Saskatchewan
Labour Relations Board

SASKATCHEWAN BUILDING TRADES COUNCIL, Applicant v CONSTRUCTION WORKERS UNION, CLAC LOCAL 151, WOODLAND CONSTRUCTORS LTD. and TECHNICAL WORKFORCE INC., Respondents

WOODLAND CONSTRUCTORS LTD., Applicant v SASKATCHEWAN BUILDING TRADES COUNCIL and CONSTRUCTION WORKERS UNION, CLAC LOCAL 151, Respondents

LRB File Nos. 015-23 and 034-23; LRB File Nos. 025-23 and 046-23; May 31, 2023
Chairperson, Michael J. Morris, K.C.; Board Members: Vince Engel and Grant Douziech

For Saskatchewan Building Trades Council:	Greg D. Fingas
For Construction Workers Union, CLAC Local 151:	Richard F. Steele and Carly M. Baker
For Woodland Constructors Ltd.:	Michael Vos and Lori Brienza
For Technical Workforce Inc.:	No one appearing

Intervention – Union files certification application and then files successorship application while representation vote being conducted – Unclear whether alleged successorship occurred in the context of a retendering – Board grants applicant limited standing as a public law intervenor in successorship application.

Summary dismissal – Unfair labour practice application – Standing - Board dismisses unfair labour application – Applicant having no real and direct interest necessary to ground private interest standing.

REASONS FOR DECISION

Background:

[1] **Michael J. Morris, K.C., Chairperson:** These are the Board's reasons regarding an application to intervene in a successorship application[1] brought pursuant to s. 6-18 of *The Saskatchewan Employment Act* [Act],[2] and an application to summarily dismiss an unfair labour practice application alleging contraventions of s. 6-62 of the Act.[3]

[2] The applications arise out of the following factual matrix.

[1] LRB File No. 034-23.
[2] *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [Act].
[3] LRB File No. 046-23.

[3] Prior to December of 2022, Graham Construction [Graham] contracted with Technical Workforce Inc. [TWI] to provide industrial construction-related services for the Cargill Seed Crushing Plant in Regina and the Great Plains Power Station in Moose Jaw [the Sites]. The Construction Workers Union, CLAC Local 151 [Local 151] is the bargaining agent for TWI's employees pursuant to an order of the Board dated October 7, 2016.[4]

[4] In December of 2022 Graham awarded Woodland Constructors Ltd. [Woodland] contracts to perform industrial construction-related services for the Sites, and Woodland hired (former) TWI employees to do so. Local 151 initially filed a certification application[5] for Woodland's employees, on January 10, 2022. Shortly afterward, the Saskatchewan Building Trades Council [Council], on behalf of some of its affiliate unions, contacted Woodland about being able to access the Sites to discuss organizing, noting access had been provided to Local 151. Neither the Council nor its affiliates were provided access. On January 18, 2022, the Board directed a mail-in vote on Local 151's certification application. On January 25, 2022, Local 151 filed a successorship application[6] alleging Woodland to be a successor employer to TWI based on a "transfer" of TWI's contracts to Woodland. For its part, Woodland has not objected to Local 151's certification application or its successorship application. It has, however, noted that it was awarded new contracts for the Sites by Graham based on its reputation and expertise, and that TWI's contracts were not transferred to it, nor did it provide any financial consideration to TWI when it was awarded the new contracts.[7]

[5] On February 8, 2023, the Council filed an unfair labour practice application [ULP application][8] against Woodland on the basis that it and its affiliates were denied access to the Sites, unlike Local 151, and that Woodland's hire-on packages had included Christian Labour Association of Canada [CLAC] benefit and retirement plan enrollment forms. On February 10, 2023, the Council's affiliates, the International Brotherhood of Electrical Workers, Local 2038 [IBEW Local 2038] and the Construction and General Workers Union, LIUNA Local 180 [LIUNA Local 180] filed similar applications.[9] Each of the applications seeks dismissal of Local 151's certification application on the basis that "it is the result of employer influence and interference".[10]

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[4] LRB File No. 173-16.
[5] LRB File No. 005-23.
[6] LRB File No. 015-23.
[7] Reply of Woodland in LRB File No. 015-23, paras 3(a) and (b).
[8] LRB File No. 025-23.
[9] IBEW Local 2038's application is LRB File No. 027-23 and LIUNA Local 180's application is LRB File No. 028-23.
[10] Application in LRB File No. 025-23, para 12(c); Application in LRB File No. 027-23, para 10(c); Application in LRB File No. 028-23, para 11(f).

