UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1999, Applicant v INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS AND ASBESTOS WORKERS, LOCAL 119; BROCK CANADA WEST LTD.; STEEPLEJACK KITAMAAT HOLDINGS LTD.; BROCK CANADA INDUSTRIAL LTD.; BROCK CANADA INC. and BROCK CANADA OILFIELD SERVICES LTD., Respondents

LRB File No. 143-20; April 6, 2021
Chairperson, Susan C. Amrud, Q.C.; Board Members: Bert Ottenson and Gary Mearns

For United Brotherhood of Carpenters and Joiners of America, Local 1999: Ronni A. Nordal, Q.C.

For International Association of Heat & Frost Insulators and Asbestos Workers, Local 119: Greg Fingas

For Brock Canada West Ltd., Steeplejack Kitamaat Holdings Ltd., Brock Canada Industrial Ltd., Brock Canada Inc. and Brock Canada Oilfield Services Ltd.: Christopher Lane, Q.C.

Application to intervene as direct interest intervenor in related employer application dismissed – Proposed intervenor was party to expired voluntary recognition agreement with one of the Respondents – No direct interest in answer to legal question in dispute – No legal rights or obligations that may be directly affected by determinations of the Board.

Application to intervene as public law intervenor or exceptional intervenor dismissed – Criteria not satisfied.

REASONS FOR DECISION

Background:

[1] Susan C. Amrud, Q.C., Chairperson: On August 5, 2020, the International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 [“Insulators”] filed an application[1] [“Main Application”] requesting a declaration that Brock Canada West Ltd., Steeplejack Kitamaat Holdings Ltd., Brock Canada Industrial Ltd., Brock Canada Inc. and Brock Canada Oilfield Services Ltd. [“Respondents”] are related employers within the meaning of section 6-79 of *The Saskatchewan Employment Act* [“Act”].

[1] LRB File No. 125-20.

[2] On September 14, 2020, United Brotherhood of Carpenters and Joiners of America, Local 1999 ["Carpenters"] filed an Application to Intervene[2] in the Main Application. The Insulators oppose this Application. The Respondents do not oppose the Application. Brock Canada Oilfield Services Ltd. ["BCOSL"] filed a Reply that supports the Application.

[3] The evidence before the Board at this point indicates the following. The Insulators are the certified bargaining agent for certain employees of Steeplejack Kitamaat Holdings Ltd. and Brock Canada West Ltd. Brock Canada Industrial Ltd. ["BCIL"] was requested to perform insulator work during a shutdown period at the Co-op Refinery Complex in Regina. BCIL contacted the Insulators but they were unable to reach an agreement on terms on which Insulators' members would perform the work. As a result, BCIL subcontracted the work to BCOSL. BCOSL entered into a Project Labour Agreement ["PLA"] with the Carpenters for the performance of that work. For the purposes of this application, the following provisions of the PLA are relevant:

> *Article 2 – Duration and Scope*
>
> *2.1 This Agreement shall be in full force and effect, from June 18, 2020, for a duration of 89 days. This Agreement, and the Employer's recognition of the Union's status as bargaining agent for its Employees, only covers the Employer's Co-op Project in the province of Saskatchewan.*
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> *2.2 The Union agrees that it will not seek to expand its status as a voluntarily recognized bargaining agent by filing any applications with the Saskatchewan Labour Relations Board.*
>
> *2.3 The parties agree that they may, by mutual consent, negotiate the terms and conditions for additional projects. Parties requesting negotiations would outline the project, points of concern and proposed area of resolution.*

Argument on behalf of Carpenters:

[4] The Carpenters apply for direct interest intervenor status or, in the alternative, for status as an exceptional intervenor and/or public law intervenor. They are seeking status that would allow them to call evidence, cross-examine witnesses and make legal arguments.

[5] The Carpenters argue that they have a direct interest in the Main Application for a number of reasons:

- Its outcome has the potential of prohibiting them from continuing their relationship with BCOSL.
- The outcome could nullify the rights gained by the Carpenters and their members pursuant to the PLA.

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[2] LRB File No. 143-20.

