

June 20, 2023

Construction Workers Union, CLAC Local 151
c/o Burnet, Duckworth & Palmer LLP
2400, 525-8th Ave SW
Calgary, AB T2P 1G1

Attention: Richard F. Steele (via email)

Saskatchewan Building Trades Council,
IBEW Local 2038, and LIUNA Local 180
c/o Gerrand Rath Johnson LLP
700 – 1914 Hamilton Street
Regina, SK S4P 3N6

Attention: Greg D. Fingas (via email)

Woodland Constructors Ltd.
c/o Mathews, Dinsdale & Clarke LLP
Suite 4020, 400 – 3rd Avenue SW
Calgary, AB T2P 4H2

Attention: Michael H. Vos (via email)

Technical Workforce Inc.
via email: info@technicalworkforce.com

Attention: To whom it may concern (via email)

Dear Sirs, and to whom it may concern:

**Re: LRB File No. 005-23; Certification Application
Construction Workers Union, CLAC Local 151 v Woodland Constructors Ltd.**

**LRB File No. 015-23; Successorship Application
Construction Workers Union, CLAC Local 151 v Woodland Constructors Ltd. and Technical
Workforce Inc. (Respondents), Saskatchewan Building Trades Council (Intervenor)**

**LRB File No. 027-23; Unfair Labour Practice Application
International Brotherhood of Electrical Workers, Local 2038 v Woodland Constructors Ltd.
(Respondent), Construction Workers Union, CLAC Local 151 (Intervenor)**

**LRB File No. 028-23; Unfair Labour Practice Application
Construction and General Workers' Union, LIUNA Local 180 v Woodland Constructors Ltd.
(Respondent), Construction Workers Union, CLAC Local 151 (Intervenor)**

Background:

[1] The following applications are before the Board:

- a) LRB File No. 005-23: A certification application brought by the Construction Workers Union, Local 151 [Local 151] with respect to Woodland Constructors Ltd. [Woodland].

- b) LRB File No. 015-23: A successorship application brought by Local 151 with respect to Woodland. The Saskatchewan Building Trades Council [Council] has been granted limited standing as a public law intervenor in this application, pursuant to the Board's May 31, 2023 reasons reported as *Saskatchewan Building Trades Council v Construction Workers Union, Clac Local 151, Woodland Constructors Ltd.*, 2023 CanLII 46607 (SK LRB) [May 31st Reasons]. Though named as a respondent, Technical Workforce Inc. [TWI] has not filed a reply or otherwise participated in this application to date.
- c) LRB File No. 027-23: An unfair labour practice application brought by the International Brotherhood of Electrical Workers, Local 2038 [IBEW Local 2038] against Woodland. This application seeks relief which includes dismissal of Local 151's certification application in LRB File No. 005-23. Local 151 was granted direct interest intervenor standing in LRB File No. 027-23 via an order issued on April 4, 2023.
- d) LRB File No. 028-23: An unfair labour practice application brought by Construction and General Workers' Union, LIUNA Local 180 [LIUNA Local 180] against Woodland. This application seeks relief which includes dismissal of Local 151's certification application in LRB File No. 005-23. Local 151 was granted direct interest intervenor standing in LRB File No. 028-23 via an order issued on April 4, 2023.

[2] At the conclusion of the May 31st Reasons, the Board invited the parties to the abovementioned applications to file brief written submissions regarding the sequence in which the Board should consider the applications.

[3] The Board received submissions from Local 151, Woodland, the Council, IBEW Local 2038 and LIUNA Local 180 on June 14, 2023.

[4] Local 151's position is that its successorship application should be heard first, and the remaining applications postponed until it is determined. If the successorship application is successful, its rights will be clarified and confirmed, and a hearing with respect to its certification application will not be necessary or appropriate. Further, some of the relief requested by IBEW Local 2038 and LIUNA Local 180 in their respective unfair labour practice applications will be rendered

moot; particularly, that Local 151's certification application be dismissed due to alleged employer influence and interference. If the successorship application is dismissed, Local 151 acknowledges that the unfair labour practice applications may have a direct impact on its certification application. Local 151's suggested ordering for hearing the applications is: first, its successorship application; next, its certification application, if necessary; last, the unfair labour practice applications.

