UNITED STEELWORKERS OF AMERICA, LOCAL 5917, Applicant v. ARCH TRANSCO LTD, operating as Regina Cabs and BUFFALO CABS LTD. Respondents

LRB File No. 209-17; April 20, 2018

Chairperson, Kenneth G. Love Q.C.; Members Aina Kagis and Ken Ahl
This decision has been completed pursuant to section 6-94 of *The Saskatchewan Employment Act*

For the Applicant:	Heather M. Jensen
For the Respondent Arch Transco Ltd:	Robert Frost-Hinz
For the Respondent Buffalo Cabs Ltd:	Michael Phillips

Common Employer – Section 6-20 of *The Saskatchewan Employment Act* – Board reviews and confirms factors to be considered by Board in making declaration of a common employer.

Common Employer – Board reviews factors to determine if declaration of common employer warranted. Board finds that not all factors met. Declaration of Common Employer denied.

Common Employer - Board reviews and confirms that declaration involving common employer must serve labour relations purpose and is designed to prevent erosion of bargaining rights, not extend those rights.

Common Employer – Board confirms that grant of Common Employer declaration is discretionary.

REASONS FOR DECISION

Background:

[1] The United Steelworkers of America, Local 5917 (the "Union") applied to the Board for a declaration pursuant to section 6-1(1)(i) and section 6-20 of *The Saskatchewan*

Employment Act (the "*SEA*") that Arch Transco Ltd, operating as Regina Cabs "Regina Cabs") and Buffalo Cabs Ltd. ("Buffalo") are one employer for the purposes of Part VI of the *SEA*.

[2] In addition to the common employer declaration sought, the Union also requested that these Reasons be posted in the workplace and that all taxi drivers operating under the Regina Cabs banner be notified through the Regina Cabs dispatch system of the outcome of the proceedings.

[3] The Union also raised an Unfair Labour Practice issue concerning the employer's treatment of Mr. Muhammed Ameer and Mr. Farhan Javed related to the termination of Ameer's lease agreement with Buffalo Cabs and Mr. Javed's de-authorization from driving Mr. Ameer's leased taxi. Regina Cabs and Buffalo requested that the Board defer consideration of these issues, pending the hearing of grievances on essentially the same facts by an arbitrator, pursuant to section 6-111(1)(l) of the *SEA*. After hearing argument from the parties in respect of this deferral request, the Board allowed the application for deferral and did not, therefore, deal with this issue pending the outcome of arbitration proceedings.

[4] For the reasons which follow, we decline to make the declaration sought by the Union.

Facts:

[5] The Board heard from several witnesses for the Union, being Ms. Leslie McNabb, an employee of the Union, Mr. Idnan Bajwa, a taxi driver, and Mr. Muhammed Ameer, a taxi driver who, at one time leased a taxi licence from Buffalo. Ms. Sandra Archibald testified on behalf of both Regina Cabs and Buffalo. Testimony from those witnesses established the following facts.

[6] Regina Cabs was incorporated on November 1, 1981. The Saskatchewan Corporate Registry search filed by the Union shows the nature of business as being "Cab Services Car Wash & Gas Bar Facilities. Buffalo was incorporated on April 27, 1976. The Saskatchewan Corporate Registry search filed by the Union shows the nature of business as being "Taxi Company".

[7] The physical and mailing addresses for Regina Cabs is set out on the Corporate Registry Search as being 3405 Saskatchewan Drive, Regina, SK. The physical and mailing

addresses for Buffalo is set out on the Corporate Registry Search as being 3534 McCourt Bay, Regina, SK.

[8] The Shareholders of Regina Cabs are Barrie James Archibald, who holds 68 Class A shares and 68,900 0COM shares and Margaret Archibald who holds 31 Class D shares. Only the Class A and Class D shares have voting rights attached to them. Barrie James Archibald is the President and Secretary-Treasurer of Regina Cabs. He is also the sole director.

[9] The Shareholder of Buffalo is the Estate of Margaret Archibald[1], who holds 2 Common shares, which shares have voting rights. No officers are specified on the Corporate Registry Search, but Barrie James Archibald is sole director of Regina Cabs.