- The outcome could constitute a complete prohibition of them applying to be certified as the exclusive bargaining agent for employees of BCOSL or entering into future PLAs with BCOSL.
- The Carpenters were recognized by BCOSL as the bargaining agent for insulators at the Co-op Refinery site for 89 days.
- The Carpenters entered into a collective agreement with BCOSL under which BCOSL voluntarily recognized the Carpenters as the bargaining agent for insulators at the Co-op Refinery site for the life of the project.
- The Carpenters entered into the PLA and proceeded under voluntary recognition "in the hope" that an ongoing relationship with BCOSL would arise and if it did, the Carpenters "intended to consider" applying to acquire bargaining rights at that time.[3]

[6] The Carpenters rely on *National Maintenance Council for Canada v International Brotherhood of Boilermakers and Edmonton Exchanger & Refinery Services Ltd.*[4] ["*National Maintenance Council*"] as describing the rules that the Board will apply to an intervention application and, in particular, an application for direct interest intervention.

[7] The Carpenters submit that, based on the factors set out above, they satisfy the criteria to be granted direct interest intervention status. They argue that, if the Main Application had been filed during the term of the PLA, they would have had a direct interest in the Main Application. The Board should not rely on the Insulators' delay in filing the Main Application to deprive them of their status as a direct interest intervenor. They argue that the existence and effect of their voluntary recognition during the Co-op Refinery project is a relevant fact to be considered in the Main Application.

[8] The Carpenters do not elaborate on how they believe they meet the criteria to be granted status as an exceptional intervenor. With respect to public law intervention, they indicate that in their view they meet each of the criteria to be considered. However, that is a determination to be made by the Board, and the Carpenters did not provide the Board with arguments on which it could make that determination.

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[3] Written Argument filed on behalf of the Proposed Intervenor, United Brotherhood of Carpenters and Joiners of America, Local Union No. 1999 at para 10.
[4] 2019 CanLII 107117 (SK LRB).

Argument on behalf of the Insulators:

[9] The Insulators argue that the Carpenters lack any direct interest in the outcome of the Main Application. It would not be appropriate to grant any form of intervenor status to them based on an expired voluntary recognition agreement or their interest, as a competing bargaining agent, in engaging in future organizing efforts. Any right asserted by the Carpenters is speculative. Its interest in a further relationship with any of the Respondents is based on mere "hope" rather than any enforceable right or step taken to date. The Board has rejected the assertion that the potential for future organizing constitutes a direct interest[5].

[10] The Insulators argue that the Main Application should be considered equivalent to a certification application and that, on that basis, the Carpenters' application should be dismissed as they have not demonstrated sufficient support as of the date of the Main Application[6]. The purpose of the Main Application is to relieve against the erosion of the Insulators' existing bargaining rights. Its foreseeable outcome is an order that the Insulators are the certified collective bargaining agent for the Respondents' employees. The Board's concern about one application serving as a trigger for competing campaigns thus applies. A voluntarily recognized bargaining agent has no right to assert a voluntary recognition agreement as a barrier to certification by another bargaining agent.

[11] The Board should take into consideration that, in the PLA, the Carpenters agreed not to "seek to expand its status as a voluntarily recognized bargaining agent by filing any applications with the Saskatchewan Labour Relations Board". The Board should not accept the conclusion that BCOSL can insulate itself from the exercise of certified collective bargaining rights by another union through such an agreement.

[12] With respect to public law intervenor status, the Insulators deny the existence of a public law aspect to the dispute in the Main Application. Even if the Board was to find that there is a public law issue to be determined, the Carpenters would have to establish that they would present a distinct perspective to assist the Board. They have not done this, since BCOSL has taken a position entirely in alignment with that of the Carpenters. BCOSL indicates that it expects to call evidence and make arguments as to the relationship between itself and the Carpenters. Thus there is no benefit to the Board in allowing the Carpenters to participate as a separate party.

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[5] *Construction Workers Union, Local 151 v Tercon Industrial Workers Ltd*, 2012 CanLII 2145 (SK LRB) at para 33-36.
[6] *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial v International Brotherhood of Electrical Workers, Local 2038*, 2017 CanLII 6027 (SK LRB) at para 30-33.

[13] Granting the Carpenters' Application will result in even further delay in hearing the Main Application. The Carpenters' involvement raises numerous issues as to its own status that are not part of the *lis* in the Main Application. The hearing of the Main Application would be lengthier and more complicated with the addition of another party. Their participation would result in substantial prejudice and no meaningful benefit.