[5] Like Local 151, Woodland takes the position that Local 151's successorship application should be heard first. If it is successful, Local 151's certification application will be rendered moot. While the unfair labour practice applications will not necessarily be rendered moot if the successorship application is successful, it is in the Board's and the parties' interests for the successorship issue to be resolved first, as it will allow the parties to reassess their positions and arguments with respect to the unfair labour practice applications in light of the successorship determination. If the successorship application fails, Woodland submits that Local 151's certification application should be heard next, separate from the unfair labour practice applications. Finally, the unfair labour practice applications should be combined into one proceeding, and heard last.

[6] The Council, IBEW Local 2038 and LIUNA Local 180 filed a common written submission. They submit that the only applications whose resolution could definitively decide all matters respecting the common dealings and work giving rise to all of the applications are the unfair labour practice applications, either of which could result in the dismissal of the successorship and certification applications. While the unfair labour practice applications have not sought dismissal of the successorship application as relief, it is suggested that the applications could be amended to seek such relief, if required.

[7] The Council and its affiliates suggest that there will be substantial overlap in the evidence to be addressed in the successorship application and the unfair labour practice applications, particularly as to the manner of the asserted transfer of work between TWI and Woodland and Woodland's associated actions in dealing with employees. Their preference is for the successorship, certification and unfair labour practice applications to be consolidated and scheduled for a common hearing, with successive evidentiary phases (beginning with evidence with respect to the

successorship and certification applications, followed by evidence with respect to the unfair labour practice applications) and the presentation of argument with respect to all four applications afterward.

[8] In addition to their submissions on sequencing, the Council and its affiliates have proposed that TWI and Woodland be required to disclose to the other parties “the standard set of documents to be produced by employers in successorship cases for a time period beginning in 2002: see *Prairie Arctic Regional Council of Carpenters, Drywallers, Millwrights v Ellison Corporation*, 2014 CanLII 100507 (SK LRB) at para. 77 and *United Brotherhood of Carpenters and Joiners of America, Local 1985 v. Brand Energy Solutions (Canada) Ltd.*, 2018 CanLII 127660 (SK LRB) at para. 33[.]”

Analysis and Decision:

[9] The Board is the master of its own schedule and is empowered under subsection 6-103(1) and clause 6-111(1)(k) of *The Saskatchewan Employment Act* to adjourn or postpone any proceeding if it considers postponement appropriate.¹

[10] In *Brand*, mentioned above, a certification application by Local 151 spawned successorship and common employer applications by certain craft unions.² In an oral ruling the Board determined that it would hear the successorship applications first, before the related applications (i.e., the certification and common employer applications),³ which were postponed pending determination of the successorship applications. While not reduced to writing, the fact that the certification application could be affected by the successorship applications was presumably an important consideration in the sequencing of the applications.

[11] The Board can take some guidance from the Court of King’s Bench, which is often required to decide sequencing in the context of proposed class actions. In such cases the plaintiff wants their certification application heard first, while the defendant wants their application heard first, as their application (e.g., for summary judgment) may dispose of some or all of the claims against them.

¹ *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [Act], ss 6-103(1) and 6-111(1)(k).

² *United Brotherhood of Carpenters and Joiners of America, Local 1985 v Brand Energy Solutions (Canada) Ltd.*, 2018 CanLII 127660 (SK LRB) [*Brand*].

³ *Brand*, at paras 1-2.

[12] In *Piett*, a leading decision on the sequencing of applications in proposed class actions, the Court noted that fairness to all parties, efficiency and judicial economy are the key considerations in determining sequencing.⁴

[13] In spite of the different forum and type of proceeding involved, the key considerations employed by the Court are also relevant when the Board is determining the sequencing of related applications. Paraphrasing from *Piett*,⁵ some of the questions when assessing the key considerations include:

- Has the party seeking postponement of any application(s) proceeded promptly with the application(s) it seeks to have determined first?
- Will postponing the application(s) promote efficiency, in the circumstances?
- Are any of the applications time sensitive, or needing to be heard promptly to ensure the proceeding is conducted fairly?

[14] In addition, the Board has generally prioritized certification applications to ensure that employees are not unduly delayed in the exercise of their rights,⁶ though successorship and rescission applications could be prioritized based on similar reasoning. When determining sequencing, the Board will be mindful of making economical use of the time and resources of the parties and the Board. Ultimately, the list of factors which may impact sequencing in specific circumstances is not closed.

[15] As aforementioned, Local 151 wants to proceed with its successorship application first, and Woodland supports this sequencing.

[16] While Local 151 filed its certification application first, on January 10th, it filed its successorship application only 15 days later. The delay in the successorship application proceeding

⁴ *Piett v Global Learning Group Inc.*, 2018 SKQB 144 [*Piett*], at para 15.

⁵ *Piett*, at para 15, particularly the sixth through ninth bullet points.

⁶ *Seiu-west v Saskatoon Twin Charities Inc. Operating City Centre Bingo*, 2019 CanLII 120616 (SK LRB), at para 24.

is due to the Council's application to intervene in it and the Board's consideration of the Council's application, not due to delay on the part of Local 151.

[17] In terms of efficiency and judicial economy, if Local 151's successorship application is successful, its certification application will not be required. Further, the context of the unfair labour practice applications against Woodland is different if it has been a successor employer to TWI (with an associated obligation to collectively bargain with Local 151), than if it has not. It would benefit both the Board and the parties to the unfair labour practice applications to have the successorship issue resolved, to enable the evidence and argument respecting those applications to be appropriately focused.

[18] From the Board's perspective, the arguments for determining the successorship application first, based on efficiency and judicial economy, are persuasive. Further, there is no apparent unfairness in doing so, nor have the Council or its affiliates suggested any.

[19] The Board is sceptical of the suggestion that hearing all four applications together in some form of consolidated proceeding is the most efficient way to proceed. Further, a consolidated proceeding could raise fairness issues.

[20] One of the Board's considerations in granting the Council limited intervenor standing in the successorship application was that the Council's involvement would not unduly delay the application's resolution. This was premised on the Council not being permitted to lead evidence regarding its unfair labour practice application. The Council's unfair labour practice application has been dismissed,⁷ but those of its affiliates remain to be litigated.⁸ The Board is concerned that the consolidated proceeding proposed by the Council and its affiliates would result in the delay sought to be avoided in the May 31st Reasons.

[21] The consolidated proceeding proposed by the Council and its affiliates also has the potential to blur the lines regarding what evidence and arguments are applicable to the respective applications in the proposed evidentiary and argument phases. The Council has important but

⁷ On the basis of the Council's lack of standing to advance it.

⁸ May 31st Reasons, paras 36 and 56.

limited standing in the successorship application that was granted on the basis that it would not widen the *lis* in that application. A consolidated proceeding could pose challenges in ensuring this.

[22] In the Board's view, fairness, efficiency and judicial economy are achieved by hearing and determining the successorship application first.

[23] Because there are fewer issues in the successorship application alone than there would be in a consolidated proceeding, it will be able to be scheduled for fewer days, and the Board should be able to render its decision regarding it more promptly than a decision regarding all issues in a consolidated proceeding. A relatively prompt decision on the successorship application will enable Woodland and its employees, as well as IBEW Local 2038 and LIUNA Local 180, to know where they stand with respect to Local 151.

[24] Accordingly, the proceedings in LRB File Nos. 005-23, 027-23 and 028-23 will be postponed pending determination of the successorship application in LRB File No. 015-23. At this time the Board declines to make any further decision regarding when and how LRB File Nos. 005-23, 027-23 and 028-23 will be heard. This issue will be revisited after the successorship application is determined. At that time, it will be clear whether the certification application in LRB File No. 005-23 is relevant.

[25] With respect to the Council's and its affiliates' suggestion that TWI and Woodland be required to disclose certain documents for the purposes of LRB File No. 015-23, the parties are encouraged to work cooperatively with respect to disclosure. The Board does not have a Form 19 application for pre-hearing production before it at this time. If there is a dispute over what ought to be produced the Board encourages an application to be made promptly.

[26] The Registrar will contact the parties to set up a teleconference for the purposes of the case management and scheduling of LRB File No. 015-23.

[27] These reasons and decision are made in my capacity as the Board's executive officer, for the purposes of s. 6-97 of the Act.

Yours truly,

Michael J. Morris, K.C., Chairperson
Labour Relations Board