INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS AND ASBESTOS WORKERS, LOCAL 119, Applicant v BOOK INSULATIONS LTD., Respondent and HALLBOOK ENTERPRISES LTD., Respondent

LRB File No. 212-18; September 20, 2019

Vice-Chairperson, Barbara Mysko; Board Members: Mike Wainwright and Bert Ottenson

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Counsel for the Respondent Book Insulations Ltd.:	Thomas W.R. Ross
Counsel for Hallbook Enterprises Ltd.:	Thomas W.R. Ross

Common Employer Application – section 6-79 of *The Saskatchewan Employment Act* – Businesses performing insulation work – Serving union and non-union "markets".

Board reviews factors related to the exercise of its discretion – Businesses are related but not carried on under common control and direction as contemplated by section 6-79 – Board's discretion is exercised only after three prerequisites are satisfied – Given finding on three prerequisites, it is unnecessary to exercise discretion.

Statutory interpretation – Hansard transcripts – Reliability and weight – *The Construction Industry Labour Relations Amendment Act, 2000* – Limited evidence of debates does not override clear requirements set out in the Act.

REASONS FOR DECISION

Background:

[1] Barbara Mysko, Vice-Chairperson: These the Board's Reasons for Decision in relation to a Common Employer Application, filed with the Board on October 23, 2018 ["Application"]. The International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 [the "Union"] requests an Order pursuant to subsection 6-79(1) of *The Saskatchewan Employment Act* ["Act"], declaring the Respondents, Book Insulations Ltd. and Hallbook Enterprises Ltd. to be common employers for the purposes of the Act ["Book" and "Hallbook"].

[2] The Union is the certified bargaining agent for unionized members of the Insulator Trade Division, as set out by Ministerial Order, dated December 2, 1992. Pursuant to an Order, dated February 2, 2001, the Union is the certified bargaining agent for a unit of insulators, insulator apprentices, and insulator foremen, employed by Book in the Province of Saskatchewan. Book operates as a unionized contractor in Alberta, Saskatchewan, and elsewhere. It commenced its work in 1983. Hallbook has operated as a non-unionized contractor since 2004 or 2005. Both contractors perform insulation work, but suggest that they serve different markets in performing that work.

[3] The Union alleges that Book and Hallbook are engaged in associated and related businesses and undertakings that are carried on under common control and direction. Hallbook's performance of industrial insulation work in Saskatchewan arose for the purpose of avoiding and defeating Book's collective bargaining obligations, including its obligation to hire insulators through the hiring hall. An interchange of employees of one business with those of the other business has taken place.

[4] In reply, both Respondents acknowledge a shareholder relationship but suggest that they operate under separate management at separate facilities with separate equipment, management, marketing, and resources. The Respondents argue that a common employer declaration would be inappropriate and ask that the Application be dismissed.

Evidence:

[5] The Union filed corporate registry searches that disclose relationships among the directors and shareholders between Book and Hallbook. Book's directors are Janice Book and William Book, who are husband and wife. Hallbook's sole director is Janice Book. 52% of Book's shares are held by a numbered company owned by William Book. Book and Hallbook have four common shareholders with 12% shareholdings each. These shareholdings are owned by corporations directed by Travis Book, Dean Pearson, Barry Pearson, and Pat Pearson. Travis Book is the son of William Book and Janice Book. The three Pearsons are brothers.

[6] The parties agreed to file a brief agreed statement of facts, disclosing that Dale Farrus ["Farrus"], an employee of Book, performed work for Hallbook at Key Lake, Saskatchewan in 2012. Farrus worked in a management role, and not on the tools. He was paid for that work by Book in accordance with the Union's collective agreement. As a result of this, the Union charged

Farrus with violations of the constitution and bylaws. Farrus was found guilty by the General Executive Board and fined.

[7] Rudder is the Business Manager for the Local. He had heard through the Alberta-based Local that Book and Hallbook were “double-breasted”, are one and the same, and had operated out of the same office when they started. Rudder was not personally aware of the common premises. He believed that the entities shared a mailing address at one point.

[8] Rudder visited the Chinook site for the first time in October 2018. On site, there were insulator workers donning hardhats with the initials “HB”. A foreman advised Rudder that Hallbook was performing the insulating work. Rudder later performed a corporate search.

[9] The Chinook work could have been performed by Book, but Rudder had never received a manpower request or an enabling clause. He had no knowledge of whether the bidding process was by invitation only.