[14] The same considerations that militate against the other forms of intervenor status also apply to the request for exceptional intervenor status. Any interest on the part of the Carpenters is entirely speculative and not meaningfully distinguishable from that of other unions. There is no basis for the Board to conclude that another party substantially echoing the position of BCOSL will be of assistance to it in deciding the Main Application.

Argument on behalf of BCOSL:

[15] While BCOSL did not file a written argument, it did file a Reply. In it BCOSL states: "if Local 1999 were not a party or an intervenor this Respondent would still likely want to have evidence or witnesses called from Local 1999". It makes this comment as supporting its assertion that adding the Carpenters as an intervenor will not delay the proceedings or prejudice any party.

Applicable Legislative Provisions:

[16] The following provision of the Act is relevant to this application:

> ***Proceedings not invalidated by irregularities***
> *6-112(4) Without limiting the generality of subsections (2) and (3), in any proceedings before it, the board may, on any terms that it considers just, order that the proceedings be amended:*
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> > *(a) by adding as a party to the proceedings any person that is not, but in the opinion of the board ought to be, a party to the proceedings*.

[17] *The Saskatchewan Employment (Labour Relations Board) Regulations* ["Regulations"] include the following provision with respect to intervention applications:

> ***Intervention***
> *20(1) In this section:*
>
> > *(a) "application to intervene" means an application in Form 17 (Application to Intervene);*
> > *(b) "original application" means an application made to the board pursuant to the Act and these regulations that is the subject of an application to intervene.*
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> *(2) An employer, other person, union or labour organization that is served with a copy of an application pursuant to section 19 and intends to intervene in the proceedings before the board shall file a reply in Form 18 (Reply).*

> *(3) An employer, other person, union or labour organization that is not served with a copy of an application pursuant to section 19 and that intends to intervene in the proceedings before the board shall file an application to intervene.*

Analysis and Decision:

[18] In *National Maintenance Council*, the Board reiterated the principles it applies to an application for intervention:

> *[13] The principles applied by the Board in determining an application for intervention are well-established. In a recent decision[7] they were described as follows:*
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> > *[24] In C.E.P. v J.V.D. Mill Services, [2010] SLRBD No. 27, 199 CLRBR (2d) 228 ("JVD Mill Services No.1"), the Board confirmed its approach to granting intervenor status in cases before the Board. As the Board explains, an order granting intervenor status is a discretionary order based on the Board's assessment of the fairness to the parties and the potential for the proposed intervenors to assist the Board in coming to a decision.*
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> > *[25] The Board endorses the following comments made in Construction Workers Union, CLAC Local 151 v Ledcor Industrial Limited, 2018 CanLII 53123 (SK LRB) ("Ledcor"):*
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> > > *[20] By definition, an intervenor is a stranger to on-going litigation before an administrative tribunal or a court. As such, allowing such a party to participate in the litigation, especially private litigation, is an unusual, if not an extraordinary, occurrence. It is precisely for this reason that applications to intervene must be carefully scrutinized, and when deciding them this Board should exercise its discretion to grant intervenor standing sparingly, mindful of the particular factual matrix of the case under consideration.*
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> > *[26] Generally, the Board will allow only the original parties to define the issues that come before the Board. Intervention applications must be carefully scrutinized so as to avoid any unnecessary impact on the efficient and fair adjudication of the lis. In Construction Workers Union (CLAC), Local 151 v Tercon Industrial Works Ltd, 2012 CanLII 2145 (SK LRB), at paragraph 31, the Board provides a detailed summary of the approach set out in JVD Mill Services No.1:*
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> > > *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. The Board went on to identify and adopt three (3) forms of intervention recognized by this Board. These three (3) forms of intervention are summarized as follows:*

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[7] *Construction Labour Relations Association of Saskatchewan Inc. v International Association of Bridge, Structural, Ornamental, and Reinforcing Ironworkers, Local 771*, 2019 CanLII 43219 (SK LRB).

