Government of Saskatchewan

Saskatchewan Labour Relations Board
1600, 1920 Broad Street
Regina, Canada S4P 3V2
Tel - (306) 787-2406
Fax – (306) 787-2664
www.sasklabourrelationsboard.com

October 22, 2018

Plaxton Jensen
Barristers and Solicitors
500, 402 – 21st Street East
SASKATOON SK S7K 0B6

Attention: Ms. Heather Jensen

Gerrand Rath Johnson
Barristers and Solicitors
700 – 1914 Hamilton Street
REGINA SK S4P 3N6

Attention: Mr. Greg Fingas

McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
EDMONTON AB T5N 3Y4

Attention: Mr. Chris Lane, Q.C.

Seiferling Law
204-640 Broadway Avenue
SASKATOON SK S7N 1A9

Attention: Mr. Larry Seiferling, Q.C.

Burnet, Duckworth & Palmer LLP
2400, 525 - 8th Avenue S.W.
CALGARY AB T2P 1G1

Attention: Mr. Richard Steele

Dear Ms. Jensen, Mr. Fingas, Mr. Lane, Mr. Seiferling and Mr. Steele:

RE: LRB File No. 137-18; Construction Workers Union, CLAC Local 151 v. The International Association of Heat & Frost Insulators and Asbestos Workers, Local 119, Brand Energy Solutions (Canada) Ltd., Safway Services Canada, ULC and Aluma Systems Canada Inc.

LRB File No. 138-18; Construction Workers Union, CLAC Local 151 v. United Brotherhood of Carpenters and Joiners of America, Local 1985, Brand Energy Solutions (Canada) Ltd., Safway Services Canada, ULC and Aluma Systems Canada Inc.

OVERVIEW:

[1] On February 8, 2018, Construction Workers Union, CLAC Local 151 ["CLAC"] filed an Application for Bargaining Rights[1] for employees of Brand Energy Solutions (Canada) Ltd. ["Brand"]. That application has spawned many additional applications meant to address the issue of which union(s) have bargaining rights with respect to Brand's employees. Those applications included two Applications for Employer Successorship, one that alleges that Brand is a successor employer to Aluma Systems Canada Inc. ["Aluma"] and Safway Services Canada, ULC ["Safway"], brought by The International Association of Heat & Frost Insulators and Asbestos Workers, Local

[1] LRB File No. 030-18.

119[2] ["Insulators"], and one that alleges that Brand is a successor employer to Brand Scaffold Systems of Canada Inc., Aluma and ThyssenKrupp Safway Inc., brought by the United Brotherhood of Carpenters and Joiners of America, Local 1985[3] ["Carpenters"].

[2] At a hearing on June 21, 2018, the Board determined that the Applications for Employer Successorship filed by the Insulators and Carpenters would be heard first, before the other related applications. CLAC has applied for standing as a direct intervenor in both successorship applications. Brand supports CLAC's applications. The Carpenters and Insulators oppose them. Aluma and Safway indicated in oral argument at the June 21, 2018 hearing that CLAC's participation is not required.

[3] CLAC argues that it has a direct legal interest in the successorship applications because it has legal rights that will be directly affected by the Board's decision. It bases its applications on the following passages from *CLAC Local 151 v. Tercon Industrial Works Ltd.*, 2012 CarswellSask 329 [*Tercon Industrial]*:

> *[33] While all of the proposed intervenors, save SGEU, argued that they have a "direct" interest in the within proceedings, their assertions in this regard represent an unwarranted extension of this Board's meaning of the term "direct". This Board saw no evidence and none of the proposed intervenors purport to represent any of the employees falling within any of the bargaining units sought to be certified by CLAC. Furthermore, none of the proposed intervenors have filed certification applications involving any of the employees that were the subject matter of CLAC's certification applications. In our opinion, none of the proposed intervenors are directly impacted by the within applications as no legal obligations can be imposed upon them; nor are any certification rights they currently hold or are seeking to obtain prejudicially affected by the within applications.*
>
> *[36] … 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).*

[4] The Insulators argue that any interest held by CLAC is merely contingent at this stage, and that contingent interests are not properly treated as equivalent to direct interests for the purposes of a determination as to intervenor status. They also state that CLAC's submissions would duplicate those of Brand; there is no need to grant them status in these applications as they would provide no benefit to the Board.

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[2] LRB File No. 049-18.
[3] LRB File No. 052-18.

[5] The Carpenters argue that although CLAC's certification application could be affected by the outcome of the successorship applications, that does not automatically entitle CLAC to participate as a direct intervenor. There must be some connection between the proposed intervenor's interest and the *lis* between the parties, and none has been shown here: the central question in the successorship applications is the relationship among the corporate entities named in the successorship applications. Further, CLAC's interests are already represented and protected by Brand. There is nothing to indicate CLAC intends to do anything other than simply align itself with Brand in opposing the successorship applications. CLAC has not indicated it would bring anything new to the issue concerning the *lis* between the parties.

[6] The Insulators, Carpenters and CLAC all filed Briefs of Arguments that the Board has read and for which we are thankful.

ANALYSIS AND DECISION:

[7] All of the parties referred the Board to the decisions in *JVD Mill Services (Re)*, [2010] SLRBD 27 [*JVD Mill Services*] and *Tercon Industrial*. In *JVD Mill Services*, the Board adopted three categories of intervenor status:

> 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 participation may assist the court [Board] in considering a public law issue before it ("public law intervenor")* (para 13).

[8] Before reaffirming these three categories, *Tercon Industrial* summarized the Board's approach in *JVD Mill Services* as follows:

> *In J.V.D. Mill 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* (para 31).

[9] *Tercon Industrial* does not assist CLAC in these applications. In that case, the *lis* between the parties was a certification application, hence the reference by the Board to the issue of whether the proposed intervenors had applied for bargaining rights with respect to the employees in question. In this phase of this case, the successorship applications, the *lis* between the parties is the relationship among the various named employers.

[10] The Board has also considered the following passage from *Evraz Wasco Pipe Protection Corp. (Re)*, [2017] S.L.R.B.D. No. 3 in determining this issue:

> *[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.*

[11] The Board has discretion whether to grant intervenor status. One of the issues for the Board to consider in deciding whether to exercise its discretion to grant CLAC intervention rights is the potential for CLAC to assist the Board (by making a valuable contribution or by providing a different perspective). CLAC provided no evidence or argument on this point. They made no attempt to satisfy the Board that they would make a valuable contribution or provide a different perspective. They have not suggested that they have any evidence to provide, or that their perspective would be different from Brand, Safway and Aluma.

[12] The test for an applicant for direct interest intervenor status to meet is whether "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" (*JVD Mill Services*, para 13). CLAC does not have a legal right to represent Brand's employees. As it acknowledges in its Briefs of Arguments, it is seeking to obtain those rights in its Application for Bargaining Rights. Although it is keenly interested in the outcome of the successorship applications, it cannot be said that it has a direct interest in those applications. The Board exercises its discretion to dismiss CLAC's Applications for Intervention.

[13] Orders will issue dismissing the applications for direct interest intervenor status by Construction Workers Union CLAC Local 151 in the Applications for Employer Successorship filed as LRB Files Nos. 049-18 & 052-18.

[14] This is a unanimous decision of the Board.

Yours truly,

Susan C. Amrud, Q.C.
Chairperson