[10] The Union has not attempted to organize the Hallbook employees. It seemed that the first and the fastest course of action was to get this Application before the Board for a determination. Organizing was difficult due to challenges with obtaining site access.

[11] A source working for Hallbook contacted the Union to complain about Union members working on the Chinook site. In the course of the conversation, this source advised the Union that a horse trailer on site was owned by Book. The Union sent the organizer out to take photos of the license plate, and the horse trailer was gone.

[12] Shayne Chambers [“Chambers”] is the Union’s organizer. Chambers visited the Chinook site in late 2018. He was asked to attend to investigate Union members who were allegedly working on site without authorization and thereby violating the Union’s constitutions and bylaws. While on site, Chambers concluded that Hallbook was performing work typical of a mechanical insulator in various areas. Chambers prepared a report as a result of the site visit in which he recorded his observations of three Union members on site, assigning work to other employees. He later contacted Rudder to advise of his visual identification of these employees.

[13] While Chambers was on site, he observed the trailer, which was being used by Hallbook employees, and was informed by a member that it belonged to Hallbook. After being asked a second time by counsel, Chambers repeated that he was informed by a member that the trailer belonged to Hallbook.

[14] When asked about organizing the workplace at Hallbook, Chambers explained that he was still gathering information on the scope of Hallbook's work, and that effort was ongoing. The possibility of organizing was put on the backburner pending the outcome of this hearing. He had attended some of the sites where Hallbook performed work, but it was hard to obtain access unless the Union was working on site.

[15] Travis Book has worked as Hallbook's General Manager since 2009, managing Hallbook's daily operations. Hallbook is a mechanical insulation contractor that performs work on industrial and commercial sites, predominantly in Alberta. It has performed six industrial jobs and four commercial jobs in Saskatchewan, out of a total of about 344 jobs. The Chinook job was the largest by far, of the Saskatchewan jobs. There were 15-30 people on site. In Saskatchewan, Hallbook bids primarily on industrial jobs. Book bids on union work. Hallbook bids on non-union work.

[16] In 2007, the Hallbook office was on Atchison. Hallbook moved to Spruce Grove in or around 2011. In or around 2014, Hallbook moved to the Saskatchewan Drive location.

[17] Travis Book has no involvement in managing Book. Pat Pearson, Book's General Manager, has no involvement with Hallbook. Barry Pearson is Hallbook's Project Manager. Book's Project Manager, Dean Pearson, has no involvement in Hallbook. William Book makes no decisions, and has no consultative role with respect to Hallbook. No one from Book assists in the business development work for Hallbook.

[18] Barry Pearson, Hallbook's Project Manager, manages Hallbook's field crew. He hires through word of mouth or through Kijiji ads. Although he tries to hire on a long-term basis, this is challenging in the absence of large projects on the horizon. There is no interchange of employees. To Travis Book's knowledge, no one from Hallbook has left to work for Book.

[19] In his testimony, Travis Book testified to the following, which the Board has organized by category for ease of reference and analysis:

a. Type of work - Hallbook performs glycol work, which is not viewed as insulators' work. Hallbook does no maintenance work.
b. Associations - Hallbook has its own active memberships in relevant associations.
c. Marketing - The websites are different. Hallbook's signature color is red. The logo and branding are different. Official hardhats are red.

d. Safety - There is no shared management of safety. The safety policies are similar, but the regulatory requirements make similarity unavoidable. Book and Hallbook do not rely on each other's safety experience in marketing themselves to clients.
e. Banking and finance – There are separate bank accounts, separate payroll, and separate payroll services. There are no shared services in administration or finance.
f. Human Resources - Travis Book manages human resource issues with no involvement from Book. The two entities have different benefit plans for staff.
g. Staff transfer - Two employees of Hallbook, who answered a job ad, were members of the Union, and forfeited their relationship with the Union. No tradespeople have been exchanged between the entities. Barry Pearson worked for Book before Travis Book's time. He was seeking employment at the time that he was hired.
h. Insurance - There are separate Workers' Compensation Board ["WCB"] accounts. Hallbook does not rely on Book's history for WCB insurance purposes. Other insurance plans are separate.
i. Business development - Hallbook bids on jobs through requests for quotations. It does not draw on information from Book for estimating jobs. Hallbook and Book do not jointly meet with clients, do not sub-contract work to each other, do not bid on the same work, and do not discuss bids.
j. Physical premises - Hallbook rents space on the main floor of Book's building. Book is located upstairs. The lease was based on the going rate online. Travis Book did not recall ever having shared space with Hallbook. Hallbook does not have physical premises in Saskatchewan.
k. Communications – Hallbook and Book have separate phone and internet. There is no way to transfer calls.
l. Equipment – The companies do not lease equipment to each other. Book does not use Hallbook's yard.
m. Suppliers - There are no mutual volume benefits from suppliers.
n. Shares - There are two sets of dividends.