> *1. **A Direct Interest Intervenor**; where the applicant seeking standing 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 determinations of the Board.*
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> *2. **An Exceptional Intervenor**; where the applicant has a demonstrable and genuine interest in the answer to the legal question in dispute (i.e.: for example, if the party has a pending application before the Board on the same issue and thus has legal rights or obligations that may be affected by a binding precedent); and the applicant can establish the existence of "special circumstances" that differentiate it from others who may have a similar interest; and where that party can demonstrate that it can provide a valuable assistance to the Board in considering the issues before it.*
>
> *3. **A Public Law Intervenor**; where 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 Board that its perspective is different or that its participation would assist the Board in considering a public law issue before it.*

[19] The Carpenters' main argument is that they should be granted status as a direct interest intervenor. In *National Maintenance Council* the Board described the factors to be considered on an application for direct interest intervention. The following comments are relevant to this Application:

> *[16] Construction Workers Union, Local 151 v Tercon Industrial Works Ltd. was an application for intervention in a certification application. The Board stated:*
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> > *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).*
>
> ***. . .***
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> *[19] In CLR v Ironworkers the Board provided the following comments:*
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> > *[30] CLR must show that it "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". CLR may be "keenly interested in the outcome" of this application, but it cannot be said that it has a direct interest. It does not have legal rights or obligations that will be directly affected by the answer.*
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> > *[31] To quote the Board in J.V.D. Mill Services (Re), [2011] SLRBD No 21, 199 CLRBR (2d) 241, at paragraph 60, "[t]he Applicants [sic] rights are not affected by the certification decision. No legal obligations are imposed upon them by the Order or decision. Nor are they prejudicially affected directly." Likewise, CLR does not have a direct stake in the lis between the parties in the underlying Certification Application.*
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> > *[32] CLR states that the precedent in this case could "affect the CLR not only as the REO for the Ironworkers Trade Division, but also as the REO in 15 other trade divisions within which the CLR represents unionized employers". That may be true*

> *but the potential for a "bad precedent" is not a sufficient basis for a direct interest intervention. As the Board stated in Ledcor, at paragraph 25, the "fact that a proposed intervenor may have a similar case pending before the tribunal or court in question, does not mean it should be granted intervenor status in an unrelated matter". Similarly, the fact that a proposed intervenor may be impacted by the case before the Board does not mean that it should be granted direct interest intervenor status.*

[20] As set out in *National Maintenance Council*, to satisfy the test to be granted status as a direct interest intervenor, the Carpenters must show that they have a direct interest in the answer to the legal question in dispute in that they have legal rights or obligations that may be directly affected by the answer. The Carpenters may be keenly interested in the outcome of the Main Application, but it cannot be said that they have a direct interest. They do not have legal rights or obligations that will be directly affected by the answer. They chose to enter into a short-term arrangement with BCOSL that did not result in legal rights or obligations for either of them. Given the filing by the Insulators of the Main Application, they may regret that course of action now, but they cannot expect the Board to rewrite history.

[21] In their Reply Submissions the Carpenters admit that they have no existing legal rights that could be affected by the Main Application and instead raise a new argument, that they have legal obligations, pursuant to section 6-59 of the Act, that could be affected. They provide no explanation of how their obligations under section 6-59 could be directly affected by an Order on the Main Application. They suggest that an Order on the Main Application "would have retroactive implications and would amount to a declaration that UBCJA Local 1999 was not entitled to enter into the Project Labour Agreement with Brock Canada Oilfield Services Ltd. and was not entitled to dispatch members to work on the Co-op Refinery project"[8]. This argument ignores the restrictions in section 6-79 that a declaration is effective "or and after the date of the declaration" (subsection (3)) and that an order granting additional relief can be effective "not earlier than the date of the application" (subsection 6)).

[22] The Carpenters have not met the criteria to be granted status as direct interest intervenors.

[23] The next issue for the Board to consider is whether the Carpenters should be granted status as public law intervenors. As noted by both the Carpenters and Insulators, the Board takes into consideration the *Latimer* factors in considering whether to grant public law intervenor status:

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[8] Reply Submissions filed on behalf of the Proposed Intervenor, United Brotherhood of Carpenters and Joiners of America, Local Union No. 1999 at para 3.

(1) whether the intervention will unduly delay the proceedings;

(2) possible prejudice to the parties if intervention is granted;

(3) whether the intervention will widen the *lis* between the parties;

(4) the extent to which the position of the intervener is already represented and protected by one of the parties; and

(5) whether the intervention will transform the court into a political arena.[9]

[24] The Board is not bound by any of these factors in determining an application for intervention but must balance these factors against the convenience, efficiency and social purpose of moving the case forward with only the persons directly involved in the *lis*.

