April 24, 2017

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Mr. Jason Rattray
3011 Salterio Cres.
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Attention: Ms. Heather Jensen

Dear Sir and Madam:

RE: LRB File No. 011-17 and LRB File No. 049-17

Background:

[1] The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9841 ("United Steelworkers") applied to the Board to be determined to be the successor union to a bargaining unit of employees of The Saskatchewan Government and General Employees' Union ("SGEU"), which employees were formerly represented by Communications, Energy and Paperworkers Union[1], Local 481 ("CEP"). Mr. Rattray, a former employee of SGEU applied to the Board requesting that the Board summarily dismiss the United Steelworkers application. The Board determined to consider Mr. Rattray's standing to participate in the question of successorship as a preliminary matter to the application. A panel of the Board comprised of Kenneth G. Love Q.C.,

[1] CEP later joined with the Canadian Auto Workers Union to form Unifor.

Board Chairperson, Mr. Jim Holmes, Board Member and Mr. Michael Wainwright, Board Member heard the preliminary matter on April 19, 2017.

[2] The Board heard evidence from a witness called by Mr. Rattray, Ms. Kathy Mahussier as well as argument from Mr. Rattray as to his request for standing in order to intervene in the successorship application and to have that application summarily dismissed by the Board. The Steelworkers called no evidence, but filed a written brief and provided oral argument.

Factual Background:

[3] The facts related to this matter have been gleaned from the applications and replies filed in this matter by the parties as well as the evidence provided to the Board by Ms. Mahussier.

[4] Mr. Rattray was formerly an employee of SGEU and was a member of the bargaining unit. His employment was terminated by SGEU and a grievance was filed by CEP in respect to that termination. The grievance was processed in accordance with the Collective Bargaining Agreement between CEP and SGEU. At some point in the process, CEP determined not to submit the grievance to arbitration under the terms of the Collective Bargaining Agreement. Mr. Rattray unsuccessfully appealed that decision to the general membership of CEP.

[5] During that same time period, Unifor National ("Unifor") by letter dated November 22, 2016, advised CEP that its charter as a local union of Unifor had been revoked. This revocation of the local charter was in furtherance of a decision by Unifor to discontinue representation of employees employed by other union organizations such as SGEU, citing a potential conflict of interest.

[6] At that same time, Mr. Rattray was attempting to appeal the membership decision not to proceed with his grievance to Unifor under the terms of the Unifor constitution. However, as a result of the cancellation of the Local's charter, Unifor initially refused to participate in the appeal process.

[7] In addition, Mr. Rattray had also brought complaints against certain of the CEP executive under the terms of the Unifor constitution. Unifor also declined to participate in that process.

[8] Meanwhile, CEP, now without a local charter or bargaining representative, was actively seeking to find another union who would represent their members. After some discussion with two potential suitors, the membership, through an informal process of an electronic survey[2] sought to establish a relationship with the United Steelworkers for the purpose of collective bargaining with SGEU (LRB File No. 011-17).

[9] Mr. Rattray also filed complaints[3] with this Board under sections 6-58 (Disputes regarding Internal Union Affairs) and section 6-59 (Duty of Fair Representation). These complaints were filed against both Unifor and CEP.

[10] Mr. Rattray also filed a reply and request for summary dismissal of the United Steelworkers successorship application. This is the matter we are dealing with here.

Discussion and Analysis

[11] The Board has refined its jurisprudence with respect to applications for intervenor status in the Board's decision in *Communication, Energy and Paperworkers*

[2] Survey Monkey
[3] LRB File Nos. 012-17 and 022-17

Union of Canada v. J.V.D. Mill Services Inc.[4] That decision clarified and rationalized the Board's jurisprudence and approach to granting of intervenor status in matters before the Board. The Board recognized three (3) classes of intervenor before the Board. Those are a Direct Intervenor, an Exceptional Intervenor and a Public Law Intervenor. Definitions of the characteristics of each of these classes of intervenor were adopted from an article published by Shelia M. Tucker and Elin R.S. Sigurdson entitled *Interventions in British Columbia: Direct Interest, Public Law & Exceptional Intervenors*[5].