Testimony of Sandra Archibald

[10] Sandra Archibald is the spouse of Barrie James Archibald. She provides management services to both Regina Cabs and Buffalo under contract. Ms. Archibald was described by Leslie McNabb in her testimony as being "the face of everything". Ms. McNabb testified that she conducted union negotiations with Ms. Archibald when the Union was certified to represent taxi drivers and single plate owners/leases operating through Regina Cabs.

[11] Ms. Archibald testified on behalf of both Regina Cabs and Buffalo. She testified that Regina Cabs had been in operation in Regina since the late 1930s. She testified that she had been the manager for Regina Cabs for 20 years and was responsible for the day to day operations of the business. She testified that 45 taxi licences were operated through the dispatch services of Regina Cabs.

[12] Ms. Archibald testified that she was involved in union negotiations and was also involved in discussions with the City of Regina concerning the taxi industry and the issuance by the City of Regina of "seasonal" licences. She deposed that she reported to Barrie Archibald. She also testified that approximately 15 office administration employees and supervisors reported to her.

[1] The Corporate Profile Report U-4, dated June 16, 2017 noted the shareholder as Barrie Archibald. The Corporate Profile Report E-3 noted the shareholder as The Estate of Margaret Archibald. In her testimony, Ms. Archibald advised that Exhibit U-4 was in error and that error was corrected by a subsequent filing, as noted in exhibit E-3. She also testified that Barrie Archibald was the beneficiary of the Estate of Margaret Archibald.

[13] Ms. Archibald described the process whereby drivers obtained credentials to drive a taxi for Regina Cabs as follows:

> **1.** A person wishing to drive a taxi would first obtain a class 4 licence from SGI.
>
> **2.** Once the class 4 licence had been obtained, that person could then apply to the City of Regina, under the Taxi Bylaw[2], for a driving badge.
>
> **3.** Once a driving badge had been obtained, the person could then apply to a taxi operator to be a driver for that operator. The taxi operator was responsible for any training necessary for the operation of the taxi in accordance with the dispatch system.
>
> **4.** Once the person has been trained, they can then be insured under the Regina Cabs liability policy and can be given log in credentials and activated on the dispatch system as a driver.

[14] Ms. Archibald also testified concerning the operation of taxis by owner of taxi licences and by persons who leased taxi licences from persons who did not themselves operate the taxi. In her testimony she noted:

> 1. Taxi drivers do not pay any fees for dispatch services to Regina Cabs. All such fees are paid by the operators (either owners or lease operators). A driver would pay a rental fee to the owner or lease operator for the use of the taxi while the driver is operating the taxi.
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> 2. Owner/operators are responsible to purchase their own vehicle for use as a taxi in accordance with theTaxi Bylaw and to then outfit it as required for the dispatch system under which the taxi will operate.
>
> 3. Owner/operators are free to choose which taxi dispatch they will operate under for dispatch services.

[2] The Taxi Bylaw, 1994 City of Regina Bylaw No. 9635

4. The Taxi Bylaw provides[3] for the issuance of Taxicab Brokers Licences. Under the bylaw, all taxis must be affiliated with a Taxicab Broker to be operated in the City of Regina. Additionally, the Taxi Bylaw imposes reporting responsibilities on the Taxicab Brokers in respect to the operation of taxis affiliated with that Taxicab Broker.

5. In addition to operation of a dispatch service for affiliated Owner/Operator, Taxicab Brokers will also facilitate the optimization of taxi licences by arranging for leases of licences as well as the purchase and sale of licences.

6. Both Regina Cabs and Buffalo hold Taxicab Brokers licences issued by the City of Regina.

7. Owner/Operators will normally engage another person or persons to drive their taxi in addition to themselves, if they also drive. Most Owner/Operators operate their taxis 24 hours a day.

8. Owner/Operators receive fares from customers when they are driving and also receive rental fees from drivers engaged to operate their taxi. The Owner/Operator then pays fees to the dispatch company. The Dispatch Company also provides service in collection of credit card payments and charge accounts.

9. Regina Cabs operates a dispatch system. Buffalo does not. She testified that Buffalo does not have much day to day activity. She testified that Buffalo was only engaged in the leasing of its taxi licences. She testified that these licences must be operated through Regina Cabs.

[15] Ms. Archibald testified that Buffalo owned 11 taxi licences which it leases out to operators. She also testified that Regina Cabs owned no permanent taxi licences, but had 45 licences affiliated with Regina Cabs and leased out 3 seasonal licences. Buffalo also had 3 seasonal licences which were leased out. She also testified that she and her son both own 1

[3] See section 22-24.22

taxi licence, which licences are leased out. In addition to providing services to Regina Cabs and Buffalo, she testified that she also provided services to other licence owners for a small fee.

Testimony of Leslie McNabb

[16] Ms. McNabb testified concerning the Union's involvement in lobbying the City of Regina for changes to the manner in which seasonal licence plates were allocated. In the past, seasonal licence plates were issued to Taxi Brokers for their use during the winter season. The Union lobbied for a change which would allow drivers to obtain seasonal licences through a lottery system. The Union's lobbying efforts were successful and a portion of the seasonal licences were allocated through this lottery system.

[17] Through her testimony, Ms. McNabb also provided copies of a form of lease utilized by Frie Taxi Ltd. of Saskatoon, Saskatchewan[4] as well as a copy of a lease between Buffalo Cabs and Mohammad Ameer.[5] These documents were entered as part of the arbitration proceedings between Regina Cabs and Mr. Ameer and in respect of which the Board has deferred its examination of an alleged unfair labour practice pending a determination in those arbitration proceedings. Several other exhibits produced through this witness also related to that grievance proceeding and the possible unfair labour practice application.

[18] Ms. McNabb testified that any complaints made by the taxi customers under the bylaw or otherwise would be responded to by Regina Cabs. She testified that she dealt exclusively with Sandra Archibald and has never had any involvement with Barrie Archibald. She referred to Sandra Archibald as the "boss".

Testimony of Idnan Bajwa

[19] Mr. Bajwa was a driver for one of the Owner/Operators affiliated with Regina Cabs. His testimony related primarily to the alleged unfair labour practice which has been deferred by the Board pending conclusion of arbitration proceedings under the collective agreement.

[4] Exhibit U-5
[5] Exhibit U-6

Testimony of Muhammed Ameer

[20] Mr. Ameer's testimony was also primarily with respect to the issues deferred by the Board. He entered into a lease[6] of a taxi licence with Buffalo, which lease was subsequently terminated by Sandra Archibald acting on behalf of Buffalo. Mr. Ameer testified that he had never dealt with Barrie Archibald, only Sandra Archibald in respect of the lease.

[21] Mr. Ameer also testified that when he paid his lease fees, he received a receipt for those payments from Regina Cabs.[7] He also entered into evidence a letter dated March 10, 2015[8] wherein Regina Cabs advised it intended to cease dispatch services effective August 31, 2015.

Relevant statutory provision:

[22] The relevant statutory provisions are as follows:

> *6-1(1)(i) "employer" means:*
>
> *(i) an employer who customarily or actually employs three or more employees;*
>
> *(ii) an employer who employs fewer than three employees if at least one of the employees is a member of a union that includes among its membership employees of more than one employer; or*
>
> *(iii) with respect to any employees of a contractor who supplies the services of the employees for or on behalf of a principal pursuant to the terms of any contract entered into by the contractor or principal, the contractor or principal as the board may determine for the purposes of this Part;*
>
> *. . .*
>
> *6-20(1) On the application of any union or employer affected, the board may, by order, declare more than one corporation, partnership, individual or association to be one employer for the purposes of this Part if, in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by one person through the different corporations, partnerships, individuals or associations.*
>
> *(2) Subsection (1) applies only to corporations, partnerships, individuals or associations that have common control or direction on or after October 28, 1994.*

[6] Exhibit U-6
[7] Exhibit U-10
[8] Exhibit U-13

Union's Arguments:

[23] All counsel were in agreement that the criteria utilized by the Board in analysis of common employer applications were set out by the Board in its decision in *United Steelworkers v. Comfort Cabs et al.*[9]. The Union argued that Buffalo and Regina Cabs were sufficiently related through activities in Regina Cabs to be declared a common employer pursuant to section 6-20 of the *SEA*. The Union argued that Ms. Archibald's testimony reflected a deep integration of Buffalo's and Regina Cabs' operations.