[20] Pat Pearson has been Book's General Manager since 2014. He manages Book's daily operations, including invoicing, payroll, and estimates. 95% of the overall work is industrial. Book is developing the maintenance side of its business, but not in Saskatchewan. In Saskatchewan, Book also performs work on multi-unit residential projects.

[21] William Book is the President, estimator, and head of finance and business development for Book. William Book initiated the shareholding structure and provided the opportunity to own shares to those who have them. No one else was offered shares. William Book has no involvement in Hallbook's operations.

[22] Book's bidding process is by invitation only. Book does not solicit for bids, and so Pat Pearson is generally unaware of a project until an invitation is received. Book bids against other building trades, as opposed to non-union shops, and has chosen not to bid on jobs in Saskatchewan. He is unaware of Hallbook's existing bids at any given time, including in relation to the Chinook project.

[23] In his testimony, Pat Pearson testified to the following, which the Board has organized by category for ease of reference and analysis:

a. Marketing - The website, logo, and hardhats are distinct, in particular due to color.
b. Banking and payroll - All banking accounts are separate. A Book staff member is assigned to payroll.
c. Physical premises - Book owns the building in which its office is located, and leases the space to Hallbook. Book and Hallbook have never shared the same office. Book has no physical premises or assets in Saskatchewan.
d. Benefits - The benefit plans between the two companies are distinct and different.
e. Insurance – Book's insurance is specific to the project on which it is working, and it receives no benefit from Hallbook's insurance ratings.
f. Equipment - Book has a couple of cargo trailers, a couple of trucks, and some small equipment. It owns its own equipment, and does not share equipment with Hallbook.
g. Communications - Phone, computer, and internet are separate.
h. Business development - There are no joint relationships with any customers. Contracts are issued in Book's name only.
i. Management - Book has a separate management team.
j. Human resources - Dean Pearson and William Book deal with labour relations and/or human resources issues.

[24] Book does not hire non-Union tradespeople or encourage people to apply for Hallbook. About 20 years ago, Brian Polny, one of the Union members identified by Chambers on the Chinook site, had worked for Book as a helper on a small project. To Pat Pearson's knowledge,

Brian Polny has not worked for Book since that time. Pat Pearson had not heard of the other two individuals. No one other than Book hires, fires, disciplines, or pays their tradespeople.

[25] Pat Pearson resigned his membership with the Union recently. He had been on the withdrawal card for 12 years, but was unaware of the steps.

[26] He has not been in contact with the CLR, nor has he contacted Local 119 to discuss enabling terms. He does not see the need for enabling bids against building trades contractors.

Relevant Statutory Provisions:

[27] The following provisions of the Act are applicable:

> ***6‑65*** *In this Division:*
> *…*
> *(h)* ***"unionized employer"****, subject to section 6‑69, means an employer:*
> *(i) with respect to whom a certification order has been issued for a bargaining unit comprised of unionized employees working in a trade for which a trade division has been established pursuant to section 6‑66; or*
> *(ii) who has recognized a union as the agent to engage in collective bargaining on behalf of unionized employees working in a trade for which a trade division has been established pursuant to section 6‑66.*
>
> ***6‑4****(1) Employees have the right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing.*
>
> *(2) No employee shall unreasonably be denied membership in a union.*
> *…*
>
> ***6‑79****(1) On the application of an employer or a union affected, the board may declare more than one corporation, partnership, individual or association to be one unionized 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 or through those corporations, partnerships, individuals or associations.*
>
> *(2) In exercising its authority pursuant to subsection (1), the board may recognize the practice of non‑unionized employers performing work through unionized subsidiaries.*
>
> *(3) The effect of a declaration pursuant to subsection (1) is that the corporations, partnerships, individuals and associations, on and after the date of the declaration:*
> *(a) constitute a unionized employer in the appropriate trade division;*
> *(b) are bound by a designation of a representative employers' organization; and*
> *(c) are bound by the collective agreement in effect in the trade division.*