[6] On February 28, 2023, the Council applied to intervene in Local 151's successorship application.[11] On March 14, 2023, Woodland applied to summarily dismiss the Council's ULP application on the basis, amongst other reasons, that the Council lacks standing to advance it.[12] These are the two applications which are being determined in these reasons. The Board has not considered it necessary to convene an oral hearing for either application.[13]

[7] The Board will address the Council's application to intervene in Local 151's successorship application first. It will then turn to Woodland's application to summarily dismiss the Council's ULP application. Finally, the Board will provide a summary of its decision and further direction to the parties.

A. The Council's application to intervene in the successorship application

i. The Council's position

[8] The Council seeks direct interest, public law or exceptional intervenor standing to intervene in Local 151's successorship application, in order to present evidence and argument regarding:

a. The interest of workers in access to bargaining agents aside from those selected by their employer; and
b. The process by which Woodland acquired its work, and administered its selective preference among potential bargaining agents, at the applicable work sites.[14]

[9] The Council takes the position that the successorship application has been filed by Local 151 to render its ULP application moot. Recall that the Council's ULP application (along with those of its affiliates IBEW Local 2038 and LIUNA Local 180) seeks dismissal of Local 151's certification application on the basis that the application results from improper influence and interference by Woodland.

[10] The Council submits that it satisfies the test for each of direct interest, public law and exceptional intervenor standing.

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[11] LRB File No. 034-23.
[12] LRB File No. 046-23.
[13] In LRB File No. 046-23 Woodland has requested that its summary dismissal application be considered without an oral hearing. In its reply, the Council requested that the Board either dismiss Woodland's summary dismissal application without an oral hearing, or alternatively, hold an oral hearing. The Board has the authority to decide any matter before it without holding an oral hearing: s. 6-111(1)(q).
[14] Application in LRB File No. 015-23, para 3(k).

[11] The Council states that its direct interest arises on the basis that if the successorship application is granted, particularly if granted prior to the Council's or its affiliates' unfair labour practice applications being heard, the latter will be rendered moot.

[12] The Council submits that it should be granted public law intervenor standing because Local 151 and Woodland are substantially aligned in interest on the successorship application, and the Council's involvement will assist the Board in making a decision in what will otherwise be an uncontested application. The Council suggests its involvement will assist the Board in determining whether a successorship between TWI and Woodland has occurred at all, and whether it would be appropriate to make an "otherwise order", i.e., a discretionary order under s. 6-18 by which Woodland would not be certified as a successor employer to TWI in spite of a successorship having been established. The Council submits that the commission of an unfair labour practice by Woodland may be a sufficient basis for the Board to make an "otherwise order". The Council takes the position that its intervention would not widen the *lis* between Local 151 and Woodland, and that its proposed evidence and argument would be directed at issues the Board will be required to consider in the successorship application.

[13] Finally, the Council submits that if the Board determines that it should not be granted direct interest or public law intervenor standing, it satisfies the three required elements for exceptional intervenor standing: (a) a demonstrable and genuine interest in the answer to the legal question in dispute; (b) special circumstances which differentiate it from others who may have a similar interest; and (c) the ability to provide valuable assistance to the Board in considering the issues before it.

ii. Woodland's position

[14] Woodland states that the Council cannot satisfy the requirements for any form of intervenor standing in the successorship application.

[15] Woodland submits that the issues in the successorship application relate solely to how Woodland acquired the work for the Sites in December of 2022, and whether these circumstances engaged s. 6-18 of the Act. The Council cannot provide any evidence regarding this, nor has it suggested that it can.

[16] Woodland states that the Council has no legal rights or obligations that will be directly impacted by Local 151's successorship application. Accordingly, it cannot be granted direct interest intervenor standing. The Council does not and cannot have any application for bargaining

rights for Woodland employees before the Board because it is not a union, and even if it could and did, such circumstances have not been sufficient to justify granting direct interest intervenor standing in analogous circumstances.[15] Similarly, the fact that the potential remedies in the Council's ULP application may be affected by the outcome of the successorship application does not give it a direct interest in the successorship application.

[17] Woodland suggests that the successorship application involves no issues of public law importance beyond the immediate parties to the application, and that the application of the *Latimer*[16] factors weighs against granting the Council public law intervenor standing. Woodland states the proposed intervention would unduly delay the successorship application, widen the *lis* in it, and require Woodland to respond to irrelevant evidence. Simply put, evidence and argument related to the Council's ULP application have no bearing on whether a successorship occurred between TWI and Woodland. Further, the fact that the Board may make an "otherwise order" under s. 6-18 cannot be relied upon to grant the Council public law standing where the underlying application does not raise an issue of public law importance and application of the *Latimer* factors weighs against the Council's request.