[24] The Union argued that Buffalo and Regina Cabs were under common control and direction. Both have common management, shareholders, and directors. The Union also argued that Buffalo and Regina Cabs are treated by external bodies like the City of Regina as a single entity. Both have broker's licences, and are entitled to provide dispatch services, but do not do so. Only Regina Cabs provides dispatch services.

[25] The Union argued that there was a labour relations purpose in making the common employer declaration. The Union also argued that the changes to the saving section in section 6-20(2) had changed under the *SEA* and the change materially changed the interpretation of that provision.

[26] The Union also sought to distinguish the present case from the fact situation determined by the Board in *United Steelworkers v. Comfort Cabs et al.*. It argued that the lease terms reviewed in the Comfort Cabs decision are different. Also, it noted that the Comfort Cabs decision was based upon the Board's view that a declaration of common employer would not serve a valid sufficient labour relations purpose, which was not the case here.

Regina Cabs' Arguments:

[27] Regina Cabs argued that the Board had already determined a similar issue in *United Steelworkers v. Comfort Cabs et al.* and should be bound by that decision. It argued that the Board should not exercise its discretion so as to make the requested declaration.

[9] 2015 CanLII 19986 (SK LRB)

[28] Regina Cabs also argued that the requested declaration was an expansion of the certification order not a protection of that order, relying upon *Regina (City) Re:*[10]. Additionally, it argued that the granting of a common employer declaration was discretionary. It argued the Board should exercise its discretion against making the requested declaration, citing the Board's decision in *International Brotherhood of Electrical Workers, Local 529 v. Merick Contractors Inc. et al.*[11].

[29] Regina Cabs also argued that the factors established by the Board for the granting of a common employer declaration had not been met, citing *Edgewood Forest Products Inc. v. United Steelworkers Union*[12]

[30] Finally, Regina Cabs argued that section 6-20(2) was a bar to the Board making the requested common employer declaration. They noted that both corporations have been in existence since prior to October 28, 1994. Any common ownership or direction would have existed prior to that date.

Buffalo's Arguments:

[31] Buffalo adopted the arguments of Regina Cabs as noted above. Buffalo also cited *United Steelworkers v. Comfort Cabs et al* as the governing authority with respect to this issue. Additionally, it argued that there was no valid and sufficient labour relations purpose for making the requested declaration.

Analysis:

[32] The Board's decision in *United Steelworkers v. Comfort Cabs et al.* was taken for judicial review before Mr. Justice Mills. The Court upheld the decision of the Board.[13] An appeal was taken from Mr. Justice Mills decision to the Court of Appeal for Saskatchewan who affirmed[14] Mr. Justice Mills decision

[33] Mr. Justice Whitmore delivered the unanimous decision of the Court of Appeal. His outline of the common employer application in that case begins a paragraph 19 of his

[10] [1999] S.L.R.B.D. No. 21, 54 C.LR.B.R. (2d) 161, LRB File No. 363-97
[11] 2015 CanLII 19981 (SK LRB)
[12] 2013 CanLII 15714 (SK LRB)
[13] 2016 SKQB 171.
[14] 2017 SKCA 45

decision. In that paragraph, he recognized and confirmed the four factors identified by the Board in its decision[15] which were prerequisites for a common employer declaration. Those factors were set out as follows:

> *(a) "the application must involve more than one corporation, partnership, individual or association and at least one of those entities must be a certified employer";*
>
> *(b) "the subject entities must be 'sufficiently related' to a unionized employer through their involvement in associated or related businesses, undertakings or other activities";*
>
> *(c) "the subject entities must be operated under 'common control and direction'; and*
>
> *(d) "the designation must serve a valid and sufficient labour relations purpose, interest or goal."*

[34] In the Board's decision in *Comfort Cabs*, the Board, at paragraph [62] cautioned as follows with respect to these criteria:

> *[62] It is very important to be mindful that an applicant trade union must satisfy all of the above criteria. For example, even if we are satisfied that the subject companies are sufficiently related and operating under common control and direction, the question still remains as to whether or not the Board should exercise its discretion to make a common employer declaration. Such declarations are not automatic because, by definition, a common employer declaration involves an expansion of the applicant union's collective bargaining rights to one or more employers that were not previously named in its certification Order. Thus, applicants seeking a common employer declaration must not only satisfy the first three (3) prerequisites but they must also satisfy the Board that there is a compelling reason for granting the declaration. In Wayne Bus, supra, this requirement was described as follows:*
>
> > *However, once these requirements have been fulfilled the Board must determine whether to exercise its discretion to treat entities as one employer for purposes of the Act. This discretion will be exercised where there is a **valid** and **sufficient** labour relations value, interest or goal contemplated by the Act that will be served by making a single employer declaration. Absent such a purpose, the discretion to make the declaration will not be exercised. (**Emphasis added**)*

[35] In this case we are also asked to consider the impact of section 6-20(2) of the *SEA.*

[15] At paragraph 61 of the Board's decision

Is One or More Entities Involved, One of Which is Certified?

[36] In *International Brotherhood of Electrical Workers, Local 529 v. Merick Contractors Inc. et al.*[16], the Board found that the common ownership provisions of section 6-20 would have been engaged except that neither entity was certified and required to bargain collectively with the union. That is not the case here. Regina Cabs is the subject of a certification Order[17] by the Board. That Order requires Arch Transco Ltd. operating as Regina Cabs to bargain collectively with the Union on behalf of those employees identified in the order. As one entity is certified a common employer declaration could be made by the Board.

Are the Entities "Sufficiently Related"?

[37] At paragraph [65] of the *Comfort Cabs* decision, the Board described the purpose for the requirement to show that parties are "sufficiently related" so as to justify a common employer declaration. The Board said:

> *The second requirement in the exercise of our discretion is that the reason for doing so must be "sufficient"; meaning that the benefits of making a common employer declaration must outweigh the mischief such declaration is likely to cause. In making a common employer declaration, labour boards must balance potentially competing interests. In the first instance, labour boards must be mindful of the need to protect and preserve the collective bargaining rights of organized employees by not permitting the erosion of their rights. On the other hand, labour boards must also be careful not to unilaterally impose collective bargaining upon a group of employees who may not wish to be represented by a trade union. This Board described this limitation on the exercise of its discretion in North American Construction Group Inc.*[18]*, supra, as follows:*
>
> > *[65] While the purpose to be served by a common employer declaration is the protection and preservation of established collective bargaining rights, because of the potential for imposing collective bargaining upon a group of employees who may not wish to be represented, a trade union must move to enforce its rights with reasonable dispatch if it believes that an erosion of its bargaining rights is occurring because of the operations of a*

[16] Supra Note 11
[17] LRB File No. 262-14
[18] See also: *Farquhar Construction Limited v. United Brotherhood of Carpenters and Joiners of America, Local 2486*, [1979] 1 Can L.R.B.R. 72, [1978] O.L.R.B. Rep. Oct. 914, 1978 CanLII 595 (ON LRB).

> *suspected common or related employer. Simply put, the longer the delay and the greater the number of employees that could potentially be unilaterally swept in, the more likely a common employer declaration will do more labour relations harm than good.*
>
> . . .
>
> *[67] Even if we were satisfied that the corporate reorganization within the North American Group of Companies had the [e]ffect of eroding the scope of the Union's certification Order (which we weren't), in our opinion, there has been too much delay on the part of the Union i[n] seeking a common employer declaration with respect to NA Services Inc. and there is a not-insignificant risk that a common employer designation would impose collective bargaining upon a group of new employees who may not wish to be represented by the Union. The Union has been aware that NA Services Inc. was operating in Saskatchewan on a non-union basis since 2009. The Union now seeks to assert bargaining rights in respect of a group of employees who has been unrepresented for a period of over three (3) years. In these circumstances, we are not satisfied that it would be a sound exercise of our discretion to treat NA Caisson Ltd. and NA Services Inc. as one (1) employer for the purposes of collective bargaining. If the Union wishes bargaining rights for the Employees of NA Services Inc., it must tender evidence of support from these affected employees with its amendment application (which it hasn't) or it must proceed by way of the normal certification procedures.*

[38] The evidence shows that both Regina Cabs and Buffalo are closely connected. They have common shareholders, directors and officers. They are both managed by Ms. Sandra Archibald who reports to her husband, Barrie Archibald with respect to both operations. In that regard, they are also under common control and direction which is required by criteria No. 3 above.

[39] However, the analysis required is more detailed than that. In order for there to be a sufficient relationship, there must also be real or imminent erosion of bargaining rights. We have no evidence that Buffalo has any employees. They do not operate a dispatch service for taxis and we have no evidence to suggest that they will in the near future or at any time commence operation of a taxi dispatch service. The evidence from Sandra Archibald was that Buffalo's business consisted of arranging leases of its 11 taxi licences through Regina Cabs.

Any operators or drivers driving under those licences, if within the prescribed unit of employees found by the Board to be appropriate for collective bargaining, would be covered by both the certification order and the collective agreement.

[40] In the *Comfort Cabs* decision, the Union made the argument that the declaration was necessary because they were of the view that the terms of taxi licence leases should be subject to the collective bargaining process. The Board disagreed at paragraph [55] of its decision. It said:

> *For these reasons, we find that Comfort Cabs was not required to bargain collectively with the Union regarding the terms and conditions of taxi plate leases. In our opinion, the fact that the Union is not able to negotiate with respect to some facets of their members' participation in the taxi industry is the practical consequence of the awkward fit of that industry into the world of collective bargaining. It is not indicative of misconduct on the part of Comfort Cabs. As a consequence, we find that Comfort Cabs did not violate The Saskatchewan Employment Act in its conduct at the bargaining table. Furthermore, because of our conclusion that taxi plate leases do not form part of the employment relationship, we find that Comfort Cabs did not violate the statutory freeze when it provided (on behalf of the respondent franchise owners) draft lease agreements to lease operators without first negotiating the terms of these agreements with the Union.*

[41] Given that the negotiation of taxi licence leases is not subject to collective bargaining, we can see no necessity or rationale for a declaration of common employer in this case. There is no business activity conducted by Regina Cabs which is also being conducted by Buffalo. Buffalo does not operate a taxi dispatch service and does not, based upon the evidence we have employ any taxi drivers or operators who are covered by the certification Order.

[42] As noted by the Board in *Comfort Cabs*, "taxi plates are intangible assets that have a substantial capital value"[19]. It went on to say:

> *…The value of a taxi plate is largely a function of its scarcity, its transferability, and the stream of income that it can reasonably be expected to generate. The evidence established that approximately ten (10) members of the Union's bargaining unit were owner/operators of single taxi plates. If the Union seeks to represent lease operators in their dealings with franchise owners, the status of those taxi drivers who own taxi plates within the bargaining unit is an issue that may need to be re-examined by this Board. However, this is a determination that is better left for another day.*

[19] See paragraph [56]

[43] Buffalo is engaged in the monetization of the value of the 11 taxi licences which it owns, not the operation of a taxi dispatch business, which is the role of Regina Cabs who holds no licences apart from seasonal licences awarded as a part of the lottery process for those licences. In short, they are not in the same business if we strip out any involvement with respect to potential negotiation of taxi licence leases.

[44] We cannot, therefore, conclude that the two entities are sufficiently related so as to justify a common employer declaration in this case.

Are the Entities Under Common Control and Direction?

[45] We have answered this question in paragraph [38] above.

Is there a Valid and Sufficient Labour Relations Purpose, Interest or Goal.

[46] In our view, the evidence did not support a finding of a sufficient labour relations purpose, interest or goal in making the declaration sought. As noted above, the purpose for the common employer declaration is to prevent actual or imminent erosion of the Union's bargaining rights, not to expand those bargaining rights. There is no evidence of any erosion of the Union's bargaining rights, let alone an imminent erosion of those rights. The underlying purpose, in our opinion appears to be a collateral attack on the conclusions reached by the Board in *Comfort Cabs* and the negotiability of taxi licence leases under the collective agreement. This is not a proper purpose for a common employer declaration as it seeks to expand rather than protect the Union's bargaining rights.

[47] The Board dealt with a similar issue in *Comfort Cabs* at paragraph [67]. The Board said:

> *Rather, the purpose of the Union's common employer application was an attempt to bring the respondent franchise owners to the bargaining table so that the Union could negotiate with respect to the terms and conditions of taxi plate leases. However, there are a number of problems with the Union's desire to do so. Firstly, as we have already concluded, the leasing of a taxi plate is not an act of employment and thus not properly the subject of collective bargaining. Secondly, the Union is only seeking to bring three (3) franchise owners to the table. While the respondent franchise owners control a significant number of the total taxi plates that are associated with Comfort Cabs, they do not represent them all or even a majority of them. As a consequence, even if we granted the Union's request, the terms and conditions of the taxi plate leases negotiated by most franchise owners would still be beyond the Union's reach at the bargaining table.*

> *Even assuming that taxi plate leases are properly the subject of collective bargaining (an assumption with which we disagree), unless the Union is prepared to name all franchise owners as was done in the Diamond Taxicab Association (Toronto) case, a common employer declaration would be ineffectual. In our opinion, even if we granted the Union's request, it would not achieve the objective desired by the Union; namely, permitting the Union to bargain with respect to the taxi plate leases that are operated under the Comfort Cabs banner.*

[48] Those comments are also appropriate here. In this case, the Union seeks to add an entity owning 11 taxi licences into the collective bargaining fold. The evidence established that there were at least 45 taxi licences being operated through Regina Cabs. That would still leave 34 taxi licences for which no bargaining would be possible.

[49] It is also important to remember that the issuance of a common employer declaration is discretionary. Even if we had found that Regina Cabs and Buffalo were sufficiently related to justify the issuance of a common employer declaration, we would have declined to do so on the basis that there is no sufficient labour relations purpose in doing so. As noted above, there was no evidence to suggest an erosion (imminent or not) of the Union's bargaining rights. Nothing in the Union's evidence or argument raised, in our opinion, any labour relations justification for the requested declaration, especially if the issue of negotiation of taxi licence leases is settled.

[50] In *IBEW v. Merick Contractors Inc. et al.*[20] the Board quoted former chairperson Hamilton of the Manitoba Labour Relations Board in respect to the Board's discretion to make a common employer declaration. In *UFCW. Local 832 v. Sun Gro Horticulture Canada Ltd. and F.P.M. Peat Moss Co.*[21] he said at paragraph 6(d)

> *(d) The sole issue before the Board is whether it ought to exercise its acknowledged discretion under s. 59(1). In this regard, the jurisprudence of labour boards across Canada has consistently held that there must be a proper labour relations purpose for the issuance of a common employer declaration. It is accepted that the overriding purpose of such a declaration is to prevent an anticipated erosion of existing bargaining rights. Common employer declarations cannot be used to expand bargaining rights. The anticipated erosion of bargaining rights must be real and go beyond a speculation as to what might possibly occur. Therefore, an applicant must demonstrate that there is either an actual or potential erosion of [existing] bargaining rights (see Seamless Industrial Floor Coatings Ltd, and Marble, Tile & Terrazzo Local 31 92012) 211 CLRBR (2d) 310, [2012] O.L.R.D. No. 792, at paras. 15 and 16). There are numerous authorities confirming these principles. Their disagreement relates to how these principles apply to the facts of this case.*

[20] Supra note 11.
[21] 249 C.L.R.B.R. (2d) 279 at p. 283.

[51] We therefore conclude that the declaration should not be made. This is a unanimous decision of the Board.

[52] Given our conclusion above, there is no necessity to deal with the issue of section 6-20(2) of the *SEA*

DATED at Regina, Saskatchewan, this 20th day of April, 2018.

LABOUR RELATIONS BOARD

Kenneth G. Love Q.C.
Chairperson