(4) The board may make an order granting any additional relief that it considers appropriate if:

(a) the board makes a declaration pursuant to subsection (1); and

(b) in the opinion of the board, the associated or related businesses, undertakings or activities are carried on by or through more than one corporation, partnership, individual or association for the purpose of avoiding:

(i) the effect of a determination of a representative employers' organization with respect to a trade division; or

(ii) a collective agreement that is in effect or that may come into effect between the representative employers' organization and a union.

(5) For the purposes of subsection (4), the burden of proof that the associated or related businesses, undertakings or activities are carried on by or through more than one corporation, partnership, individual or association for a purpose other than a purpose set out in subclause (4)(b)(i) or (ii) is on the corporation, partnership, individual or association.

(6) An order pursuant to subsection (4) may be made effective from a day that is not earlier than the date of the application to the board pursuant to subsection (1).

Analysis:

Onus of Proof

[28] On this Application, the burden of proof is on the Union to demonstrate, through clear, convincing and cogent evidence, that it is more likely than not that the Respondents' businesses, undertakings or other activities are associated or related and are carried on under common control or direction.

[29] The burden shifts to the Respondents for the purpose of subsection 6-79(4). Subsection 6-79(4) allows the Board, if it grants a declaration pursuant to subsection (1), to make an order granting additional relief if it determines that the associated or related businesses are carried on through more than one entity for the purpose of avoiding: the effect of a determination of an REO with respect to a trade division; or a collective agreement that is in effect or that may come into effect between the REO and a union. The Respondents bear the burden of proof to demonstrate that the related businesses are carried on as outlined for a purpose other than as set out in subclause (4)(b)(i) or (ii).

Are the Respondents Common Employers?

[30] The common employer legislation is a powerful, remedial tool, allowing the Board to pierce the corporate veil to prevent the erosion of bargaining rights through the establishment of a related and common non-union entity. A common employer declaration causes employees of the non-union entity to come within the scope of the union's bargaining unit, and employers to be bound by the REO designation and the effective collective agreement in the trade division.

[31] The Board described the purpose of the common employer provision in *International Union of Operating Engineers, Hoisting & Portable & Stationary, Local 870 v North American Construction Group Inc., et.al*., (2014) 234 CLRBR (2d) 168, 2013 CanLII 60719 (SK LRB) ["*North American Construction Group*"]:

> *[60] In response to the complex and often murky realities of corporate organization, most Canadian jurisdiction have enacted legislation that authorizes labour boards to pierce the corporate veil and find that two (2) or more related businesses ought to be treated as one (1) common employer for the purposes of labour relations. Saskatchewan has such a provision for the construction industry in s. 18 of The Construction Industry Labour Relations Act, 1992. Many corporations operate in an associated or related fashion and these corporations may be operated under common direction and control for a variety of legitimate business reasons. However, if the purpose or effect of a corporate organization or reorganization is to avoid collective bargaining obligations (for example, by permitting the transfer of work that would normally be completed by a unionized company to a non-union a related company operated under common direction and control – a practice commonly known as "double breasting"), then this Board has authority pursuant to s. 18 to pierce the corporate veil, so to speak, and declare both employers to be one (1) for the purposes of collective bargaining. The affect of a common employer designation is to cause the employees of both the union and non-union employers to fall within the scope of a trade union's bargaining unit. Obviously, it is a powerful tool granted by the legislature for the purpose of achieving a particular remedial effect.*

[32] This Board has previously identified four prerequisites for a common employer declaration, all of which are to be satisfied before the Board will grant the requested Order:

> 1. *The application must involve more than one corporation, partnership, individual or association and at least one of those entities must be a certified employer.*
>
> 2. *The subject entities must be "sufficiently related" to a unionized employer through their involvement in associated or related businesses, undertakings or other activities.*
>
> 3. *The subject entities must be operated under "common control and direction".*
>
> 4. *The designation must serve a valid and sufficient labour relations purpose, interest or goal. … In other words, there must be a compelling labour relations reason for making the declaration and the benefits of doing so must outweigh the mischief such declaration is likely to cause.*
>
> *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International Union v Comfort Cabs Ltd, 2015 CanLII 19986 (SK LRB) ["Comfort Cabs"], at paragraph 61.*
>
> *[Citations removed]*