[18] Finally, Woodland submits that the Council cannot meet the criteria for exceptional intervenor standing. Woodland reiterates that the Council cannot apply for certification of its employees, that its historical involvement with its affiliates are not "special circumstances" justifying its intervention, and that the evidence the Council proposes to tender (which grounds its ULP application) is irrelevant to whether Woodland is a successor employer to TWI.

iii. Local 151's position

[19] Like Woodland, Local 151 states that the Council cannot satisfy the requirements for any form of intervenor standing in the successorship application. In addition, Local 151 notes that the Council is a historically fierce adversary to it and is a political body which cannot acquire bargaining rights. Local 151 views the Council's proposed intervention as an attempt to frustrate its ability to preserve its bargaining rights. It notes that the Council's ULP application makes no reference to requiring relief related to the successorship application (e.g., dismissing it) - only a request that Local 151's certification application be dismissed - despite the Council's ULP application being filed two weeks after the successorship application.

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[15] *Construction Workers Union, CLAC Local 151 v. The International Association of Heat & Frost Insulators and Asbestos Workers, Local 119*, 2018 CanLII 127663 (SK LRB) [*Brand*], at para 12.
[16] *R v Latimer*, 1995 CanLII 3921 (SK CA) [*Latimer*].

[20] With respect to the Council's request for direct interest intervenor standing, Local 151 emphasizes that the Council is not a union and has no ability to acquire bargaining rights. Further, none of the Council's affiliates have applied to acquire bargaining rights for Woodland's employees.

[21] With respect to the Council's request for public law or exceptional intervenor standing, Local 151 states that the Council's participation would not assist the Board. Local 151 submits that the Council's proposed evidence is irrelevant to whether a successorship occurred between TWI and Woodland, and that the Board will have the necessary evidence and argument before it without the Council's involvement. Further, Local 151 states the successorship application raises no questions of public law importance, and that the Council's involvement would cause undue delay, prejudice the parties, widen the *lis* between them, and politicize the application.

iv. Analysis and Decision

[22] The Board's authority to add an intervenor to proceedings is grounded in ss. 6-103(1) and 6-112(4)(a) of the Act:

> ***6-103**(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.*
> …
>
> ***6-112*** …
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> *(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;*

[23] In 2010, in *J.V.D. Mill Services*, the Board identified three forms of intervention recognized by it: direct interest, public law and exceptional.[17] In *Tercon*, the Board summarized these forms of intervention and explained that when deciding whether to add an intervenor it will consider the fairness to the parties, including the applicant, and the potential for the applicant to assist the Board:

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[17] *Communications, Energy and Paperworkers Union of Canada v. J.V.D. Mill Services Inc.*, reasons for decision dated September 27, 2010, LRB File No. 087-10.

> ***[31]*** *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[6]. These three (3) forms of intervention are summarized as follows:*
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> > *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.*[18]

[24] In *Ledcor*, the Board emphasized the need to carefully scrutinize applications to intervene, and to exercise its discretion to add intervenors sparingly:

> *[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.*[19]

[25] More recently, in *CREA*,[20] the Board determined that it is appropriate to consider an applicant's eligibility for public law intervenor standing before considering their eligibility for exceptional intervenor standing, where both are in issue:

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[18] *Construction Workers Union (CLAC), Local 151 v Tercon Industrial Works Ltd.*, 2012 CanLII 2145 (SK LRB) [*Tercon*], at para 31.

[19] *Construction Workers Union, CLAC Local 151 v Ledcor Industrial Limited*, 2018 CanLII 53123 (SK LRB) [*Ledcor*], at para 20.

[20] *Saskatchewan Provincial Building and Construction Trades Council v Churchill River Employees' Association (CREA)*, 2020 CanLII 10513 (SK LRB) [*CREA*].

> ***[36]*** *The Council… applies for status as an exceptional intervenor and/or a public law intervenor in the underlying application. In deciding how to proceed, the Board heeds the observation made by the Board in Tercon, as follows:*
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>> *37 …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 intervenor status to a party that does not qualify as either a direct interest intervenor or public law intervenor.*
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> ***[37]*** *In light of these comments, the Board will proceed to consider the public law category first, and then will consider the exceptional intervenor category if necessary.*[21]

[26] In accordance with the reasoning in *CREA*, the Board will address the Council's application to intervene in the following order: (1) as a direct interest intervenor; (2) as a public law intervenor; and (3) as an exceptional intervenor, if necessary.

[27] Prior to delving into the merits of the Council's application, the Board considers it appropriate to make some brief comments about the nature of a successorship application, and what must generally be established to prove a successorship. A successorship application seeks to preserve collective bargaining rights when there is a disposal of a business, or part of a business, from one employer to another. The fundamental issue in any successorship application is whether such a "disposal" has taken place, which is defined as "a sale, lease, transfer or other disposition".[22] The inquiry into this issue focuses on how the new employer acquired the business to which collective bargaining rights are alleged to attach.