[25] The Carpenters' submissions make it clear that granting their Application would unduly delay the hearing of the Main Application through its attempt to raise issues about to its own status rather than focusing on the issues raised by the Main Application.

[26] The prejudice to the parties would be not only the delay in the hearing of the Main Application but also the potential for the Carpenters to attempt to introduce new issues that are not relevant to the Main Application. For example, the Carpenters indicate they want to speak to the effect of voluntary recognition agreements on projects in Saskatchewan.[10] That is not the issue before the Board on the Main Application.

[27] The intervention would widen the *lis* between the parties, by taking the focus off the issue of whether the Respondents are related employers.

[28] If evidence respecting the PLA is found to be admissible in the hearing of the Main Application, BCOSL has already indicated that it intends to tender that evidence. The Carpenters indicate that they are the only ones who can speak to the labour relations circumstances arising out of the PLA. This argument ignores the ability of BCOSL to do just that.

[29] Factor five is not an issue in this matter.

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[9] *R. v. Latimer*, 1995 CanLII 3921 (SK CA).

[10] Written Argument filed on behalf of the Proposed Intervenor, United Brotherhood of Carpenters and Joiners of America, Local Union No. 1999 at para 25.

[30] Given the Carpenters' inability to satisfy any of the *Latimer* factors, the application to be granted status as a public law intervenor is dismissed.

[31] This leaves the issue of whether the Carpenters should be granted status as exceptional intervenors. With respect to exceptional intervenor status, *United Food and Commercial Workers, Local 1400 v K-Bro Linen Systems Inc.*[11] described the test to be met as follows:

> *To qualify as an "exceptional intervenor", the proposed intervenors must not only have a demonstrable and genuine interest to the legal questions in dispute in UFCW's certification application, but they must also satisfy the Board that an "exceptional circumstance" exists that differentiates them from others trade unions who may share a similar interest in the outcome of proceedings before the Board. In J.V.D. Mills Services, supra, and in Tercon Industrial Works Ltd., supra, this Board cautioned that under this form of intervention an intervenor must demonstrate, as the name would imply, circumstances that are "exceptional". In recognizing this form of intervention, the Board was not expanding the grounds for intervention but rather was merely recognizing that there have been in the past (and can be in the future) exceptional circumstances that justify granting standing to a party that does not qualify as either a "direct interest intervenor" or "public law intervenor".*

[32] To qualify as an exceptional intervenor the Carpenters must satisfy the Board that they meet all three criteria: they must have a demonstrable and genuine interest in the answer to the legal question in dispute; "special circumstances" must differentiate them from others who may have a similar interest; and they must demonstrate that they can provide valuable assistance to the Board in considering the issues before it on the Main Application.

[33] The Carpenters chose to organize their labour relations with BCOSL for the Co-op Refinery project without the protection of a certification order. This left them vulnerable to an application for certification by another union or a related employer application, either of which could potentially affect the informal relationship they previously had with BCOSL. As a result, while they are interested in the outcome of the Main Application, they do not have a demonstrated and genuine interest in the Main Application.

[34] Are there special circumstances that differentiate them from other unions that may have a similar interest? The Board is not convinced that having their members work on one project for BCOSL for 89 days establishes those special circumstances.

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[11] 2015 CanLII 19984 (SK LRB) at para 25.

[35] Finally, the Carpenters have not demonstrated that they can provide valuable assistance to the Board on the Main Application. If the issue of the PLA is relevant to that matter, BCOSL can, and has said it will, provide the Board with evidence and argument regarding it.

[36] Accordingly, having met none of the criteria, the Carpenters have not met the test to be granted standing as exceptional intervenors.

[37] As the Board has indicated on numerous occasions, allowing a stranger to participate in private litigation is an unusual, if not an extraordinary, occurrence. It is for this reason that applications to intervene must be carefully scrutinized, and when deciding them this Board should exercise its discretion to grant intervenor status sparingly.

[38] The Application for Intervention is dismissed.

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

DATED at Regina, Saskatchewan, this **6th** day of **April, 2021.**

LABOUR RELATIONS BOARD

Susan C. Amrud, Q.C.
Chairperson