[33] For further clarification, the Board in *Amalgamated Transit Union, Local 588 v City of Regina and Wayne Bus Ltd.*, [1999] Sask LRBR 238 (SK LRB) ["*Wayne Bus*"] explained what is involved in deciding the fourth prerequisite:

> *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.*
>
> *Wayne Bus, at paragraph 146.*

[34] If the Board finds that the first three requirements are satisfied, the Board must proceed to assess whether to exercise its discretion to treat the entities as one employer for the purposes of the Act. In deciding whether to exercise its discretion, the Board must consider whether there is a valid and sufficient labour relations purpose for making the requested declaration. Only if the Board decides that such a purpose is served, should it exercise its discretion to grant the declaration.

[35] Before turning to its analysis of the current case, the Board sees fit to clarify the applicable test. In interpreting the legislation for this purpose, the Board is guided by the modern rule of statutory interpretation, which requires that the Board rely on the ordinary meaning of the words of section 6-79 in the context of the objective of the provision and of the Act.

[36] First, the Board's description of the second prerequisite, in *Comfort Cabs*, pertains to clause 18(1)(b) of the predecessor *CILRA, 1992*, which states:

> *18(1) On the application of an employer or a trade union affected, the board may declare more than one corporation, partnership, individual or association to be one unionized employer for the purposes of this Act and The Trade Union Act where:*
>
> > *(a) in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by or through those corporations, partnerships, individuals or association; or*
> >
> > *(b) a corporation, partnership, individual or association is sufficiently related to a unionized employer that, in the opinion of the board, they should be treated as one and the same.*

[37] Since the Board's decision in *United Brotherhood of Carpenters and Joiners of America, Local 1985 v Graham Construction and Engineering Ltd*., et.al., [1998] Sask LRBR 718, the Board has adopted and applied that language in subsequent decisions, including in *Comfort Cabs*. In the present case, the Board is charged with determining whether the associated or related businesses, associations or other activities are carried on under common control or direction. It

is not considering whether an entity is sufficiently related to a unionized employer that they should be treated as one and the same.

[38] Unlike subsection 18(1), section 6-79 does not qualify the terms “associated or related” except to limit their application to “businesses, undertakings or other activities”. In particular, section 6-79 does not include the language “sufficiently related to a unionized employer that, in the opinion of the board, they should be treated as one and the same”.

[39] The second prerequisite, for the purposes of the current legislation, is that the businesses, undertakings or activities are associated or related. The legislation does not contemplate a requirement that the businesses, undertakings or activities be sufficiently associated or related that they should be treated as one and the same. Nor does the legislation contemplate a requirement that the association or relation be “sufficient”; indeed, there would be no clear qualifier for sufficiency, if it did. If a threshold is to be imposed, it is that the association or relation be such as is contemplated by section 6-79.

[40] In the context of a common employer declaration, the Board in *Wayne Bus*, at paragraph 148, held that the “criteria used to determine whether activities are ‘associated or related’ and under ‘common control or direction’ cannot be isolated from one another.” The Board provided its interpretation of the concepts, “association” and “relation”:

> *[149] The concept of “association” is predicated upon the organization or alliance of two or more individuals or entities out of a common interest or for a common purpose; their respective activities may be combined in a manner that results in an organization that is functionally independent of either ‘associate’ alone.*
>
> *[150] The concept of “relation” connotes connection in a commercial sense. The connection need not be structural, as in the case of companies that have common directors, officers or shareholders, but may arise because of a significant degree of interdependence in the carrying on of an enterprise in which the parties to the relationship have a mutual or reciprocal interest.*

[41] On the fourth prerequisite, the Board has held that the primary reason for granting a common employer declaration is to prevent an erosion of established bargaining rights, for example, by the redirection of work by a unionized employer to another enterprise; to remove obstacles to viable structures for collective bargaining, for example, the inclusion of the employees of two entities in a single unit; and to ensure that the union is able to deal directly with the entity that possesses real economic control: *Wayne Bus*, at paragraphs 123, 125. According

to the Board in *Comfort Cabs*, at paragraphs 63 and 64, the reason will be “valid” if the alleged erosion of bargaining rights is real or imminent and not merely speculative.[1]

[42] The Board must be careful not to unilaterally impose collective bargaining on a group of employees whose wishes have not been gauged through the statutory voting process. The common employer provisions are not to be used to extend or enhance, but rather preserve, bargaining rights: *Wayne Bus*, at paragraph 126.