[28] As might be expected, successorship disputes generally involve the union seeking to preserve bargaining rights achieved with respect to a previous employer, and the new employer resisting attachment of those bargaining rights to its business. Notably, there does not appear to be such a dispute in Local 151's successorship application, at least on the face of the pleadings. Woodland's reply indicates that it "does not contest the application", other than denial of some specific facts alleged in the application. For example, Woodland denies that TWI's contracts relating to the Sites were transferred to it; rather, Woodland indicates that it was awarded new contracts relating to the Sites by Graham. Accordingly, while there may be some disagreement regarding the underlying facts in the successorship application, on the face of the pleadings Woodland is not opposed to the relief sought by Local 151. With this context explained, the Board will now turn to addressing the Council's request for intervenor standing.

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[21] *CREA*, at paras 36-37.
[22] Act, s 6-18(1).

[29] The Board declines to grant the Council standing as a direct interest intervenor. It is true that its ULP application (or those of its affiliates) could be affected by the outcome of the successorship application. For example, if the successorship application is granted, the Council might reconsider its argument that Woodland allowing Local 151 access to the Sites while denying its affiliates similar access was inappropriate. However, the Council has no legal rights or obligations that could be directly affected by the outcome of the successorship application. The Council is not a union capable of obtaining bargaining rights. Even if it were, this would not be determinative. As Woodland has pointed out, in a previous decision involving Local 151, *Brand*, the Board held that the fact that Local 151 had a pending certification application involving Brand did not give it a direct interest in the successorship applications with respect to Brand which had been brought by two craft unions.[23] Perhaps more importantly, in *Brand* the Board concluded that Local 151's proposed intervention would not be of assistance because it would not provide any relevant evidence or perspective beyond that of the existing parties.

[30] Here, the Board is not satisfied that the Council's proposed evidence relating to its ULP application would assist the Board in determining the fundamental issue in the successorship application. As previously mentioned, this issue concerns how Woodland acquired its work at the Sites, and whether this amounted to a "disposal" within the meaning of s. 6-18(1) of the Act. Simply put, a successorship may have occurred regardless of whether an unfair labour practice occurred at the Sites after work commenced. The Board notes that the Council's ULP application impugns the inclusion of CLAC benefit and retirement forms in Woodland's hire-on packages prior to Woodland commencing work at the Sites in January. However, this fact is not in dispute in the successorship application.

[31] The Board is also not satisfied that evidence pertaining to *after* Woodland acquired and commenced its work at the Sites, whether supporting an unfair labour practice allegation against Woodland or not, is relevant to whether the Board should make an "otherwise order" under s. 6-18. The Council submits that an unfair labour practice having been committed by Woodland *after* a successorship has occurred at law – assuming this is established - could cause the Board to refuse to give effect to the successorship rights of Local 151. The Council has cited no precedent where this has occurred, and the Council is not among those individuals or entities "directly affected by a disposal" that may apply for an order under s. 6-18(4)[24] to, for example, direct that

[23] *Brand*, at para 12.
[24] The individuals and entities listed under s. 6-18(4) are "any union, employer or employee directly affected by a disposal".

a vote be taken.[25] Further, the Council's position is troubling insofar as it suggests a *stranger* to the collective bargaining relationship could frustrate the preservation of employees' collective bargaining rights based on *their employer's* unfair labour practice. An "otherwise order" is unnecessary for the Council's affiliates to attempt organizing at the Sites. Assuming an unfair labour practice has occurred which has impeded organizing, an appropriate order in the context of an unfair labour practice application can remedy it.

[32] The considerations regarding whether to grant the Council public law standing are different than those regarding direct interest standing, and based on the specific circumstances in this successorship application, the Board is prepared to grant the Council limited standing as a public law intervenor. The Council will be permitted to cross-examine witnesses and make argument regarding whether a disposal of a business or part of a business occurred from TWI to Woodland, pursuant to s. 6-18. Our explanation follows.

[33] In determining whether to grant an applicant public law standing, the Board must consider whether there is a "public law" aspect to the dispute, giving it significance beyond the immediate parties.[26] In such disputes, an intervenor may make a valuable contribution by providing a different perspective than the immediate parties. The exercise of the Board's discretion will ultimately turn on the applicant's potential to assist the Board and considerations of fairness, including potential prejudice to the immediate parties to the dispute. In exercising its discretion, the Board will take into account the considerations described in *Latimer*.[27] When the answer to one or more of the following questions is "possibly", the proposed form of intervention may be problematic:

1. Will the intervention unduly delay the proceedings?
2. Is there potential prejudice to the immediate parties if the intervention is granted?
3. Will the intervention widen the *lis* (dispute) between the parties?
4. Is the position of the intervenor already represented and protected by one of the parties?
5. Will the intervention transform the proceeding into a political arena?

