Sciences*, *supra*, the union filed two (2) applications seeking certification as the exclusive bargaining representative for a group of para-professionals and Assessor Care Co-ordinators at worksites operated at two (2) locations operated by the then Regina District Health Board. Subsequently, Saskatchewan Union of Nurses ["SUN"] and Saskatchewan Government Employees' Union sought to intervene in Health Service's certification applications. At the hearing of the intervenor applications, counsel for SUN submitted evidence it had gathered following the filing of Health Services' certification applications. This evidence purported to demonstrate that a number of the employees who previously supported Health Service had switched their allegiance to SUN.

[28] The Board rejected this evidence and dismissed SUN's intervention application. Speaking for the Board, former Chairperson Bilson stated at page 133:

> *The Board denied the request for intervenor status by [SUN]. The procedures adopted by the Board are in general marked by considerable flexibility, which assists us to accommodate the peculiar circumstances of particular cases and the needs of the parties to the applications which are brought before us. One exception to this is our adherence to a policy of considering evidence of support for a certification application as of the date of the application. Though it has sometimes been urged upon us to show more flexibility in the application of this policy, we have reiterated firmly on a number of occasions our position that, if evidence of support for a certification application, - or of*

> *withdrawal of support or of support for some other trade union – is to be considered by the Board, it must be in the hands of the Board in its original form by the date on which the application is filed with the Board. The Board reiterated this point recently in a decision in Saskatchewan Joint Board Retail, Wholesale and Department Store Union v Brown Industries (1976) Ltd., LRB File Nos. 010-95 and 012-95.*
>
> *Where the claim is made that employees are not only withdrawing their support for the certification application, but also lending their support to a second application for certification, the same principle applies. In a number of decisions, the Board has confirmed that the first of two competing trade unions to apply for certification will have that application determined without regard to any subsequent application received from the second trade union. [Emphasis added, citations omitted.]*

[29] Counsel submitted that the same approach should be followed here. United Steelworkers waited almost three (3) months after IBEW's certification order was filed before it commenced its own, competing application. This timeline is significant, she asserts, because it happened about the same time the 90 day time limit for support cards set out in section 6-9(2) of the *SEA* signaling support for IBEW would expire. In other words, there was no evidence of employee support for United Steelworkers at the time IBEW filed its application.

Analysis and Decision

[30] The authorities that were cited to us by counsel and others we have reviewed demonstrate clearly that applications seeking intervenor status in "competing certification" cases are treated differently than other "direct interest intervenor" applications. In such cases, the first certification application will proceed without the participation of a second union unless there is some evidence of support for the second union which pre-dates the first union's formal application. Reference has already been made to *Health Services*, *supra*, however, there the Board cited at pages 133 and 134, other of its Decisions emphasizing the same principle.

[31] For our purposes, the most significant of those Decisions is *Salem Industries*, *supra*, an authority also relied upon by IBEW in this matter. In *Salem Industries*, *supra*, the Board refused to grant direct interest intervenor standing to Construction and General Workers Union, Local 180 in CLAC's first-in-time certification application respecting all labourers and labourer foremen employed by Salem Industries in Saskatchewan. The Board found that the only evidence of support for the Construction and General Workers Union was in the form of "individual cards signed by the employees…obtained and filed after February 20, 1986 being the date on which CLAC filed its application for certification": *Salem Industries*, *supra*, at page 71.

[32] Writing for the Board, former Chairperson Ball explained the Board's rationale for this position as follows at pages 71 and 72:

> *Whenever the Board has received an application for bargaining rights by one union and a subsequent intervention and request for certification by another union, it has consistently accepted only evidence of support gathered prior to the date on which the first application for certification is filed and rejected evidence of support obtained subsequently (see Jim Patrick Ltd., 60 CLLC 16,166; Designex Builders Ltd., LRB File No. 204-78, Reasons for Decision dated October 17, 1978; Rite Way Mfg. Co. Ltd., LRB File No. 390-84, Reasons for Decision dated December 13, 1984; and Gene's Ltd. et al., 75 CLLC 16,913 at p. 16, 810). The Board has considered the date of the first application for certification to be the best date for determining majority support because it renders pointless subsequent employer tactics intended to turn employees against the union and establishes a terminal date for the cessation of campaigning between two competing unions. Once an application is filed, further efforts to obtain support to an emerging employee association or to an intervening union serve no purpose. It would be chaotic if the filing of an application for certification simply served as a signal for all those seeking employee support to begin campaigning in earnest. [Emphasis added.]*

[33] The Board emphatically reiterated this position in *Energy and Chemical Workers' Union v Remai Investment Corporation and Saskatchewan Joint Board, Retail, Wholesale and Department Store Union*, LRB File Nos. 028-92 & 029-92, [1992] 2nd Quarter, Sask. Labour Report, 97 ["*Remai Investment*"], at 104 as follows:

> *The Board's policy in this regard is long-standing, well-known and firm. The two mentioned exceptions aside[2], the first of the two competing unions to apply for certification will have its application determined without regard to any subsequent application received from the second union (see: Salem Industries Canada Limited (supra); Tanar Lloydminster Maintenance Ltd. [1992] 1st Quarter, Sask. Labour Report, p. 56).*

[34] An illustration of one of the exceptions noted by the Board in *Remai Investments*, *supra*, can be found in *Penn-Co Construction Ltd.*, *supra*. There one union was permitted to participate in a competing union's certification application because it was able to demonstrate it had sufficient support that pre-dated the first union's application. As a consequence, the Board granted the second union standing in that application.

[35] A variation on this theme is found in *Brock Canada*, *supra*. In that case, the International Heat and Frost Insulators and Asbestos Workers, Local 119 ["IA"] sought to have

[2] The two exceptions in cases involving competing unions referred to here by the Board are: (1) where a union can establish that its ability to organize employees and apply for certification was interfered with or frustrated by the employer, and (2) where the second union establishes that it enjoyed a sufficient level of support from the employees when the initial certification application was filed with the Board.

the Board reconsider an earlier decision in which it certified CLAC as the exclusive bargaining agent for employees of Cornerstone Contractors Ltd. CLAC sought to participate as a direct interest intervenor in any reconsideration of the Board's previous decision.

[36] In those circumstances, the Board had no hesitation in granting CLAC such standing since "its certification for the employees of Cornerstone flows directly from" the Board's earlier decision to certify it: See *Brock Canada*, *supra*, at para. 40. In *Brock Canada*, clear support for CLAC as the bargaining agent for the Cornerstone Contractors' employees which pre-dated IA's application for reconsideration had been demonstrated.

[37] It is evident that the Board's general policy in competing certification applications is to permit the first application to proceed without any involvement by a union that has commenced a subsequent competing application. However, counsel for United Steelworkers suggested the precedential force of the authorities which have enforced this policy has been diminished somewhat by recent amendments to the *Regulations*. She asserts that sections 19 and 20 of the *Regulations* differ significantly from the previous regulation 17 under the *TUA* which was the regulation in place at the time decisions such as *Health Services*, *supra* were rendered, so much so the Board should be cautious when applying those decisions.

[38] The Board has reviewed and compared the various regulations to which we were referred by counsel for United Steelworkers. With respect, we are unable to discern any difference between them significant enough to disturb the Board's general policy in such matters.

[39] As a consequence, there is no reason for the Board to depart from its general practice in competing certification applications. We agree with counsel for IBEW that no evidence was presented to us that United Steelworkers enjoyed any, let alone a sufficient level of, support among the employees of Evraz Wasco prior to September 12, 2016, the date IBEW filed its certification application with the Board.

[40] In our view, this would be sufficient to dispose of United Steelworker's application for direct interest intervenor status in IBEW's certification application. However, there are other considerations in this matter that further persuade us to dismiss United Steelworker's application. We enumerate them briefly below.

[41] First, counsel for United Steelworkers argued strenuously that it would be a stronger and more stable collective bargaining agent for employees of Evraz Wasco than IBEW. It is important to recognize, however, that on a certification application the Board is not looking for the most appropriate bargaining unit. Rather, as subsection 6-11(1) of the *SEA* states the issue is whether "the unit of employees is appropriate for collective bargaining". That issue can only be decided after the Board receives evidence from the union seeking certification, and our deliberations will not be enhanced by hearing from a competing union that failed to demonstrate any employee support at the time the first union filed its certification application.

[42] Second, it became apparent during the hearing that the submissions United Steelworkers would make on IBEW's certification application proper would, in effect, largely duplicate arguments already being advanced by Evraz Wasco, the employer. In the public law context, the Saskatchewan Court of Appeal in *R v Latimer* (1995), 128 Sask. R. 195, 1995 CanLII 3921 (SKCA) *per* Sherstobitoff J.A. (a former Chairperson of this Board) adopted the five (5) factors identified in the textbook, *The Conduct of an Appeal* by Justice John Sopinka and Mark Gelowitz for assessing intervention applications. One of those factors is "the extent to which the position of the [proposed] intervener is already represented and protected by one of the parties". If it could be shown that a proposed intervenor's participation would be duplicative of a position already before the tribunal, this fact will militate against the tribunal exercising its discretion to permit an applicant to intervene.

[43] The Board is well aware that the *Latimer* factors are not directly applicable to direct interest intervention applications before us. Yet, it cannot be ignored that in this matter United Steelworkers failed to persuade us it would offer a perspective which differed in any appreciable way from the position already being advanced by Evraz Wasco.

[44] Finally, counsel for IBEW advised us at the hearing that its application seeks certification for a bargaining unit consisting of approximately two (2) employees. She candidly acknowledged that she may have an uphill battle in obtaining such an order. The strength of IBEW's position is not the issue on this application, however. Yet, it does underscore the fact that even if IBEW is successful, the application commenced by United Steelworkers is not significantly prejudiced, if at all. United Steelworkers can still seek certification for the majority of Evraz Wasco's employees. Should IBEW's application fail, United Steelworkers could then seek

to represent those employees who had initially chosen IBEW as their collective bargaining agent.

[45] Accordingly, for all of these reasons United Steelworker's direct interest intervenor application – LRB File No. 002-17 – in IBEW's certification application – LRB File No. 202-16 – is dismissed.

[46] The Board extends its gratitude to counsel for their helpful written and oral submissions.

DATED at Regina, Saskatchewan, this **10th** day of **February, 2017**.

LABOUR RELATIONS BOARD

Graeme G. Mitchell, Q.C.
Vice-Chairperson