[43] In this respect, the Board has cautioned against delay in bringing a common employer application, suggesting that, “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”: *North American Construction Group*, cited in *Comfort Cabs*, at paragraph 65. The Respondents argue that delay is pertinent in the current case, stating that the Union has been aware of Hallbook operating non-union in Alberta for years without challenge or objection.

[44] In assessing a common employer application, the Board is focused on determining the true employer of the employees in question for labour relations purposes. In performing this assessment, the Board undertakes a functional assessment of the “actual seat of fundamental control or direction of the activities that determine employment and working conditions of the employees”:

> *The inquiry under each of ss. 2(g)(iii) and 37.3 of the Act is directed to determining the "true employer(s)" for labour relations purposes of the employees in question. A functional analysis to identify the actual seat of fundamental control or direction of the activities that determine employment and working conditions of the employees must be undertaken in both instances using similar criteria. The results of the exercise may identify more than one "common" employer exercising fundamental control or direction. A detailed examination of the relationship between the entities involved and their relationship to the work place must be undertaken using various criteria outlined below.*
>
> *Wayne Bus*, *at paragraph 128.*

[45] In *Wayne Bus*, the Board cited the following summary of criteria used by the Ontario Board in *Labourers' International Union of North America, Local 183 v York Condominium Corporation, et al*, [1977] OLRB Rep October 645 [“*York Condominium*”], in determining which parties are the true employers of certain employees:

> *1. The party exercising direction and control over the employees performing the work.*

[1] The Saskatchewan Court of Appeal in *United Steelworkers v Comfort Cabs Ltd*., 2017 SKCA 45, 2017 CarswellSask 287, upheld the Court of Queen’s Bench decision finding that the Board’s decision in *Comfort Cabs* was reasonable.

2. The party bearing the burden of remuneration.

3. The party imposing discipline.

4. The party hiring the employees.

5. The party with the authority to dismiss the employees.

6. The party who is perceived to be the employer by the employees.

7. The existence of an intention to create the relationship of employer and employees.

Wayne Bus, at paragraph 129.

[46] The following factors, as outlined by the Ontario Labour Relations Board in *Walters Lithographic Company Co. Ltd.*, [1971] OLRB Rep 406 ["*Walters Lithographic*"], and recited in *York Condominium*, are relevant in an assessment of whether the activities or businesses in question are carried on under common control or direction:

1. *Common ownership or financial control;*
2. *Common management;*
3. *Interrelationship of operations;*
4. *Representation to the public as a single integrated enterprise; and*
5. *Centralized control of labour relations.*

As cited in Wayne Bus, at paragraph 153.[2]

[47] To be clear, there is no fixed set of criteria. It is not necessary for the Union to demonstrate the existence of all of these factors. However, the foregoing factors have been repeatedly relied upon by this Board, due to their relevance to the question at hand. This question is answerable only through an assessment of the totality of circumstances in the given case. The weight of each factor will vary depending on the facts and the purpose of the assessment. No single factor will necessarily translate into fundamental control.

[48] The Respondents argue that the Board's analytical focus must be on the activities, as opposed to the structure, of the entities. In considering this argument, the Board has again been guided by the modern rule of statutory interpretation. Section 6-79 allows the Board to make a declaration if it finds that associated or related businesses, undertakings or other activities are carried on under common control or direction. The distinction between the categories of "corporation, partnership, individual or association" and "businesses, undertakings or other

[2] See, also, *Walters Lithographic*, 1971 CarswellOnt 442.

activities", combined with the phrase "carried on" suggests that the provision is more concerned with the active businesses, undertakings or other activities of the organization or individual, than with the structure of the organization itself. But that certainly does not mean that the Board should ignore evidence of organizational structure altogether.

[49] An objective of the provision is to prevent the avoidance or anticipated erosion of bargaining rights through the transfer of work. The Act is benefit conferring legislation, providing through subsection 6-4(2), that "[n]o employee shall unreasonably be denied membership in a union". The Board observes that, in some cases, the corporate organization is indicative of an avoidance or an anticipated erosion of bargaining rights through the transfer of work. Therefore, in scrutinizing the business, the Board should look to the whole of the circumstances, including the structure and corporate organization of the entities in question. Generally, the focus should be on the day-to-day management of the business, but depending on the circumstances, the corporate organization may be more or less significant in deciding whether to make the declaration requested.