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[25] Clause 6-18(4)(d).
[26] *International Brotherhood of Electrical Workers, Local 2038, United Association of Journeyman & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, Local 179 and International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v International Association of Bridge, Structural, Ornamental, and Reinforcing Ironworkers, Local 771*, 2019 CanLII 43219 (SK LRB) [*Ironclad*], at para 43.
[27] *Latimer*, at para 5.

[34] The Board is satisfied that there is a sufficient public law aspect to the successorship application to give it significance beyond the immediate parties. Based on Woodland's pleading, its acquisition of its contracts for the Sites appears to have been via an award from Graham, based on its reputation and expertise, and not via a direct transfer from TWI. This indicates that Woodland's acquisition of its work may have been through a form of contract retendering. Determining whether a successorship occurs in a retendering can present unique challenges. The Board has previously noted that "[t]he mere replacement of one contractor with another does not provide the necessary nexus between the two to constitute the transfer of a "business"…" and that "[t]here must be something disposed of which is a "going concern…".[28] For this reason, legislators have in the past included "deemed successorship" provisions for circumstances involving retendering of certain contracts (e.g., s. 37.1 of *The Trade Union Act* (repealed)). The Act contains no such provision. While each case must be decided on its own facts, the Board's decision on whether a successorship has occurred in this case may be persuasive in other circumstances involving other parties, and a perspective other than that of the immediate parties (who appear substantially aligned) may assist the Board in examining the relevant considerations.

[35] While Local 151 characterizes the Council's affiliates as fierce competitors and adversaries to it, this does not necessarily mean that the Council's participation will be solely oriented towards subverting Local 151's application. The Council's affiliates are presumably not interested in the Council advocating for an unreasonable interpretation and application of s. 6-18 which could prevent their own successorship applications from being granted in other circumstances.

[36] In the Board's view, its decision to grant the Council the limited form of intervention contemplated – the ability to cross-examine and make argument on the fundamental successorship issue – does not raise significant concerns arising from the *Latimer* considerations. Adding a party always adds some delay to proceedings, but the Council's limited intervention should not cause undue delay. The Board can case manage the successorship application to limit delay. Local 151's and Woodland's arguments about potential prejudice, widening the *lis* in the successorship application, and transforming the proceeding into a political arena concern the Council intervening to litigate its unfair labour practice allegations in the context of the successorship application. This is not being permitted.

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[28] *CUPE, Local 1975-01 v Versa Services Ltd*, 1993 CarswellSask 627 (SK LRB), at para 24. See also *Saskatchewan Joint Board, RWDSU v Marriott Canadian Management Services Ltd.*, 1988 CarswellSask 870 (SK LRB).

[37] The following reasoning from *CREA* is applicable to the circumstances before the Board:

> ***[56]*** *... Given the positions of the parties, the hearing on this matter will not likely benefit from the usual indicia of the adversarial process; nor can the Board expect or count on a vigorous cross examination of… witnesses or assume that role itself. The Board will benefit from the Council's contribution. Whether that contribution is ultimately persuasive or even influential is another matter entirely.*[29]

[38] Because the Board is exercising its discretion to grant the Council limited standing as a public law intervenor, it is unnecessary for it to consider whether the Council could qualify as an exceptional intervenor.

B. Woodland's application to summarily dismiss the Council's ULP application

i. Woodland's position

[39] Woodland's summary dismissal application is primarily based on the argument that the Council lacks standing to bring its ULP application, which is effectively duplicated by the applications of its affiliates, IBEW Local 2038 and LIUNA Local 180. Woodland submits that the Council is not a union, has no rights that can be impacted by its ULP application, and accordingly has no real and direct interest sufficient to support standing. Further, the Council's ULP application is unnecessary given its affiliates have filed their own applications. Woodland also argues that the ULP application lacks evidence and fails to plead the elements of a violation of the Act, though these arguments are less forcefully advanced in its material.

ii. The Council's position

[40] The Council has pled that its standing is rooted in its longstanding representation of its affiliates, stating in its reply that "Both the Affiliates and the Council have a direct interest in the exercise of construction industry employees' exercise of their rights under the Act based on their active interest in organizing the worksite and longstanding presence in the industry."[30] The Council also notes it had direct involvement in the circumstances underpinning the alleged unfair labour practices, including by communicating with Woodland on behalf of its affiliates.[31]

[41] The Council pleads that its mandate is "to advance the collective interests of the Affiliates and their members by promoting the building trades and advocating for the best interests of workers with a unified voice", and further that "[i]n carrying out this mandate, the Council regularly

