September 11, 2017

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Attention: Mr. Gary Caroline

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Attention: Mr. Thomas W.R. Ross

Dear Sirs and Madam:

RE: LRB Files Nos. 090-17, 124-17 & 125-17

Background:

[1] The International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union No. 771 (the "Ironworkers") applied[1] to the Board to be certified to represent a group of three (3) employees employed by Matrix Labour Leasing Ltd. ("Matrix"). Subsequently, the employees which the Ironworkers sought to represent were terminated from their employment and the Ironworkers filed an Unfair Labour Practice Application[2] with the Board in relation to those terminations.

[1] LRB File No. 090-17
[2] LRB File No. 125-17

[2] The Ironworkers also filed an application[3] to be certified to represent a group of 27 employees employed by Pinnacle Industrial Services ("Pinnacle"). In its reply, Pinnacle identified itself as 101059035 Saskatchewan Ltd., carrying on business as Pinnacle Industrial Services.

[3] The Ironworkers filed an amendment to both its application for certification in respect of Pinnacle and also respect to its Unfair Labour Practice Application as against Matrix. Both Matrix and Pinnacle objected to the amendment of the Applications. The Board convened a telephone conference hearing with respect to the requested amendments on August 31, 2017. The application for amendment was heard by n panel of the Board comprised of Chairperson, Kenneth G. Love, Q.C. and Members Hugh Wagner and Steven Seiferling.

[4] For the reasons that follow, the Board has unanimously determined to permit the amendments to the applications as requested by the Ironworkers.

Discussion and Analysis

[5] The Board is given broad authority[4] to permit amendments "at any stage of the proceedings" to ensure that "the real question in dispute in the proceedings" is determined.

[6] In their amended applications, the Ironworkers allege that Matrix and Pinnacle are common or related employers and/or one of them is the true employer of the employees in question. That information, they argue was not known to them at the time of the initial applications for certification and that they should therefore be

[3] LRB File No. 124-17
[4] See Section 6-112 of *The Saskatchewan Employment Act.* S.S. 2013 c. S-15.1

permitted to amend their applications to name both parties and to include the proper name of Pinnacle and provided in its reply to the Board.

[7] In this Board's decision in *Atco Structures and Logistics Ltd. v. UFCW, Local 1400*[5], the Board recognized the confusion that often occurs in the construction industry with respect to employers. At paragraph [65] of that decision, the Board says:

> *As this Board has noted in many cases, it is not unusual for employers in the construction sector to operate within a complex corporate structure utilizing subsidiaries or related companies to deliver their services and/or to support their operations. See: International Union of Painters & Allied Trades, Local 739 v. PAFHQ Construction GP Ltd., 2013 CanLII 83873 (SK LRB), 238 C.L.R.B.R. (2d) 57; International Brotherhood of Electrical Workers Local Union 2038 v. Clean Harbors Industrial Services Canada, Inc. & BCT Structures Inc., 2014 CanLII 76047 (SK LRB), 254 C.L.R.B.R. (2d) 111; and Prairie Artic Regional Council of Carpenters, Drywallers, Millwrights and Allied Workers v. EllisDon Corporation, et. al., 2014 CanLII 42398 (SK LRB), 247 C.L.R.B.R. (2d) 255. It is not unusual for employers to compartmentalize their operations through corporate divisions and for subsidiary or related companies to operate under and promote a common corporate brand. As a consequence, the true identity of an employer in the construction sector is not always readily apparent; even to the employees. For example, this Board has observed that related companies, subsidiaries, and corporate divisions are sometimes differentiated by subtle distinctions not readily apparent to an external observer. While it is incumbent upon applicant trade unions to use due diligence in preparing their applications and in describing the bargaining unit they seek to represent, not every defect or error in an application is fatal. In our opinion, a certain level of imprecision in identifying employers and in describing bargaining units in certification applications is the corollary of the corporate complexity and obscurity within which many employers in the construction sector desire to operate.*

[5] [2015] CanLII 80541

[8] In that case, the Board considered if the granting of the amendments to the application would result in a substantive change in the essential character of the application. They determined in that case, that it would not.

[9] Similarly, in this case, the underlying assumptions may be disputed by Matrix and/or Pinnacle. However, the real dispute is, we believe, placed before the Board with the amendments to the applications before us.

[10] The applications under consideration here are not, in our opinion, changed in their essential character, by the amendments. Additional allegations must be considered with respect to the proper identity of the Employer, but this is necessary if the real dispute is to be determined by the Board.

[11] For these reasons, we permit the amendments to the applications as submitted by the Ironworkers. Those amended applications are accepted as filed. Matrix and Pinnacle may, if they wish, file amended replies with respect to those amended applications within ten (10) days of this decision.

Yours truly,

Kenneth G. Love, Q.C.
Chairperson