[50] The Union argues that section 6-79 operates to prevent so-called "double-breasting", a term that commonly denotes the establishment of a related, non-union business for the purpose of obtaining work otherwise available to unionized employees. Indeed, the Board in *International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v Cornerstone Contractors Ltd*., 2015 CanLII 43777 (SK LRB) ["*Cornerstone*"] observed that the common employer provision interdicts so-called double-breasting, which is of particular relevance in the construction industry: *Cornerstone*, at paragraphs 69, 71. The Union adds that this conclusion is "amply supported by the legislative record behind Saskatchewan's related employer provisions" in the Act.

[51] The Union relies on excerpts from Hansard to inform the Legislature's intention in preventing double-breasting in circumstances where it was previously permitted. While Hansard evidence may be admitted as relevant to assessing the background and purpose of legislation, adjudicators must be mindful of any issues with reliability, and should assign Hansard evidence the appropriate weight, taking that into account. This caution is particularly relevant when the excerpts provided represent only limited sections from the debate on the subject-matter in question.

[52] The Union argues that its limited passages signal that the Board should, in the context of a common employer determination, view double-breasting with "significant skepticism". The

Union urges the Board to apply the provisions in a manner that reflects the legislative intent, and to refrain from applying principles, particularly those from other provinces, that are not reflective of that intent. While the Board agrees that the passages provided signal a desire, on behalf of the Minister at the time, to crack down on double-breasting in Saskatchewan, the Board must not ignore the clear legislative requirements for granting a declaration, as set out in section 6-79. The Board must also be mindful of the limited nature of the excerpts provided.

[53] Furthermore, the amendment that was enacted, following the debates on which the Union relies, was a targeted amendment.[3] *The Construction Industry Labour Relations Amendment Act, 2000* resulted in the repeal of subsections 18(1) and (2) of *The Construction Industry Labour Relations Act,* which were replaced with:

> *(1) On the application of an employer or a trade union affected, the board may declare more than one corporation, partnership, individual or association to be one unionized employer for the purposes of this Act and The Trade Union Act where, in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by or through those corporations, partnerships, individuals or associations.*

[54] The main effects of this particular amendment were to remove the "sufficiently related" category as a basis upon which the Board could grant a declaration, and to remove the existing time constraints on the legislation, which restricted the declarations to entities that had commenced their business, undertakings or other activities after the coming into force of the Act. It is a stretch to interpret the Hansard debates as demonstrating an intention that extends beyond that which is reflected in the amendments themselves.

[55] Taking into account the foregoing considerations, the Board will proceed to consider these four prerequisites:

1. The application must involve more than one corporation, partnership, individual or association and at least one of those entities must be a certified employer.
2. The businesses, undertakings, or other activities must be associated or related.
3. The subject entities must be operated under common control and direction.
4. Once these three prerequisites have been established, the declaration must serve a valid and sufficient labour relations purpose, interest or goal.

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[3] *The Construction Industry Labour Relations Amendment Act, 2000*.

[56] The first requirement is that there must be more than corporation, partnership or association and at least one of those entities must be a certified employer. This requirement is satisfied.

[57] The second requirement is that the businesses, undertakings or other activities be associated or related. The businesses in question are those that are operated by Hallbook and Book. Both companies primarily serve contractors by performing insulation work, in both the industrial and commercial areas. They both perform work or have performed work in Saskatchewan. As is discussed more in the next section, the corporate structure discloses common and interconnected directors and shareholders. The entities are not organized out of a common interest or for a common purpose, and so are not "associated", but in a commercial sense, the businesses are related.

[58] The third requirement is that the entities be under common control or direction. It is well understood that "control" focuses on matters of the general orientation of the entity, as compared with "direction", which focuses on the day-to-day management.

[59] The first of the *Walter Lithographic* factors asks whether there is common ownership and/or financial control. The Respondents acknowledge that they have common minority shareholders totaling 48% ownership in each business. The shareholdings are "passive", in that they primarily entitle the shareholders to dividends. There are significant intertwined family connections embedded in the ownership structure, but the Board cannot infer from the existence of these connections, alone, that the businesses are carried on under common control or direction. The structure by itself does not disclose a "high level of strategic control" as suggested by the Union.