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[29] *CREA*, at para 56.
[30] Council's reply in LRB File No. 046-23, para 4(a).
[31] Council's reply in LRB File No. 046-23, para 4(a).

facilitates collective bargaining and other interactions between Affiliates and other parties, including representative employers' organizations, employers and site owners."[32] The Council also states that its ULP application was filed by the Council "with the approval of the Affiliates on the basis that it is appropriate for the Council to represent the common interests of the Affiliates in addition to asserting the labour rights of construction industry workers in its own right."[33]

[42] The Council takes the position that "a labour body", whether or not a trade union, has an interest in raising issues of interference related to a certification application which would not otherwise be addressed before it.[34] In commenting on the ULP applications of its affiliates, the Council states that their applications address "distinct elements of Woodland's actions".[35] In contrast, the Council states that its application addresses "the common interests of the Council and its Affiliates"[36] and is the proceeding "which most fully addresses [Woodland's] conduct."[37]

[43] The Council does not mention any applications where it has filed and litigated a ULP application before the Board, but suggests that its having been granted public law intervenor standing in *CREA* (a certification application) is supportive of it having standing to do so.[38]

[44] The Council submits that the evidence in its ULP application is sufficient to establish the violations of the Act it alleges, which center on Woodland promoting or favouring Local 151 to prevent organization by other bargaining agents.

iv. Analysis and Decision

[45] As discussed in *Thebaud*,[39] the Board may dismiss an application, with or without an oral hearing, where satisfied that the applicant lacks standing to bring it.[40] An applicant without standing has no arguable case.[41] Because the Board is a statutory tribunal, those claiming a right to be heard by it must ground their right in the Act.[42]

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[32] Council's reply in LRB File No. 046-23, para 5(c).
[33] Council's reply in LRB File No. 046-23, para 5(j).
[34] Council's written argument in LRB File No. 046-23, para 3.
[35] Council's written argument in LRB File No. 046-23, para 15.
[36] Council's written argument in LRB File No. 046-23, para 43.
[37] Council's written argument in LRB File No. 046-23, para 47.
[38] Council's written argument in LRB File No. 046-23, paras 32-33.
[39] *Saskatoon Co-Operative Association Limited v Craig Thebaud*, 2020 CanLII 35487 (SK LRB) [*Thebaud*].
[40] *Thebaud*, at paras 20-21.
[41] *Saskatchewan Power Corporation v Joel Zand*, 2020 CanLII 36086 (SK LRB), at para 19.
[42] *Arch Transco Ltd. (Regina Cabs, Appellant) v United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers)*, 2020 CanLII 100542 (SK LRB), at para 91.

[46] Generally, and unlike applications to intervene, which involve different principles and require the Board to grant standing, applicants commence proceedings before the Board on the basis that one or more of their statutory rights or interests are directly in issue in the application. For example, a union may allege that an employer has refused to collectively bargain with it in spite of a certification order requiring the employer to do so. It is the union's right and employer's obligation to collectively bargain that give the union the *real* and *direct* interest[43] necessary to file its application. This type of standing was referred to as private interest standing in *Thebaud*,[44] and is sometimes called "standing as of right". While the Supreme Court has recognized that in some cases, particularly those concerning the legality of governmental conduct[45] or legislation,[46] proceedings before the courts may be commenced on the basis of public interest standing as opposed to private interest standing, the Board does not understand the Council to be arguing that its ULP application should be maintained on this basis. Its ULP application does not involve a challenge to governmental conduct or legislation. Further, the Board notes that one of the factors the courts consider when deciding whether to grant public interest standing is whether the dispute is already being advanced by another litigant.[47] Here, the Council's affiliates have filed similar applications to the Council and are employing the same law firm.

[47] In determining whether the Council has private interest standing to advance its ULP application, the Board must consider whether the Council has rights or interests that are protected by the statutory provisions it relies upon.[48] Its affiliates may have protected rights or interests that the Council does not. Their private interest standing/standing as of right cannot clothe the Council with such standing if the statutory provisions it purports to rely upon cannot be interpreted as supporting such standing independently.

[48] In accordance with s. 2-10(1) of *The Legislation Act*,[49] the provisions the Council relies upon must be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature. Further, the Act must be given the fair, large and liberal interpretation that best ensures the attainment of its objects.[50] In general, the objects of Part VI of the Act, entitled "Labour Relations",

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[43] *Thebaud*, at para 34.
[44] *Thebaud*, at para 27.
[45] *Finlay v. Canada (Minister of Finance)*, 1986 CanLII 6 (SCC), [1986] 2 SCR 607.
[46] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 [*Downtown Eastside*]; *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27 [*Council of Canadians with Disabilities*].
[47] *Council of Canadians with Disabilities*, at para 55.
[48] *Thebaud*, at para 39.
[49] *The Legislation Act*, SS 2019, c L-10.2 [*The Legislation Act*].
[50] *The Legislation Act*, s 2-10(2).

are to facilitate and promote collective bargaining rights.[51] Part VI regulates the related rights and interests of employees, labour organizations, unions and employers, each of which are defined in s. 6-1(1).[52]

[49] The Council's application relies upon clauses 6-62(1)(a), (b), (c), (g), (h) and (i), which state:

> ***6-62****(1) It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*
>
> > *(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Part;*
> >
> > *(b) subject to subsection (3), to discriminate respecting or interfere with the formation or administration of any labour organization or to contribute financial or other support to it;*
> >
> > *(c) to engage in collective bargaining with a labour organization that the employer or a person acting on behalf of an employer has formed or whose administration has been dominated by the employer or a person acting on behalf of an employer;*
> >
> > *…*
> >
> > *(g) to discriminate with respect to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including termination or suspension or threat of termination or suspension of an employee, with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in a proceeding pursuant to this Part;*
> >
> > *(h) to require as a condition of employment that any person shall abstain from joining or assisting or being active in any union or from exercising any right provided by this Part, except as permitted by this Part;*
> >
> > *(i) to interfere in the selection of a union;*
> > *…*
>
> *(2) Clause (1)(a) does not prohibit an employer from communicating facts and its opinions to its employees.*
>
> *(3) Clause (1)(b) does not prohibit an employer from:*
>
> > *(a) permitting representatives of a union to confer with the employer for the purpose of collective bargaining or attending to the business of a union without deductions from wages or loss of time while so occupied; or*
> >
> > *(b) agreeing with any union for the use of notice boards and of the employer's premises for the purposes of the union.*

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[51] *Thebaud*, para 43.

[52] Apart from these four basic categories of rights-holders (employees, labour organizations, unions and employers), certain divisions of the Act accord rights to specific rights-holders in particular circumstances. For example, Division 13 (Construction Industry) incorporates representative employers' organizations and councils of unions, both of which may have representative rights arising after a construction industry certification.

[50] Clauses 6-62(1)(a), (g) and (h) prohibit employer conduct which interferes with the rights and interests of employees, though the interests of other legal entities under Part VI of the Act may also be affected (e.g., a union's interest in not having an employee intimidated from engaging in union activity). As the Council points out, the Board has heard applications alleging contraventions of these clauses brought by unions.[53] In the first example noted by the Council, *COPE*, *Local 342*, the essential character of the dispute was alleged employer interference with the membership of the union's bargaining committee.[54] In the second example, *Active Electric*, the union was engaged in the initial stages of a certification drive with respect to an employer when its members were terminated by the employer.[55]

[51] Clauses 6-62(1)(b), (c) and (i) prohibit employer conduct which interferes with the rights and interests of labour organizations and unions, though employees have a related interest in unions being freely selected, independent from employer influence, and able to effectively operate. Based on their definitions under s. 6-1(1) of the Act, both labour organizations and unions must have collective bargaining among their purposes. The key difference between them is that unions cannot be employer-dominated:

> ***6-1****(1)* *In this Part:*
>
> *…*
>
> *(e) "collective bargaining" means:*
>
> > *(i) negotiating in good faith with a view to the conclusion of a collective agreement or its renewal or revision;*
> >
> > *(ii) putting the terms of an agreement in writing if those terms were arrived at in negotiations or are required to be inserted into a collective agreement by this Part;*
> >
> > *(iii) executing a collective agreement by or on behalf of the parties; and*
> >
> > *(iv) negotiating from time to time the settlement of disputes and grievances of employees covered by a collective agreement or represented by a union;*
>
> *…*

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[53] See for example, *Canadian Office and Professional Employees Union, Local 342 v Canadian Union of Public Employees*, 2022 CanLII 48057 (SK LRB) [*COPE*, *Local 342*], where *Local 342* brought an application alleging breaches of clauses 6-62(1)(a), (g) and (h). See also *International Brotherhood of Electrical Workers, Local 2038 v Active Electric Ltd.*, 2018 CanLII 38245 (SK LRB) [*Active Electric*].

[54] *COPE, Local 342*, at para 18.

[55] *Active Electric*, at para 3.

(k) "labour organization" means an organization of employees who are not necessarily employees of one employer that has collective bargaining among its purposes;

…

(p) "union" means a labour organization or association of employees that:

(i) has as one of its purposes collective bargaining; and

(ii) is not dominated by an employer;

[52] In its written argument, the Council admits it is not a union and describes itself as a "labour body", which is a term with no significance for the purposes of the Act. The Board has previously described the Council as follows, in *Tercon* (underlining added):

> ***[33]*** *While all of the proposed intervenors, save SGEU, argued that they have a "direct" interest in the within proceedings, their assertions in this regard represent an unwarranted extension of this Board's meaning of the term "direct". This Board saw no evidence and none of the proposed intervenors purport to represent any of the employees falling within any of the bargaining units sought to be certified by CLAC. Furthermore, none of the proposed intervenors have filed certification applications involving any of the employees that were the subject matter of CLAC's certification applications. In our opinion, none of the proposed intervenors are directly impacted by the within applications as no legal obligations can be imposed upon them; nor are any certification rights they currently hold or are seeking to obtain prejudicially affected by the within applications.*
>
> ***[34]*** *For example, neither SGEU nor RWDSU represent employees in the construction industry. Similarly, the Saskatchewan Provincial Building Trades Council is not a trade union and, while affiliated with numerous building trades and craft unions in the construction industry, it does not purport to represent employees as a collective bargaining agent. While their respective counsel did not strenuously argue the point, for the purposes of clarity, clearly none of these parties have a "direct" interest in the within proceedings.*[56]

[53] In *Tercon*, the Board held that the Council did not have a direct interest necessary to sustain its proposed intervention in a certification application (wherein it alleged employer domination of the applicant) because it was not a union. The Council would not be directly impacted by the certification application because no legal obligations could be imposed upon it as a consequence, nor did the Council have any certification rights (existing or sought) which could be prejudicially affected by the application.

[54] Here, unlike in *Tercon*, the Council has not applied to intervene in Local 151's certification application as a direct interest intervenor.[57] Instead, it filed its ULP application seeking dismissal of Local 151's certification application on the basis of alleged employer influence and interference. However, this still requires the Council to establish it has a right or interest that is real and directly

[56] *Tercon*, at paras 33-34.
[57] LRB File No. 005-23.

in issue in its application in order to have private interest standing. Accordingly, the Council's reliance on *CREA*, a case where it was granted public law intervenor standing in a certification application, is misplaced.

[55] Similar to *Tercon*, the Council has no rights or interests that are directly engaged in its ULP application. Rather, it is attempting to litigate on behalf of its affiliates, or on behalf of employees for whom its affiliates are not bargaining agents and have not applied to be bargaining agents. This does not provide the Council with the *real* and *direct* interest necessary to sustain its own private interest standing. It is at least one step removed from those whose statutory rights and interests it seeks to litigate.

[56] The Council's submission that its ULP application is substantially different from those of its affiliates is unconvincing. It is not borne out by an examination of the respective applications. The differences between the applications are that the Council's application elaborates on its communications with Woodland, while LIUNA Local 180's application mentions it communicating with Woodland employees about pursuing a certification application, and the denial of access to the Sites affecting its ability to organize. IBEW Local 2038's application does not plead any facts that are not covered in the other applications, other than identifying itself as one of the Council's interested affiliates. Each of the applications seeks the same relief, including an order that Local 151's certification application be dismissed.

[57] If the Council has any relevant evidence to present with respect to its affiliates' ULP applications, it may be tendered as part of its affiliates' cases. Contrary to the Council's submissions, its "direct interactions with Woodland" and "its role as the representative of its Affiliates"[58] are insufficient to ground its own alleged private interest standing. If such circumstances were sufficient, in theory a law firm could file an application naming itself as a party solely on the basis of its client's asserted rights and interests.

[58] For the foregoing reasons, the Council lacks standing to bring its ULP application and it is appropriate for it to be summarily dismissed. It is unnecessary for the Board to consider Woodland's alternate arguments, and it declines to do so.

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[58] Council's written argument in LRB File No. 046-23, para 20.

C. Summary and further direction

[59] The result of these reasons is that:

a. The Council is granted limited standing as a public law intervenor in LRB File No. 015-23 to cross-examine witnesses and make argument regarding whether a disposal of a business or part of a business occurred from TWI to Woodland, pursuant to s. 6-18 of the Act; and

b. The Council's ULP application in LRB File No. 025-23 is dismissed.

[60] This is a unanimous decision of the Board. Appropriate orders will be issued accordingly.

[61] At this point, Local 151 has both its successorship and certification applications before the Board. IBEW Local 2038 and LIUNA Local 180, who are represented by the same counsel as the Council, each have a ULP application before the Board. Their applications seek dismissal of Local 151's certification application as a remedy. The Board requests brief written submissions from the parties to these four applications with respect to their proposed sequencing (i.e., which application should be heard first). The parties have until 5:00 p.m. on June 14, 2023 to file any submissions they wish to make with the Board.

DATED at Regina, Saskatchewan, this **31st** day of **May, 2023.**

LABOUR RELATIONS BOARD

Michael J. Morris, K.C.
Chairperson