[12] Mr. Rattray was not familiar with the Board's decision in J.V.D. Mill Services and requested simply that he be permitted intervenor status. From his presentation, we have taken it that he asserted that he should have direct intervenor status as he was directly affected by the successorship application in that if the application was granted, he was of the view that any potential appeal of the decision not to proceed with the grievance arbitration would be foreclosed. He believed that he would be required to demonstrate at the hearing of his applications under sections 6-58 and 6-59 that he had exhausted all potential avenues of appeal of the decision not to proceed to arbitration as a condition of the Board dealing with the applications.

[13] The definitions for the three (3) classes of intervenor, as set out in *J.V.D. Mill Services* were 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*

[4] LRB File No. 087-10
[5] Canadian Journal of Administrative Law and Practice, Vol 23, No. 2, June 2010.

> *"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 participation may assist the court [Board] in considering a public law issue before it ("public law intervenor").*

Direct Intervenor Status

[14] When considering the granting of direct intervenor status, the Applicant must have a direct interest, i.e.: legal rights or obligations that may be directly affected by the answer to the questions posed by the litigation. That is, they must have a direct interest in the legal dispute between the parties. As noted above, Mr. Rattray argued that he did indeed have a direct interest in the questions being posed in the successorship application as it could impact on his ability to continue his appeal of the decision not to proceed with his grievance to arbitration.

[15] While a significant interest, there are some basic flaws in the explanation of his interest in the successorship application. Firstly, there is no strict requirement that all avenues of appeal be exhausted before the Board will hear an application under either section 6-58 (Internal Union Affairs) or section 6-59 (Duty of Fair Representation). While it may be desirable in some cases to adjourn a hearing to have the outcome determined through and appeal process, should his access to the appeal be cut off as a result of the actions of Unifor, there can be a number of possible remedies. First, the Board could simply accept that the further right of appeal has been frustrated and move on to hear the matter. It could also, if necessary, and if the facts justified such an order, direct Unifor to consider the matter. Finally, Unifor and or CEP could agree that they would not rely upon any purported defect in the appeal process and the Board could proceed to hear the applications.

[16] Given that there are numerous options available to the Board that allow the applications to proceed notwithstanding what may occur in respect to the successorship, we cannot see any direct interest in the successorship question that would justify Mr. Rattray being granted direct interest standing in that matter.

Exceptional Intervenor Status

[17] It is equally clear, we believe, that Mr. Rattray has no demonstrable interest in the outcome of the litigation. He is no longer a member, due to his termination, of the bargaining unit. While he has the potential to be returned to the bargaining unit as a result of a successful arbitration outcome, that outcome is in no way impacted by whether or not the United Steelworkers is the bargaining agent for the employees of SGEU or whether it is CEP, or indeed Unifor. Should he be reinstated, he will be represented for collective bargaining by whoever is the current trade union certified to represent those employees. Additionally, in order to be granted exceptional intervenor status, Mr. Rattray must demonstrate both "special circumstances" and that he can be of assistance to the Board in determining the answer to the questions posed in the successorship application. With respect, we do not believe that Mr. Rattray has demonstrated any "special circumstances", nor can he provide the Board with assistance with respect to the questions to be answered.

[18] Successorship between trade unions is provided for in section 6-21 of the *SEA*. In normal circumstances, the successorship, by virtue of section 6-21(1)(c) is automatic, unless the Board otherwise orders. There are some unique facts with respect to this application which has caused the Board to make further inquiries to insure that proper process has been followed. However, the Board was provided with a copy of a successorship agreement dated January 20, 2017, wherein United Steelworkers agrees to assume responsibility for the employees of Unifor, Local 481.

On its face, this agreement purports to satisfy the transfer or assignment of any rights under or with respect to any board order, agreement or proceeding to another union.

Public Law Intervenors

[19] In a recent decision[6] of the Saskatchewan Court of Queen's Bench, Mr. Justice Brown reviewed the new Queen's Bench rule regarding the granting of intervenor status in proceedings before that Court. At paragraph [41] he says:

> *[41] The granting of intervenor status is discretionary and should be exercised sparingly. Within the ambit of that discretion, CIFFC as an applicant seeking to be made an intervenor in this Queen's Bench matter pursuant to Rule 2-12 should be prepared to address the following:*
>
> > *a. A sufficient interest in the outcome of the matter must be shown such that their involvement is warranted. An outcome that adversely affects them may well be considered sufficient to meet this criterion;*
> >
> > *b. There must exist the reasonable prospect that the process will be advanced or improved by their addition as an intervenor. This includes demonstrating that, as an intervenor, they will bring a new perspective or special expertise to the proceedings that would not be available without their participation. Merely echoing the position of one or more of the parties indicates they will not provide the requisite value;*
> >
> > *c. As an intervenor they cannot seek to increase the number of issues the parties themselves have included in the proceeding;*
> >
> > *d. Adding them as an intervenor must meet the goals and objectives identified by Rule 1-3 such that the issues raised by the litigation will be heard with reasonable dispatch and the matter will not be overwhelmed with procedure by virtue of their inclusion as an intervenor;*

[6] *Government of Saskatchewan, Ministry of Environment v. Saskatchewan Government Employees Union* [2016] CanLII 250 (SKQB)

> *e. Adding them as an intervenor must not unduly prejudice one of the parties;*
>
> *f. The intervention should not transform the court into a political arena; and*
>
> *g. The court is not bound by any of these factors in determining an application for intervention but must balance these factors against the convenience, efficiency and social purpose of moving the case forward with only the persons directly involved in the proceeding.*

[20] The Board does not have a practice rule similar to Queen's Bench Rule 2-12 which was being considered by the Court in this decision. These factors, however, are similar to the factors considered by this Board in its determinations regarding the granting of public law intervenor status, which were derived from the factors outlined by the Saskatchewan Court of Appeal in *R. v. Latimer*[7].

Sufficient Interest

[21] Mr. Rattray does not have a significant interest in the outcome of this application. Any interest he may have is certainly not sufficient to permit this Board to grant him public law intervenor status. Such status is normally granted when the party seeking such status has a unique point of view on the question on which the Board is required to adjudicate. Mr. Rattray does not meet this criteria based upon his rationale for why he sought to intervene.

A reasonable prospect that the process will be advanced by their participation

[7] [1995] CanLII 3921, 128 Sask. R. 195

[22] This factor is also one considered by this Board in its determination of whether or not public law intervenor status should be granted. However, as pointed out by Mr. Justice Brown, this participation should bring a new perspective or special expertise that would not be available without their participation. As he points out, "[M]erely echoing the position of one or more of the parties will not provide the requisite value".

[23] Mr. Rattray does not bring a new and different perspective to the arguments principally because his arguments relate more to his ongoing battle with Unifor than with respect to the successorship issue. He is merely seeking to delay or derail the granting of a successorship in order to protect what he believes is a necessary further step in the appeal process.

No increase in the Legal Issues

[24] If Mr. Rattray is allowed to participate in the hearing, the Board believes that there is a danger that the dispute between the parties will be widened. The successorship application relies upon a discrete set of facts which will be presented to the Board by United Steelworkers. Mr. Rattray's issues are much different and rely on totally different facts. That will necessarily increase the issues to be considered.

Participation not to unduly prejudice one of the parties

[25] It cannot be argued, we believe that the process in the successorship would be impacted by a huge additional burden if Mr. Rattray were granted intervenor status other than additional costs associated with the participation of the additional parties and the time which would be required to be spent by the Board and the parties. However, this factor is not, in our view sufficient to allow the granting of public intervenor status to Mr. Rattray.

Will the proceedings transform into a political arena

[26] We do not have sufficient evidence before us to make a reasoned determination on this point.

Balance of Convenience, efficiency and social purpose

[27] As noted by Mr. Justice Brown, the authority to grant intervenor status is discretionary and the Board is not bound by any of the above noted criterion insofar as the grant of status is concerned. The Board may, in the consideration of its discretion, place such weight on these factors so as to preserve scarce resources, the convenience of the parties, the efficiency of proceedings, as well as the social purpose in moving the case forward with only the persons directly involved in the proceedings.

Decision and Order:

[28] As noted above, we have determined not to grant status to Mr. Rattray. At the hearing of this matter we provided the following direction to the parties:

a) Mr. Rattray will not have status to intervene in the application for successorship.

b) The application for summary dismissal of the successorship application is dismissed. (LRB File No. 049-17)

c) The Board will consider the successorship application *in camera.* Should the Board have any questions or concerns arising out of that consideration they will contact the parties for clarification.

[29] This is a unanimous decision of the Board. The Board's formal Order in respect of this matter will be included with this letter decision.

Yours truly,

Kenneth G. Love, Q.C.
Chairperson