[60] There is no evidence that the directors have any influence on the day-to-day operations, including in relation to business development, of the businesses carried on by the opposite entities. The Board notes that, even in *Merick Contractors Inc. and IBEW, Local 529, Re*, 2015 CarswellSask 65, 257 CLRBR (2d) 180, where Merick was "highly dependent on WEM for its livelihood" and where some of the management functions were performed by WEM for a fee, that the Board declined to make a common employer declaration.[4] The evidence in relation to this factor alone, is insufficient to justify making a declaration.

[4] At paras 108, 109.

[61] The second factor is common management. The entities operate under the management of two separate management teams. William Book, who is a director, is involved in the operations of Book, and not Hallbook. There is no apparent interdependence in terms of management functions. The evidence suggests that all of the following aspects of management are separate, as opposed to interrelated: human resources, finance, safety, and operations. The Board cannot draw the inference that, because of the corporate structure, the businesses are carried on under common control or direction.

[62] The next factor is interrelationship of operations. The evidence suggests that all of the following are separate: estimates, bids, marketing, banking, finance, payroll, insurance, business development, and communications. There was limited evidence suggesting a possibility of a shared premises in earlier days, but that evidence, which was hearsay, was not corroborated by other evidence. It therefore cannot weigh heavily in the Board's assessment.

[63] The two companies own separate equipment. They do not lease or share their equipment with one another. The Union relies on hearsay evidence about the ownership of a trailer at the Chinook project site. That evidence was contradicted by Chambers' own, albeit also hearsay, evidence. Even if the Board did have definitive evidence of an on-site trailer, one isolated instance is of limited probative value.

[64] Next, the Board considers whether the entities represent themselves to the public as a single integrated enterprise. The Union made much of the supposed similarities between the two websites, including the appearance of a similar vessel displayed in photos in each. The Board is not persuaded that there are sufficient similarities between the two websites, especially not in relation to the similar vessel, such that the Board can make an inference that the Respondents are sharing marketing services. Besides, it is highly likely that, as both Respondents are engaged in insulation work, the associated equipment would, in fact, be similar. On other matters, there is some overlap in the physical and mailing addresses, but the contact information is otherwise different. Marketing logos and colors are different. There is no persuasive evidence that the entities represent themselves to the public as a single integrated enterprise.

[65] The last question is whether the control over labour relations is centralized. As the two appear to be interrelated, the Board will address labour relations and human resources simultaneously.

[66] There was limited evidence of employees transferring from one entity to another. Granted, in 2012, a member was found to be working for Hallbook without the knowledge or approval of the Union, was fined, and the fine was paid by Book. In 2018, Chambers spotted three Union members on the site of the Chinook project, including a Book employee. However, there is no evidence that the managers transferred employees from one company to another, or even encouraged employees to work for one company or another, in the context of the Chinook site. Management has limited control over the conduct of its employees when they are not at work. The Union's reliance on a personal call to Barry Pearson in a single instance is insufficient.

[67] The hiring of Barry Pearson is insufficient to support a declaration that the businesses are carried on under common control or direction. Barry Pearson, who is now Hallbook's Project Manager, previously worked for Book. At Book, he was not in a key position. The evidence disclosed that he was looking for employment at the time that he was hired.

[68] The Board is therefore not persuaded that control over labour relations is centralized.

[69] On the balance, the Board does not find that the businesses are carried on under common control or direction.

[70] As the Board has not concluded that there is common control or direction, it does not need to consider whether to exercise its discretion due to the existence of a compelling labour relations purpose. The Union would prefer that the Board exercise its discretion, but as the Board has outlined, the Board's exercise of discretion is dependent on having found that the three prerequisites have been satisfied. The fact that there is no evidence of employees' wishes to the contrary and that there is evidence of the use of Alberta insulators for Saskatchewan jobs is not dispositive.

[71] Due to the Board's determination on the main issue, it is not necessary to consider subsection 6-79(4).

[72] For the foregoing reasons, the Application pursuant to section 6-79 of the Act is dismissed.

[73] The Board would like to thank the parties for their excellent briefs of law and advocacy. The Board has reviewed all of the materials, including all of the cases provided, even if not referred to within these Reasons.

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

DATED at Regina, Saskatchewan, this **20th** day of **September, 2019.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson