

GRAIN & GENERAL SERVICES UNION, Applicant v WESTERN PRODUCER PUBLICATIONS LIMITED PARTNERSHIP/WESTERN PRODUCER PUBLICATIONS GP INC., Respondent

LRB File No. 073-23; March 5, 2024

Chairperson, Michael J. Morris, K.C.; Board Members: Shawna Colpitts and Laura Sommervill

Counsel for the Applicant, Grain & General Services Union: Samuel I. Schonhoffer and Katarina Kostiha

Counsel for the Respondent, Western Producer Publications Limited Partnership/Western Producer Publications GP Inc: Steve Seiferling and Gillian Fortlage

Successorship – The Western Producer – 1950 certification order naming Modern Press Limited as employer – Whether current employer a successor bound by 1950 order – Current employer bound – Pool acquired The Western Producer from Modern Press Limited and sold it to GVIC – Current employer acquired The Western Producer from GVIC – Union is a successor to union named in 1950 order – Declarations granted.

REASONS FOR DECISION

Background:

[1] Michael J. Morris, K.C., Chairperson: These are the Board's reasons regarding a successorship application filed by the Grain & General Services Union [Union] with respect to Western Producer Publications Limited Partnership/Western Producer Publications GP Inc. [Employer].

[2] The Employer owns the agriculture-oriented publication known as The Western Producer. The Employer and the Union have a relatively mature collective bargaining relationship with respect to employees working at The Western Producer. The negotiated term of their most recent collective bargaining agreement was August 1, 2019 to July 31, 2022.¹

[3] In 2023, the Employer expressed doubt about whether any certification order applied to employees working at The Western Producer. In response, the Union directed the Employer to a March 17, 1950 order of the Board [1950 order] naming the Saskatchewan Wheat Pool Employees Association [SWPEA] and Modern Press Limited. For its part, the Employer was unconvinced that

¹ Exhibit "C" to Exhibit U-1 (Agreed Statement of Facts).

the 1950 order applied to it. As a result, the Union applied to the Board for a determination in this regard, and associated relief pursuant to s. 6-18 of *The Saskatchewan Employment Act* [Act].²

[4] The Employer initially resisted the Union's application on several bases, some of which it has since abandoned. For the record, the Employer accepts that the Union is a successor union to SWPEA.³ Further, the Employer does not resist the Union's application on the basis that the Union took too long to file it (i.e., undue delay).⁴

[5] The parties filed an Agreed Statement of Facts⁵ which dispensed with the need for evidence respecting certain matters from 2002 onward. The parties agree that GVIC Communications Inc. [GVIC] purchased The Western Producer as a going concern from the Saskatchewan Wheat Pool [Pool] in a transaction that closed in 2002. The employees came with the transaction and GVIC was aware that they were represented by the Union; a collective agreement was in place at the time. GVIC then transferred The Western Producer to the Employer.⁶ The Employer and the Union have bargained collectively since then.

[6] The Employer's position with respect to the Union's application is set out succinctly in its written submissions:

...

2. *[The Employer] does not deny that there was a disposition of a business or that the business was acquired as a going concern in 2002. In fact, the parties agree that the Western Producer was purchased from the [Pool] by a holding company, [GVIC], as a going concern, in a transaction which closed in 2002.*

3. *[The Employer] also concedes that [the Union] is the successor to [SWPEA].*

4. *That which [the Employer] vehemently denies, the true crux of the successorship matter, is [the Union's] claims that the Western Producer was owned, controlled, and, at some point, disposed of by the certified business named in LRB File No. 123-49, Modern Press Limited ["Modern Press"].*

5. *More specifically, the issue at hand is whether [the Union] can establish a successorship from Modern Press to the [Pool] through the transfer of the Western Producer as a going concern.*⁷

² *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [Act].

³ The Board notes that the Union filed some evidence in relation to this. See, for example, Exhibit U-42 at page 3.

⁴ The Employer had pled this defence in paragraph 5(o) of its Reply, but indicated during closing argument that it was not arguing it. For its part, the Union indicated that, if required, it would rely on the Board's reasoning in *United Food and Commercial Workers, Local 1400 v Wal-Mart Canada Corp.*, 2009 CanLII 2048 (SK LRB).

⁵ Exhibit U-1.

⁶ The Agreed Statement of Facts does not indicate when this transfer occurred.

⁷ Employer's written submissions, paras 2-5.

[7] From the Employer's perspective, there are three key issues. The first issue is whether the 1950 order naming Modern Press Limited related to positions at The Western Producer. If it did, the second issue is whether Modern Press Limited transferred The Western Producer to the Pool at some point between 1950 and 2002. Finally, provided such a transfer took place, the third issue is whether The Western Producer was transferred to the Pool as a going concern.⁸ If it was, the Employer does not dispute that the 1950 order applies to it.

[8] From the Union's perspective, it has tendered sufficient evidence to address the issues identified by the Employer. Further, it submits that the Employer should be estopped from resisting its application based on proceedings in LRB File No. 003-02, which were initiated due to GVIC's acquisition of The Western Producer from the Pool. In brief, the Union's position is that GVIC admitted that the 1950 order applied to it in LRB File No. 003-02, that the Board proceeded on that basis in LRB File No. 003-02, and that the Employer should not be able to argue that the 1950 order did not apply to GVIC for the purposes of the current proceeding.⁹

Evidence:

[9] The Union called two witnesses who gave evidence on November 27 and 28, 2023. The Employer called no evidence. It indicated that it did not need to await the Board's decision on the admissibility of certain documents before deciding whether to call evidence.

[10] In reasons dated December 14, 2023, the Board ruled on the admissibility of those documents [Documents Decision].¹⁰ As a result of the Documents Decision, certain documents were admitted into evidence pursuant to the principled exception to the hearsay rule. Further, at the Board's request and with the parties' consent, the pleadings in LRB File No. 003-02 were entered into evidence.¹¹

[11] The following is meant to be a brief overview of the evidence given by the Union's witnesses, and not an exhaustive recitation of it. The Board will discuss the most relevant evidence, in detail, later in these reasons.

⁸ Employer's written submissions, para 61.

⁹ The Union raised this as a preliminary issue at the hearing, arguing that it could dispose of the need to call any evidence. The Board was not satisfied that it could reasonably address the issue in the absence of any evidence. One of the concerns highlighted by the Board was that it was unclear whether the 1950 order was the order alluded to in the reasons issued in LRB File No. 003-02.

¹⁰ *Grain & General Services Union v Western Producer Publications Limited Partnership/western Producer Publications GP Inc.*, 2023 CanLII 118607 (SK LRB) [Documents Decision].

¹¹ Exhibit B-1.

[12] Steve Torgerson [Mr. Torgerson] is the General Secretary of the Union. Mr. Torgerson explained that the disagreement between the Union and the Employer with respect to the applicability of the 1950 order led to the Union's application. He discussed his efforts to locate individuals who could provide first-hand accounts of circumstances surrounding the issuance of the 1950 order, and his inability to locate such individuals. Much of his evidence focused on his efforts to locate relevant documentary evidence. Some of the documents he located were entered with the consent of the Employer. The admissibility of other documents was disputed, and determined in the Documents Decision. Mr. Torgerson also discussed his understanding of an entity called Glacier Farms Media, which he understands to be a wholly-owned subsidiary of GVIC that manages GVIC's newspaper business. Mr. Torgerson described dealing with Glacier Farm Media's staff for labour relations issues (e.g., grievances) related to employees working at The Western Producer.

[13] Hugh Wagner [Mr. Wagner] was employed by the Union from 1975 until his retirement in 2023. Mr. Torgerson succeeded Mr. Wagner as the Union's General Secretary. Mr. Wagner gave evidence regarding his understanding, throughout his employment, that the 1950 order related to employees working at The Western Producer. Mr. Wagner was responsible for the bargaining unit containing employees working at The Western Producer, beginning in 1975. He negotiated with the Pool from that time onward, until the sale to GVIC. Mr. Wagner explained his understanding of how The Western Producer fit into the Pool's organizational structure, and the internal organization of The Western Producer. He explained where The Western Producer was published (it moved to a different location in 1977) and the different responsibilities employees within the bargaining unit had. He explained his interactions with individuals, now deceased, who were related to documents which have been ruled admissible in the Documents Decision. He described giving evidence in LRB File No. 003-02, and his recollection of the position that GVIC took during that proceeding.

Argument on behalf of the Union:

[14] The Union submits that, based on the Employer's position, the dispute is reduced to whether the 1950 order applied to employees working at The Western Producer when it was acquired by GVIC from the Pool.

[15] The evidence establishes that the Form G (Statement of Employment)¹² filed in LRB File No. 123-49 listed employees of Modern Press Limited who worked at The Western Producer at

¹² Exhibit U-19.

the time. The 1950 order¹³ was issued by the Board in reliance on the Form G. The bargaining unit that was certified consisted of those employees at The Western Producer who were not already in other craft-based bargaining units.¹⁴ In 1960, the 1950 order was amended when employees in the mailing department were carved out from it so that they could be represented by the Saskatoon Typographical Union, No. 663.¹⁵

[16] The Pool's annual reports establish that Modern Press Limited owned The Western Producer when the 1950 order was issued, and that Modern Press Limited was a wholly-owned subsidiary of the Pool at the time.¹⁶ The annual reports also establish that the Pool eventually transformed its organization such that the Pool became the sole operating company, with its subsidiaries, including Modern Press Limited, becoming holding companies only.¹⁷

[17] The Union submits that the documentary evidence supports The Western Producer being transferred from Modern Press Limited to the Pool. For example, and without providing an exhaustive recitation herein, the Union points to a document published by a division of the Pool entitled "The Inside Story of Modern Press and The Western Producer" with a forward by R.H.D. Phillips, Editor and Publisher of The Western Producer.¹⁸ It also points to collective agreements negotiated between SWPEA and the Pool from 1958 and later covering employees of the Pool's Printing and Publishing Division, with scopes conforming with the language in the 1950 order (including once the 1950 order was amended, after 1960).¹⁹ Further, it points to articles on The Western Producer's website, including one describing its 80-year history, dated August 28, 2003 (i.e., after GVIC acquired The Western Producer).²⁰

[18] The Union contends that the documentary evidence is mutually consistent and reinforcing, and also consistent with the evidence from Mr. Wagner.

[19] The Union submits that it is not able to establish the exact time that The Western Producer was transferred from Modern Press Limited to the Pool, but that it does not have to. It happened no earlier than 1952, when the Pool's annual report identified the Pool as moving toward a single operating company. Regardless, the relevant historical legislation at all times contained a

¹³ Exhibit U-4.

¹⁴ The Union points to preceding orders that certified other bargaining units with Modern Press Limited.

¹⁵ Exhibit U-40, issued in LRB File No. 072-60.

¹⁶ Exhibits U-32 and U-34.

¹⁷ The Union points to Exhibit U-35, being the Pool's 1952 annual report, as describing this process.

¹⁸ Exhibit U-28.

¹⁹ Exhibit U-23. This is a binder containing multiple collective agreements from different years.

²⁰ Exhibit U-31.

successorship provision which would have made the Pool bound by the 1950 order, following the transfer.

[20] The Union notes the Employer's agreement that, provided the 1950 order relates to The Western Producer and bound the Pool at the time the Pool sold The Western Producer to GVIC, the Employer does not dispute that it is bound by the 1950 order.

[21] However, the Union contends that it is not open to the Employer to question whether obligations pursuant to the 1950 order transferred from the Pool to GVIC. The Union's position is that GVIC admitted that the 1950 order applied to it in LRB File No. 003-02, that the Board accepted GVIC's admission in this regard and relied upon it, and that the Employer cannot resile from GVIC's admission or attack what it characterizes as a previous finding of the Board, in this proceeding.

[22] The Union submits that the Board issued two relevant decisions arising from LRB File No. 003-02. The first was an interim decision, dated January 22, 2002, in which the Board granted interim relief with respect to administration of employees' pensions [2002 Interim Decision].²¹ In the second, dated February 21, 2003 [2003 Decision],²² the Board dismissed the Union's request to declare that the Pool had committed an unfair labour practice with respect to employees' pensions. Notably, and perhaps to the Union's chagrin, while the Union had requested relief pursuant to s. 37 of *The Trade Union Act*, being the applicable successorship provision at the time, that portion of the Union's application was adjourned *sine die*.²³

[23] The Union points to the following from the 2002 Interim Decision (emphasis added):

[7] *On December 21, 2001, Saskatchewan Wheat Pool announced the sale of Western Producer Publications Division to GVIC Communications Inc. ("GVIC"). The Union filed its application with the Board prior to the effective date of this sale, but subsequently the sale date was moved forward and it actually took effect prior to the first hearing date scheduled for the interim application.*

²¹ *Grain Services Union Canada v Saskatchewan Wheat Pool, Heartland Livestock Services (324007 Alberta Ltd.)*, 2001 CanLII 32545 (SK LRB) [2002 Interim Decision].

²² *Grain Services Union Canada v. Saskatchewan Wheat Pool, Heartland Livestock Services (324007 Alberta Ltd.)*, 2003 CanLII 62870 (SK LRB) [2003 Decision]. An application to reconsider the 2003 Decision was dismissed: *Grain Services Union Canada v. Saskatchewan Wheat Pool, Heartland Livestock Services (324007 Alberta Ltd.)*, 2003 CanLII 62871 (SK LRB).

²³ 2003 Decision, para 99. The Board has been unable to locate any record of the request for relief under s. 37 of *The Trade Union Act* having been withdrawn or otherwise disposed of. An application for reconsideration of the 2003 Decision, which did not deal with any relief under s. 37, was dismissed: *Grain Services Union Canada v Saskatchewan Wheat Pool, Heartland Livestock Services (324007 Alberta Ltd.)*, 2003 CanLII 62871 (SK LRB).

[8] Again, GVIC acknowledges that it is a successor employer to Saskatchewan Wheat Pool under s. 37 and that it is bound by the collective agreement between Saskatchewan Wheat Pool and the Union pertaining to the employees at Western Producer Publications Division. That agreement contains the same pension provisions as the collective agreement pertaining to Heartland Livestock Services.

...

[37] An order will issue on the following terms:

- (1) Saskatchewan Wheat Pool is restrained from requesting the transfer of any funds from the SWP/GSU Pension Plan to pension plans established by the successor employers, Heartland Livestock Services (324007 Alberta Ltd.) and GVIC, until the final application filed herein is heard and determined by the Board, or agreement is reached between the Union and the successor employers on the transfer of such funds;
- (2) Saskatchewan Wheat Pool, Heartland Livestock Services (324007 Alberta Ltd.) and GVIC are directed to commence negotiations with the Union with respect to the SWP/GSU Pension Plan and the manner of carrying out the pension plan obligations contained in the collective agreements between the Union and Heartland Livestock Services and the Union and Saskatchewan Wheat Pool respecting the employees of Western Producer Publications Division; ...²⁴

[24] The Union highlights the following from the 2003 Decision (emphasis added):

[3] The Board heard the main application over four days. At the commencement of the hearing, counsel for the Union and for 324007 Alberta Ltd. and GVIC advised that they agreed that those Respondents were successors to SWP and had agreed to commence bargaining forthwith. These parties agreed that the Board should neither proceed to hear whether either Respondent had committed a violation of the Act nor make any order respecting them pursuant to s. 37 of the Act at this time. These Respondents attended the hearing as observers.

[4] While the majority of SWP employees come under federal jurisdiction with respect to labour relations, the Union is designated by this Board as the bargaining agent for some of its employees, including those employed by Heartland and Western Producer.

...

[22] The Union had been the bargaining agent for the employees in SWP's Western Producer Publications Division since 1954. This included the employees of Modern Press. M. C. Graphics Inc. was formed out of the merger of Modern Press and Central Graphics in 1988. M.C. Graphics' employees left the SWP organization when it was later transferred to PrintWest Communications Ltd. ("PrintWest"). The Union and SWP negotiated "Amendment No. 11" to the SWP/GSU Pension Plan in April 1997, to accommodate the transferred employees. ...²⁵

[25] The Union submits that the Employer should be bound by the position that GVIC took in LRB File No. 003-02. It references Mr. Torgerson's evidence regarding his understanding that

²⁴ 2002 Interim Decision, at paras 7-8 and 37.

²⁵ 2003 Decision, at paras 3-4 and 22.

Glacier Farms Media is a wholly-owned subsidiary of GVIC that manages GVIC's newspaper business, and with which the Union negotiates labour relations. The Union also filed a document from Information Services Corporation, dated March 21, 2023, indicating "GVIC Communications Corp." as "Publication Owner" for the purposes of libel notice to The Western Producer.²⁶ It should be noted at this point that GVIC Communications Corp. is a different corporate name than that referenced in the 2002 Interim Decision, the 2003 Decision and the Agreed Statement of Facts (being GVIC Communications Inc., or "GVIC" for the purposes of these reasons).²⁷ Further, GVIC Communications Corp. is not referenced in the parties' most recent collective agreement.²⁸ However, from the Union's perspective, the Employer is sufficiently related to GVIC that it should not be able to resile from the position that GVIC took in LRB File No. 003-02.

[26] The Union relies upon the doctrine of issue estoppel and cites the following passage from *Toronto (City) v CUPE, Local 79* (emphasis is the Union's):

23 Issue estoppel is a branch of res judicata (the other branch being cause of action estoppel), which precludes the relitigation of issues previously decided in court in another proceeding. For issue estoppel to be successfully invoked, three preconditions must be met: (1) the issue must be the same as the one decided in the prior decision; (2) the prior judicial decision must have been final; and (3) the parties to both proceedings must be the same, or their privies. ...²⁹

[27] The Union submits that the above three preconditions are met in this case.

[28] In terms of relief, the Union submits that the Board has broad latitude under s. 6-18. It should declare that the parties are bound by the 1950 order, at a minimum. The Union acknowledges that the bargaining unit description in the 1950 order is likely outdated, and that the parties may be required to negotiate an amended description. It suggests that they could return to the Board after doing so, or at least attempting to do so.

[29] The Union strongly opposes the Employer's submission that it should be entitled to costs regardless of the result of the Union's application. It submits that an award of costs against it would be inequitable, given the proceedings in LRB File No. 003-02 and the position taken by GVIC therein. If the Board is considering costs, costs would more properly be awarded in favour of the Union.

²⁶ Exhibit U-2. See the requirements under s. 18 and Schedule A of *The Libel and Slander Act*, RSS 1978, c L-14.

²⁷ Exhibit U-1.

²⁸ Being Exhibit "C" to Exhibit U-1.

²⁹ *Toronto (City) v CUPE, Local 79*, 2003 SCC 63, [2003] 3 SCR 77 [*Toronto (City) v CUPE, Local 79*], at para 23.

Argument on behalf of the Employer:

[30] The Employer submits that the onus is on the Union to provide clear, cogent and convincing evidence that it is bound by the 1950 order as a successor. First, the Union must satisfy the Board that the 1950 order applied to employees working at The Western Producer. Second, it must satisfy the Board that the Pool acquired The Western Producer from Modern Press Limited. Third, it must satisfy the Board that the Pool acquired The Western Producer as a going concern. Even if the Union can establish these matters, however, the Employer submits that the Board should consider awarding costs in the Employer's favour, because the Union's failure to update the Board's records (since the 1950 order) has caused the Employer unnecessary expense.

[31] The Employer submits that, based on the evidence, The Western Producer appears to have been owned at all material times by the Pool, not by Modern Press Limited. The circumstantial evidence the Union relies upon is insufficient to establish that Modern Press Limited owned The Western Producer and that the 1950 order applied to employees working at The Western Producer. The Board should not draw the conclusions the Union seeks based on the Form G (Statement of Employment)³⁰ that was filed with the Board prior to issuance of the 1950 order.

[32] The Employer contends that there is no evidence establishing that The Western Producer was transferred from Modern Press Limited to the Pool. The 1950 order was never updated to name the Pool as employer. While the Pool and SWPEA executed collective agreements from 1958 onward, these do not evince The Western Producer having been transferred from Modern Press Limited to the Pool. In the Employer's view, the Pool's annual reports indicate that the Pool owned The Western Producer at all material times, not Modern Press Limited. The Employer notes that Modern Press Limited was struck from the corporate registry in 1975.³¹ The Union has filed no documents evincing a transaction with respect to The Western Producer between Modern Press Limited and the Pool.

[33] The Employer resists the Union's contention that the proceedings in LRB File No. 003-02 affect its ability to oppose any relief in the current proceeding. It points to GVIC's reply in LRB File No. 003-02, in which GVIC specifically denied paragraph 5 of the Union's amended application, which included "GVIC Communications Inc. is the successor employer for Saskatchewan Wheat

³⁰ Exhibit U-19.

³¹ Exhibit U-6.

Pool – Western Producer Publications Division.”³² The Employer submits that GVIC’s acknowledgment of the relevant collective agreement applying to it in LRB File No. 003-02 is consistent with there having been a voluntary recognition in place between the Union and the Pool, and not necessarily an applicable certification order. As the Employer puts it, “you can be a successor to a voluntary recognition agreement”. The Employer notes that the Union’s request for relief under s. 37 of *The Trade Union Act* was adjourned *sine die* in LRB File No. 003-02; no order resulted from it. Further, neither the 2002 Interim Decision nor the 2003 Decision reference the 1950 order. The 2003 Decision referenced a specific order for employees working at Heartland Livestock Services;³³ it did not do so with respect to employees working at The Western Producer.³⁴

[34] The Employer submits that it should be awarded costs, regardless of any relief that may be granted to the Union. It cites *Monad*³⁵ as authority for its position. In *Monad*, a union and successor employer had failed to update an old certification order, causing a second union to believe that the workplace was not certified, and to apply for certification. The Board determined that a successorship existed, but awarded costs in favour of the second union on the basis that it had been put to unnecessary expense:

[112] In the circumstances of this case, however, we feel that an order under s. 5(g) is also appropriate. The Applicant Union has been put to considerable expense as a result of the failure of the Employer and/or the Respondent Union to:

- 1. Take any steps to amend the Certification Order of October 3, 1984 upon either the return of MICI to Saskatchewan or upon the exchange of letters between MICI and the Respondent Union dated November 16, 2010 and November 19, 2010 wherein the successorship was acknowledged between them.*
- 2. Take any steps to amend the Certification Order of October 3, 1984 at the time that steps were taken in both Alberta and Manitoba to amend bargaining certificates in those jurisdictions.*
- 3. Take any steps to register, as required by s. 30 of the Act any of its collective agreements which it now relies upon for determination of the open period pursuant to s. 5(k) of the Act.*
- 4. Take any steps under s. 37 to ask the Board to declare MICI to be the successor to MCL.*

³² Paragraph 2(b) of GVIC’s reply in LRB File No. 003-02, contained within Exhibit B-1.

³³ 2003 Decision, para 5.

³⁴ 2003 Decision, para 6.

³⁵ *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 179 v Monad Industrial Constructors Inc*, 2013 CanLII 83710 (SK LRB) [*Monad*].

Had the Employer or the Respondent Union taken appropriate steps to either amend the certification Order, have a successorship declared, or filed its collective agreements with the Minister, these proceedings may not have been necessary.

...

[114] *Section 5(g) allows the Board to “fix and determine the monetary loss suffered by ...a trade union as a result of a violation of this Act...and requiring those persons to ...pay the monetary loss or any portion of the monetary loss that the Board considers to be appropriate”.*

[115] *In the circumstances of this application, we believe that the Employer and the Respondent Union should make the Applicant Union whole with respect to its costs and expenses incurred as a result of the Applicant Union having been induced to make this application based upon an inaccurate public record, and, in particular, its failure to comply with s. 31 of the Act.³⁶*

[35] Finally, during its closing argument, the Employer suggested that the Board might consider directing a vote to ascertain whether employees working at The Western Producer wished to continue to be represented by the Union, pursuant to s. 6-18. The Union vigorously opposed this suggestion, pointing to its lengthy history of representing employees at The Western Producer and a related presumption that it continues to enjoy the support of a majority of employees.

Relevant Statutory Provisions:

[36] Section 6-18 is the successorship provision in the Act:

6-18(1) *In this Division, “disposal” means a sale, lease, transfer or other disposition.*

(2) *Unless the board orders otherwise, if a business or part of a business is disposed of:*

(a) *the person acquiring the business or part of the business is bound by all board orders and all proceedings had and taken before the board before the acquisition; and*

(b) *the board orders and proceedings mentioned in clause (a) continue as if the business or part of the business had not been disposed of.*

(3) *Without limiting the generality of subsection (2) and unless the board orders otherwise:*

(a) *if before the disposal a union was determined by a board order to be the bargaining agent of any of the employees affected by the disposal, the board order is deemed to apply to the person acquiring the business or part of the business to the same extent as if the order had originally applied to that person; and*

(b) *if any collective agreement affecting any employees affected by the disposal was in force at the time of the disposal, the terms of that collective agreement are deemed to apply to the person acquiring the business or part of the business to the same extent as if the collective agreement had been signed by that person.*

³⁶ *Monad*, at paras 112, 114-115.

(4) *On the application of any union, employer or employee directly affected by a disposal, the board may make orders doing any of the following:*

- (a) *determining whether the disposal or proposed disposal relates to a business or part of a business;*
- (b) *determining whether, on the completion of the disposal of a business or part of the business, the employees constitute one or more units appropriate for collective bargaining;*
- (c) *determining what union, if any, represents the employees in the bargaining unit;*
- (d) *directing that a vote be taken of all employees eligible to vote;*
- (e) *issuing a certification order;*
- (f) *amending, to the extent that the board considers necessary or advisable:*
 - (i) *a certification order or a collective bargaining order; or*
 - (ii) *the description of a bargaining unit contained in a collective agreement;*
- (g) *giving any directions that the board considers necessary or advisable as to the application of a collective agreement affecting the employees in the bargaining unit referred to in the certification order.*

(5) *Section 6-13 applies, with any necessary modification, to a certification order issued pursuant to clause (4)(e).*

[37] The following are historical successorship provisions that were previously in force in Saskatchewan. They would have been the relevant provisions if Modern Press Limited disposed of The Western Producer to the Pool at some point after the 1950 order and before Modern Press Limited was struck off the corporate registry in 1975:

The Trade Union Act, 1944 (as of April 8, 1950)

25a. *Where an employer disposes of his business as a going concern, any of his employees at the time of such disposal who thereupon become employees of the person acquiring the business, and their new employer, shall be bound by any subsisting collective bargaining agreement and orders made by the board under clauses (a), (b) and (e) of section 5 affecting the former employer and the said employees.³⁷*

The Trade Union Act, 1944 (as of March 20, 1953)

25a. *Where an employer sells, leases or otherwise disposes of his business or any part thereof as a going concern and the person acquiring the business or part thereof carries on substantially the same business or substantially the same business as the part of the business acquired by him, as the case may be, any of the employees of such employer at the time of such disposal who thereupon become employees of the person acquiring the*

³⁷ In effect as of April 8, 1950, pursuant to *An Act to amend The Trade Union Act, 1944*, SS 1950, c 92, s 7.

*business or part thereof, and their new employer, shall be bound by any subsisting collective bargaining agreement and orders made by the board under clauses (a), (b) and (e) of section 5 affecting the former employer and the said employees, and the new employer shall be deemed to be a party to such agreement.*³⁸

The Trade Union Act (RSS 1953)³⁹

28. Where an employer sells, leases or otherwise disposes of his business or any part thereof as a going concern and the person acquiring the business or part thereof carries on substantially the same business or substantially the same business as the part of the business acquired by him, as the case may be, any of the employees of such employer at the time of such disposal who thereupon become employees of the person acquiring the business or part thereof, and their new employer, shall be bound by any subsisting collective bargaining agreement and orders made by the board under clauses (a), (b) and (e) of section 5 affecting the former employer and the said employees, and the new employer shall be deemed to be a party to such agreement.

The Trade Union Act (as of April 7, 1955)

*28. Where a business or part thereof is sold, leased, transferred or otherwise disposed of, the person acquiring the business or part thereof shall be bound by all orders of the board and all proceedings had and taken before the board before the acquisition, and the orders and proceedings shall continue as if the business or part thereof had not been disposed of, and, without restricting the generality of the foregoing, if before the disposal any trade union was determined by an order of the board as representing, for the purpose of bargaining collectively, any of the employees affected by the disposal or any collective bargaining agreement affecting any of such employees was in force the terms of such order or agreement, as the case may be, shall, unless the board otherwise orders, be deemed to apply to the person acquiring the business or part thereof to the same extent as if the order had originally applied to him or the agreement had been signed by him.*⁴⁰

The Trade Union Act (RSS 1965)⁴¹

33. Where a business or part thereof is sold, leased, transferred or otherwise disposed of, the person acquiring the business or part thereof shall be bound by all orders of the board and all proceedings had and taken before the board before the acquisition, and the orders and proceedings shall continue as if the business or part thereof had not been disposed of, and, without restricting the generality of the foregoing, if before the disposal a trade union was determined by an order of the board as representing, for the purpose of bargaining collectively, any of the employees affected by the disposal or any collective bargaining agreement affecting any of such employees was in force the terms of that order or agreement, as the case may be, shall, unless the board otherwise orders, be deemed to apply to the person acquiring the business or part thereof to the same extent as if the order had originally applied to him or the agreement had been signed by him.

The Trade Union Act, 1972⁴²

³⁸ In effect as of March 20, 1953, pursuant to *An Act to amend The Trade Union Act, 1944*, SS 1953, c 112, s 2.

³⁹ *An Act respecting Trade Unions and the Right of Employees to organize in Trade Unions of their own choosing for the Purpose of Bargaining Collectively with their Employers*, RSS 1953, c 259.

⁴⁰ In effect as of April 7, 1955, pursuant to *An Act to amend The Trade Union Act*, SS 1955, c 65, s 3.

⁴¹ *An Act respecting Trade Unions and the Right of Employees to organize in Trade Unions of their own choosing for the Purpose of Bargaining Collectively with their Employers*, RSS 1965, c 287.

⁴² *An Act respecting Trade Unions and the Right of Employees to organize in Trade Unions of their own choosing for the Purpose of Bargaining Collectively with their Employers*, SS 1972, c 137.

36. Where a business or part thereof is sold, leased, transferred or otherwise disposed of, the person acquiring the business or part thereof shall be bound by all orders of the board and all proceedings had and taken before the board before the acquisition, and the orders and proceedings shall continue as if the business or part thereof had not been disposed of, and, without limiting the generality of the foregoing, if before the disposal a trade union was determined by an order of the board as representing, for the purpose of bargaining collectively, any of the employees affected by the disposal or any collective bargaining agreement affecting any of such employees was in force the terms of that order or agreement, as the case may be, shall, unless the board otherwise orders, be deemed to apply to the person acquiring the business or part thereof to the same extent as if the order had originally applied to him or the agreement had been signed by him.

Analysis and Decision:

[38] The Board finds it convenient to conduct its analysis by posing the following questions:

- a) What must be proven to establish a successorship as between Modern Press Limited and the Pool?
- b) Did the 1950 order apply to employees working at The Western Producer?
- c) Did the Pool acquire The Western Producer from Modern Press Limited as a going concern?
- d) Should the Employer be estopped from disputing that the 1950 order applies to it?
- e) What relief, if any, is appropriate?

[39] The Board's analysis follows.

- a) What must be proven to establish a successorship as between Modern Press Limited and the Pool?**

[40] The Union bears the onus on this application.

[41] It must satisfy the Board, on a balance of probabilities, that the 1950 order applied to The Western Producer, and that the Pool acquired The Western Producer from Modern Press Limited as a going concern. The Union must present sufficiently clear, cogent and convincing evidence in order to do so.⁴³

⁴³ *Canadian Union of Public Employees, Local 882 v Prince Albert Golf and Curling Centre Inc.*, 2023 CanLII 73621 (SK LRB), at para 93.

[42] Since the first successorship provision in *The Trade Union Act, 1944*, successorship provisions in Saskatchewan have focused on whether a business has been disposed of as a going concern.⁴⁴ Where this has occurred, and a certification order is in place with respect to the business' employees, the person or entity acquiring the business is deemed to be subject to the certification order. As a result, successorships occur by operation of law, without the necessity of an application to the Board. Where a successorship has occurred, an application to the Board serves to confirm the occurrence.

[43] The Supreme Court has stated that the basic aim of successorship provisions is to prevent employees from losing union protection when a business is sold or transferred, or when changes are made to the corporate structure of a business.⁴⁵ According to the Court, the classic situation arises when a business or part of a business is transferred from one company to another, including through corporate reorganization.⁴⁶

[44] In determining whether a business has been disposed of as a going concern, the Board's focus is not on the technical or legal form in which the disposition occurs.⁴⁷ Rather, it is on whether there has been a discernable continuity in the business from the previous employer to the current employer.⁴⁸

[45] Continuity of work without hiatus by a new employer is an important factor⁴⁹ that can indicate that it acquired "a going concern" from the previous employer.⁵⁰ Similarly, the transfer of key management personnel and employees can indicate the transfer of a business, especially when they are doing substantially the same work.⁵¹

[46] To recap, the key issues in dispute are whether the 1950 order applied to The Western Producer, and whether the Pool acquired The Western Producer from Modern Press Limited as a going concern.

b) Did the 1950 order apply to employees working at The Western Producer?

⁴⁴ *SJBRWDSU v Charnjit Singh and 1492559 Alberta Inc.*, 2013 CanLII 3584 (SK LRB) [Singh], at para 46.

⁴⁵ *Lester (W.W.) (1978) Ltd. v United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 740*, 1990 CanLII 22 (SCC), [1990] 3 SCR 644 [Lester], at para 40.

⁴⁶ *Lester*, at para 41.

⁴⁷ *Singh*, at para 42.

⁴⁸ *Singh*, at para 42.

⁴⁹ Amongst others.

⁵⁰ *Singh*, at paras 45-46.

⁵¹ *Singh*, at para 45.

[47] Based on the evidence before it, the Board answers this question in the affirmative.

[48] The Board concludes that Modern Press Limited was incorporated in 1931, based on its Memorandum of Association⁵² and Articles of Association.⁵³ Amongst others, its objects included general printing and publishing, and “generally to carry on the business of newspaper proprietors and general publishers”.⁵⁴ Its agricultural focus was evidenced by its objects including “[t]o serve as an educational organization for the purpose of encouraging improvements in the production and sale of agricultural products” and “to act as a central bureau for the assembling and dissemination of information of interest to agriculture”.⁵⁵

[49] Based on secondary sources, the Board concludes that the Pool, then known as Saskatchewan Co-operative Wheat Producers Limited, acquired ownership of Modern Press Limited in 1931. In his book “From Prairie Roots: The Remarkable Story of Saskatchewan Wheat Pool”, which was published by a division of the Pool in 1984, Garry Fairbairn indicates that the Pool acquired ownership of Modern Press Limited on June 1, 1931.⁵⁶ Modern Press Limited’s Memorandum of Association and Articles of Association each bear a “registered” stamp from the Registrar of Joint Stock Companies with this date.⁵⁷ According to Mr. Fairbairn, Modern Press Limited was a Pool subsidiary which acquired the assets of “The Modern Press Ltd.”, which included The Western Producer, by assuming the latter company’s liabilities.⁵⁸ Another secondary source, “The Inside Story of Modern Press and The Western Producer”, published in the second half of the 1970’s by a division of the Pool, provides similar information.⁵⁹ Finally, the Board refers to an article published on The Western Producer’s website, dated August 28, 2003, entitled “People, presses and publications (80th supp)”.⁶⁰ The article was published on the website after The Western Producer was acquired by GVIC. It indicates that the Pool acquired ownership of The Western Producer in 1931.

[50] The Board concludes that The Western Producer was published through the Pool’s subsidiary, Modern Press Limited, beginning in 1931. The Board notes that the Pool’s 1949, 1950 and 1952 annual reports⁶¹ identify Modern Press Limited as a Pool subsidiary. Modern Press

⁵² Exhibit U-8.

⁵³ Exhibit U-9.

⁵⁴ Exhibit U-8, para 3(b).

⁵⁵ Exhibit U-8, para 3(c).

⁵⁶ Exhibit U-29, pp 128-129.

⁵⁷ Exhibits U-8 and U-9. These documents were signed on May 29, 1931.

⁵⁸ Exhibit U-29, p 128.

⁵⁹ Exhibit U-28, in the section entitled “How it all began”.

⁶⁰ Exhibit U-31.

⁶¹ Exhibits U-32, U-34 and U-35, respectively.

Limited is described in these reports as operating two departments: the Commercial Printing Department and The Western Producer Department.⁶² The annual reports contain audited financial statements for Modern Press Limited (as well as other Pool subsidiaries). They also describe departments within The Western Producer, such as the editorial, agricultural and women's departments.⁶³

[51] The Board concludes that the Form G (Statement of Employment)⁶⁴ filed in LRB File No. 123-49 listed employees of Modern Press Limited working at The Western Producer. The purpose of the Form G was to establish the identity of Modern Press Limited's employees, other than "those whose activities are confined solely to printing."⁶⁵ It was filed on December 5, 1949,⁶⁶ and declared by T.R. Melville-Ness. The Form G lists several individuals who worked at The Western Producer at the time, according to corroborating evidence from The Western Producer's website. These include:

- i. A.P. Waldron, who is listed as "Mg. Editor". A.P. Waldron is described as one of the founders of The Western Producer, in 1923, in the "People, presses and publications (80th supp)" article from The Western Producer's website.⁶⁷ He is described as remaining as publisher and editor after The Western Producer was acquired by the Pool, and retiring as its publisher and editor in 1958; at that time, he was replaced by Tom Melville-Ness. The Board infers that Tom Melville-Ness is T.R. Melville-Ness, who declared the Form G on behalf of Modern Press Limited.
- ii. T.R. Melville Ness, who is listed as "Business Manager".
- iii. W. Bradley, who is listed as "Executive Editor". The Board infers that this is W.J. (Bill) Bradley, who is described in an article dated June 29, 1995, from The Western Producer's website.⁶⁸ The article is entitled "Well-known Saskatchewan publisher dies". It describes Bradley as joining The Western Producer in 1941 as an agricultural editor and being promoted to executive editor in 1948, where he remained for four years.
- iv. R.H. Macdonald, who is listed as "Features Editor". R.H. "Rusty" Macdonald is described in an article dated January 1, 1998, from The Western Producer's website.⁶⁹ The article is entitled "Farewell, Rusty". It describes R.H. Macdonald as having been a Western Producer employee from 1949 to 1977, and having been a feature writer for the magazine section before being promoted to other positions.

⁶² Exhibit U-32, p 21; Exhibit U-34, pp 19-20; Exhibit U-35, p 21.

⁶³ See, for example, p 22 of Exhibit U-32.

⁶⁴ Exhibit U-19.

⁶⁵ Exhibit U-19, first page.

⁶⁶ The document bears a stamp of the Department of Labour with this date.

⁶⁷ Exhibit U-31.

⁶⁸ Exhibit U-21.

⁶⁹ Exhibit U-24.

- v. V. McNaughton, who is listed as “Women’s Editor”. The Board infers that this is Violet McNaughton, who is described in an article dated December 27, 2007, from The Western Producer’s website.⁷⁰ The article is entitled “Violet McNaughton – ‘The most influential farm woman in Canada’”. It describes Violet McNaughton as having joined The Western Producer in 1926 and remaining as womens’ editor for the next 25 years.
- vi. K. Dryden, who is listed as “Reporter”. The Board infers that this is Keith Dryden, who is described in an article dated October 17, 2016 from The Western Producer’s website.⁷¹ The article is entitled “Former WP editor Keith Dryden dead”. It describes Keith Dryden as joining The Western Producer in 1947 as a reporter.

[52] In addition to the above individuals, the Board notes that the Form G lists A. McRobbie as “General Superintendent”. It is likely this person is Alexander McRobbie, who founded The Western Producer in the 1920’s along with A.P. Waldron (and others), according to the “People, presses and publications (80th supp)” article from The Western Producer’s website.⁷²

[53] Further, the Form G lists classifications/job descriptions that one would ordinarily associate with a newspaper, and/or which were in use at The Western Producer when Mr. Wagner familiarized himself with the workplace in 1975. For example, these include “Advertising Manager”, “Agricultural Editor”, “News Editor”, “Mailing Clerk”, “Assistant Women’s Editor”, “Sports Editor”, “Assistant Circulation Mgr.” and “Mailing Dept. Head”. Notably, A. Carey is listed as “Mgr. Commercial Printing Dept.”, which comports with Modern Press Limited operating two departments: the Commercial Printing Department and The Western Producer Department.

[54] The Board concludes that SWPEA sought to organize those employees of Modern Press Limited who were not already represented by craft-based unions. There were already several certification orders in place for such unions.⁷³ In its application in LRB File No. 123-49, SWPEA sought to certify a bargaining unit containing all of Modern Press Limited’s employees except “the business and office managers, editor, executive editor and those employed whose activities are confined solely to printing.”⁷⁴

[55] On March 17, 1950, the Board certified the following bargaining unit in the 1950 order, with SWPEA as its bargaining agent:

⁷⁰ Exhibit U-25.

⁷¹ Exhibit U-27.

⁷² Exhibit U-31.

⁷³ Exhibit U-12; Exhibit U-13; Exhibit U-15.

⁷⁴ Exhibit U-17.

All persons engaged as office workers, and all persons engaged on the editorial staff, in the mailing department, circulation department and maintenance department by Modern Press Limited in the City of Saskatoon, in the Province of Saskatchewan, except business manager, accountant and office manager, managing editor, executive editor, plant superintendent, assistant circulation manager, general superintendent, advertising manager, manager of commercial printing department. ...⁷⁵

[56] In so doing, it certified a bargaining unit containing employees of Modern Press Limited who worked at The Western Producer.

[57] The 1950 order was amended in 1960 as a result of an application by the Saskatoon Typographical Union No. 663 in LRB File No. 072-60, which sought to represent employees in the mailing department.⁷⁶ SWPEA's representation of employees in the mailing department ceased as a result of a Board order issued on July 8, 1960. As a result, as of that date, the bargaining unit covered by the 1950 order included:

All persons engaged as office workers, and all persons engaged on the editorial staff, circulation department and maintenance department by Modern Press Limited in the City of Saskatoon, in the Province of Saskatchewan, except business manager, accountant and office manager, managing editor, executive editor, plant superintendent, assistant circulation manager, general superintendent, advertising manager, manager of commercial printing department. ...⁷⁷

[58] Apart from the 1960 amendment, there have been no other amendments to the 1950 order.

c) Did the Pool acquire The Western Producer from Modern Press Limited as a going concern?

[59] The Board concludes that the answer to this question is "yes". Its reasoning follows.

[60] Modern Press Limited has been struck off the corporate registry since 1975,⁷⁸ the same year that Mr. Wagner commenced his employment with the Union and assumed responsibility for the bargaining unit containing employees working at The Western Producer. Mr. Wagner's evidence was that those employees were employees of the Pool. He identified the relevant August 1, 1975 to July 31, 1977 collective agreement respecting employees of the Pool's Printing and

⁷⁵ Exhibit U-4.

⁷⁶ Exhibit U-37.

⁷⁷ Exhibit U-40. Order issued July 8, 1960.

⁷⁸ Exhibit U-6. "Modern Press" remained a trade name used by the Pool for its Printing and Publishing Division for a period of time afterward. See Exhibit U-44, and Exhibits U-43 and U-28. See also Documents Decision, at para 54.

Publishing Division.⁷⁹ Mr. Wagner dealt with the Pool's management for labour relations issues involving The Western Producer for a lengthy period; from 1975 until its sale to GVIC.

[61] Based on the foregoing, the Pool acquired The Western Producer at some point prior to Mr. Wagner taking over responsibility for the Union's relevant bargaining unit in 1975.

[62] As mentioned earlier in these reasons, the Pool's 1949, 1950 and 1952 annual reports identify Modern Press Limited as a Pool subsidiary that had two departments: the Commercial Printing Department and The Western Producer Department.

[63] The Pool's 1952 annual report evidences the Pool undertaking a restructuring with respect to its subsidiaries. More particularly, the Pool resolved to have Saskatchewan Co-operative Producers Limited as the sole operating company, and to maintain its subsidiaries as holding companies only:

Reorganization

At the last Annual Meeting the delegates unanimously approved a recommendation of the Board that the existing Pool organization should be reorganized and authorized the Board to take the necessary steps to complete the reorganization, effective 1st August 1952.

This has now been completed and as from the beginning of the present year, Saskatchewan Co-operative Producers Limited is the sole operating company for all of the activities of the organization. Under the plan of operation now in effect the various subsidiary companies, including Saskatchewan Pool Elevators Limited, Saskatchewan Pool Terminals Limited, Modern Press Limited and Saskatchewan Co-operative Livestock Producers Limited, have each entered into an agreement under which they lease all of their physical assets to the parent company.

Under the agreements Saskatchewan Co-operative Producers Limited undertakes to keep the physical assets in good repair and agrees to pay all operating and maintenance expenses, taxes, insurance premiums, rentals and interest which may be payable by the Company concerned. It also agrees to pay annually such sums as may be mutually agreed upon for depreciation of the plants. Under the new arrangements Saskatchewan Co-operative Producers Limited is the sole operating company for all of the activities of the organization. For all practical purposes the subsidiaries may now be regarded as holding companies.⁸⁰

[64] The 1952 annual report also evidenced the Pool's intention to amend its corporate name from Saskatchewan Co-operative Producers Limited to Saskatchewan Wheat Pool:

Amendments to Act of Incorporation

⁷⁹ Tab 84 of Exhibit U-23.

⁸⁰ Exhibit U-35, pp 41-42.

When the steps to be taken to complete reorganization were under consideration, a proposal that the name of the organization should be changed from "Saskatchewan Co-operative Producers Limited" to "Saskatchewan Wheat Pool" was considered. Your Board is of the opinion that the name "Saskatchewan Wheat Pool" is popularly accepted and is much better known than the legal name of "Saskatchewan Co-operative Producers Limited."

If the change in name is approved by the delegates it will be necessary to amend the Act of Incorporation of the organization and the Board should be authorized to make application for the necessary amendment. ...⁸¹

[65] In 1953, the Legislature passed *An Act to amend An Act to incorporate Saskatchewan Co-operative Wheat Producers Limited*.⁸² Subsection 2(1) of this statute stated:

2.— (1) The name of the company, as changed by chapter 103 of the statutes of 1944 to Saskatchewan Co-operative Producers Limited, is hereby changed to Saskatchewan Wheat Pool.

[66] The Pool's 1958 annual report no longer reported The Western Producer under Modern Press Limited. Rather, it was reported under the Pool's Printing and Publishing Division.⁸³ Further, the annual report touted The Western Producer's continuous publication, at that time, for over 35 years.⁸⁴

[67] The 1958 collective agreement between the Union and the Pool contained a scope clause that generally mirrored the 1950 order (see paragraph 55 of these reasons), except that it substituted the Pool for Modern Press Limited as the employer (emphasis added):

...all persons engaged as Office Workers, Editorial Staff, Mailing Department, Circulation Department, and Maintenance Department by the Saskatchewan Wheat Pool, Printing and Publishing Division except the Editor, Assistant Manager, Accountant, Office Manager, Plant Superintendent, Manager of Commercial Printing Department, Circulation Manager, and Advertising Manager.⁸⁵

[68] The 1961 collective agreement reflected a scope change arising from the 1960 amendment to the 1950 order. More particularly, it reflected that the mailing room had been removed from the bargaining unit:

...all persons engaged as office workers, editorial staff, circulation department and maintenance department by the Saskatchewan Wheat Pool Printing and Publishing Division except the incumbents of the following positions:

⁸¹ Exhibit U-35, p 42.

⁸² *An Act to amend An Act to incorporate Saskatchewan Co-operative Wheat Producers Limited*, SS 1953, c 127.

⁸³ Exhibit U-36, pp 25-30.

⁸⁴ Exhibit U-37, p 27.

⁸⁵ Exhibit U-23, Tab 83, p 3.

*Managing Editor and Publisher; Assistant Editor; Business Manager; Executive Editor; Accountant and Office Manager; Plant Superintendent; Manager, Commercial Printing Department; Advertising Manager; Mailing Room Superintendent; Pressroom Foreman; Bindery Foreman; Stereotype Foreman; Composing Foreman; Lithographic Camera Foreman; Photo Engraving Foreman; Art Room Foreman and Private Secretary to the Managing Editor and Publisher.*⁸⁶

[69] The Board concludes that employees working at The Western Producer became employees of the Pool as a result of the corporate restructuring described in the Pool's 1952 annual report. It is most likely that the transition was relatively prompt, since the intention was to have Modern Press Limited serve as a holding company only. It was to lease its assets to the Pool, with the Pool serving as "the sole operating company for all activities of the organization."⁸⁷

[70] The Board notes that its July 8, 1960 order did not amend the name of the employer identified in the 1950 order from Modern Press Limited to the Pool. There is a reasonable explanation for this. The relief sought by the Saskatoon Typographical Union No. 663, in its application to carve out mailing department employees from the 1950 order, was limited to the following (emphasis added):

3. *The order or decision hereby applied to be amended was made by the Board on the 17th day of March, A.D. 1950, and is to the following effect:*

"(1) All persons engaged as office workers, and all persons engaged on the editorial staff, in the mailing department, circulation department and maintenance department by Modern Press Limited in the City of Saskatoon, in the Province of Saskatchewan, except business manager, accountant and office manager, managing editor, executive editor, plant superintendent, assistant circulation manager, general superintendent, advertising manager, manager of commercial printing department, constitute an appropriate unit of employees for the purposes of bargaining collectively;

(2) The Saskatchewan Wheat Pool Employees' Association represents a majority of the employees in the appropriate unit of employees referred to in paragraph (1) hereof;

(3) Modern Press Limited, a body corporate, incorporated under the laws of Saskatchewan with head office in the City of Regina, in the Province of Saskatchewan, shall bargain collectively with the duly appointed or elected representatives of The Saskatchewan Wheat Pool Employees' Association in respect to the employees in the appropriate unit of employees referred to in paragraph (1) hereof;"

...

5. *The reasons why the applicant submits that the said order or decision ought to be amended are as follows:*

⁸⁶ Exhibit U-23, Tab 76, p 2.

⁸⁷ Exhibit U-35, pp 41-42.

(1) *The employees employed by Modern Press Limited at Saskatoon, Saskatchewan, in the mailing department, constitute an appropriate unit of employees for the purposes of bargaining collectively;*

(2) *The applicant union represents a majority of the said employees.*

6. *In the event that the application is for the amendment of an order or decision, state here the manner in which the applicant submits the order or decision ought to be amended:*

*By deleting from paragraph numbered (1) thereof, the words “mailing department”.*⁸⁸

[71] In other words, the fact that the Board’s July 8, 1960 order did not amend the name of the employer identified in the 1950 order does not persuade the Board that Modern Press Limited continued to employ employees working at The Western Producer at that time. The collective agreements that are in evidence from 1958 until the sale of The Western Producer to GVIC reflect the Pool as the employer, not Modern Press Limited. It is reasonable to infer that the Union and the Pool saw no need to amend the 1950 order to reflect the Pool as the employer rather than Modern Press Limited since, as between themselves, this was clear.

[72] Alternatively, even if as of July 8, 1960, employees at The Western Producer were still employed by Modern Press Limited, the Board concludes that the Pool was the “true employer” of employees working at The Western Producer prior to Modern Press Limited being struck off the corporate registry in 1975.⁸⁹ Modern Press Limited was the Pool’s wholly-owned subsidiary; it was a holding company for the Pool.

[73] The Pool continued to employ employees working at The Western Producer from 1975 until it sold the business to GVIC. The Board reaches this conclusion based on the evidence of Mr. Wagner, including the memoranda and organizational charts he referred to.⁹⁰

[74] The Board has no difficulty in concluding that the Pool acquired The Western Producer as a going concern from its wholly-owned subsidiary, Modern Press Limited. A large number of documents filed with the Board reflect The Western Producer as having been continuously published from the 1920’s onward. An obvious example is the “People, presses and publications

⁸⁸ Exhibit U-37, pp 2-3.

⁸⁹ See s. 6-1(1)(i)(iii) of the Act. As of 1972, *The Trade Union Act* contained an analogous provision: *An Act respecting Trade Unions and the Right of Employees to organize in Trade Unions of their own choosing for the Purpose of Bargaining Collectively with their Employers*, SS 1972, c 137, s 2(g)(iii). For an application of s. 2(g)(iii), see *United Food and Commercial Workers, Local 1400 v Canadian Salt Company Limited*, 2010 CanLII 65961 (SK LRB), at paras 84-91.

⁹⁰ Exhibits U-45, U-46, U-47 and U-48.

(80th supp)” article dated August 28, 2003, from The Western Producer’s website, which described its 80 years of continuous publication, to that point.

[75] Neither party suggested there was any entity other than Modern Press Limited or the Pool that owned The Western Producer after the 1950 order was issued, and before the sale to GVIC, and the Board has no basis to conclude that any other entity did.

[76] Accordingly, the Board is satisfied that the Pool acquired The Western Producer from Modern Press Limited as a going concern. The acquisition occurred as a result of the corporate restructuring described in the Pool’s 1952 annual report. As stated by the Supreme Court in *Lester*, such restructuring is a “classic situation” that is contemplated by successorship provisions.⁹¹

[77] It is not necessary for the Board to determine the precise time when the Pool acquired The Western Producer from Modern Press Limited through its corporate restructuring. Since the 1950 order, there has always been a successorship provision in force to render the Pool a successor employer to Modern Press Limited, by operation of law. The relevant historical provisions are excerpted at paragraph 37 of these reasons.

[78] The Employer has conceded that the Board’s analysis with respect to successorships does not need to go further than whether the 1950 order applied to The Western Producer and the Pool at the time of the sale to GVIC. Further, the Agreed Statement of Facts states:

5. *GVIC acquired the “Western Producer” newspaper from the Wheat Pool as a going concern in a deal that closed in 2002.*
6. *GVIC then transferred the Western Producer to its current owner – the Western Producer Productions (sic) Limited Partnership [Western Producer PLP]. GVIC and Western Producer PLP have continuously operated the Western Producer newspaper as a going concern since it was acquired from the Wheat Pool.*
7. *The “Western Producer” publication is presently owned by the Western Producer PLP.*⁹²

[79] As such, the Board concludes that the Employer is a successor employer to GVIC, by operation of law. Although the date when GVIC transferred The Western Producer to the

⁹¹ *Lester*, at para 41.

⁹² Exhibit U-1, paras 5-7.

Employer is not clear, either s. 37 of *The Trade Union Act*⁹³ or s. 6-18 of the Act would have been engaged by operation of law to make the Employer subject to the 1950 order.

d) Should the Employer be estopped from disputing that the 1950 order applies to it?

[80] It is not necessary for the Board to conduct this analysis, and it declines to do so. Respectfully, the Board would have benefited from more fulsome submissions from the parties with respect to the Union's reliance on the doctrine of issue estoppel. The Board notes that GVIC participated in LRB File No. 003-02, not the Employer.⁹⁴ Further, the proceedings in LRB File No. 003-02 did not require the Board to determine whether GVIC was a successor employer to the Pool, and if so, what order applied to it. The issue that was finally determined in the 2003 Decision was whether the Pool had committed an unfair labour practice by not engaging in mid-term bargaining with respect to its employee pension plan.⁹⁵ The Union's application, insofar as it made allegations and claimed relief against GVIC pursuant to s. 37 of *The Trade Union Act*, was adjourned *sine die*.⁹⁶ In light of the foregoing, amongst other matters, it would have been helpful for the parties to address the significance of the following passage from the Supreme Court, in *Danyluk* (emphasis in bold added):

24 *Issue estoppel was more particularly defined by Middleton J.A. of the Ontario Court of Appeal in McIntosh v. Parent, 1924 CanLII 401 (ON CA), [1924] 4 D.L.R. 420, at p. 422:*

When a question is litigated, the judgment of the Court is a final determination as between the parties and their privies. Any right, question, or fact distinctly put in issue and directly determined by a Court of competent jurisdiction as a ground of recovery, or as an answer to a claim set up, cannot be re-tried in a subsequent suit between the same parties or their privies, though for a different cause of action. The right, question, or fact, once determined, must, as between them, be taken to be conclusively established so long as the judgment remains. [Emphasis added.]

This statement was adopted by Laskin J. (later C.J.), dissenting in Angle, supra, at pp. 267-68. This description of the issues subject to estoppel ("[a]ny right, question or fact distinctly put in issue and directly determined") is more stringent than the formulation in some of the older cases for cause of action estoppel (e.g., "all matters which were, or might properly

⁹³ *The Trade Union Act*, RSS 1978, c T-17 (now repealed), s 37(1): "Where a business or part thereof is sold, leased, transferred or otherwise disposed of, the person acquiring the business or part thereof shall be bound by all orders of the board and all proceedings had and taken before the board before the acquisition, and the orders and proceedings shall continue as if the business or part thereof had not been disposed of, and, without limiting the generality of the foregoing, if before the disposal a trade union was determined by an order of the board as representing, for the purpose of bargaining collectively, any of the employees affected by the disposal or any collective bargaining agreement affecting any of such employees was in force the terms of that order or agreement, as the case may be, shall, unless the board otherwise orders, be deemed to apply to the person acquiring the business or part thereof to the same extent as if the order had originally applied to him or the agreement had been signed by him."

⁹⁴ The Board understands the Union's argument to be that GVIC may be considered as the Employer's privy, however, for the purposes of applying the doctrine.

⁹⁵ 2003 Decision, para 97.

⁹⁶ 2003 Decision, para 99: "At the request of the parties, that part of the application concerning allegations and relief as against HLS and GVIC is adjourned *sine die*."

have been, brought into litigation”, *Farwell, supra*, at p. 558). *Dickson J. (later C.J.)*, speaking for the majority in *Angle, supra*, at p. 255, subscribed to the more stringent definition for the purpose of issue estoppel. **“It will not suffice” he said, “if the question arose collaterally or incidentally in the earlier proceedings or is one which must be inferred by argument from the judgment.” The question out of which the estoppel is said to arise must have been “fundamental to the decision arrived at” in the earlier proceeding.** In other words, as discussed below, the estoppel extends to the material facts and the conclusions of law or of mixed fact and law (“the questions”) that were necessarily (even if not explicitly) determined in the earlier proceedings.⁹⁷

e) What relief, if any, is appropriate?

[81] There are two issues that must be addressed at this stage. First, both parties have suggested that they should be entitled to costs, based on the other’s conduct. Second, the Board must determine what relief it ought to order, other than costs. The Board will deal with these issues in turn.

[82] The Employer’s request for costs is rooted in the argument that if the Union had updated the 1950 order at any time prior to the sale of The Western Producer from the Pool to GVIC, the Employer would have been saved the time and expense of responding to the current application. The Employer notes that, since 1950, the Union has always had the ability to file an application to update the Board’s records. It failed to do so, and consequently caused needless expense for itself and for the Employer. The Employer suggests the circumstances before the Board are akin to those in *Monad*.

[83] In *Monad*, the circumstances were somewhat different than those presently before the Board. A union and an employer had taken no steps to amend a dated certification order which applied to them by virtue of successorship provisions. They had also not filed their collective agreements with the Minister, as required under s. 31 of *The Trade Union Act*,⁹⁸ or sought a declaration from the Board with respect to the applicability of the dated certification order.⁹⁹ As a consequence, a second union attempted to certify a bargaining unit which was already certified with the first union. The Board determined that the second union should be compensated by the first union and the employer, primarily because they had not filed their collective agreements as required under s. 31 of *The Trade Union Act*.

[115] In the circumstances of this application, we believe that the Employer and the Respondent Union should make the Applicant Union whole with respect to its costs and expenses incurred as a result of the Applicant Union having been induced to make this

⁹⁷ *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 SCR 460 [*Danyluk*], at para 24.

⁹⁸ *The Trade Union Act*, RSS 1978, c T-17 (now repealed), s 31.

⁹⁹ *Monad*, para 112.

*application based upon an inaccurate public record, and, in particular, its failure to comply with s. 31 of the Act.*¹⁰⁰

[84] More recently, the Board has stated the following in *Andritz Hydro*, with respect to when it will consider awarding costs:

*[30] The Board rarely orders a party to compensate another party for legal expenses, and when it does, it relies on clause 6-104(2)(e) of the Act which applies only to monetary loss suffered by an employee, an employer or a union as a result of a contravention of Part VI, the regulations made pursuant to Part VI or an order or decision of the Board. None of those criteria applies here.*¹⁰¹

[85] The Employer did not identify any provision of the Act that had been breached by the Union, or any breach of the regulations or an order or decision of the Board. Insofar as s. 31 of *The Trade Union Act* may have been breached, or the current analogous provision, being s. 6-44 of the Act, the responsibility to file collective agreements with the Minister is on both parties to the agreement; that is, the Employer and the Union. Further, unlike the circumstances in *Monad*, the Employer knew at all times that the Union was representing employees of The Western Producer. After all, it bargained with the Union after acquiring The Western Producer from GVIC.

[86] Accordingly, the Board declines the Employer's request to order costs in its favour. It has some sympathy for the Employer, given the research that needed to be undertaken to determine the applicability of the 1950 order to The Western Producer. Had an updated order been issued prior to the sale to GVIC, or in the context of LRB File No. 003-02, much time and expense could have been saved. This hearing could have been avoided. At the same time, however, the Board notes that some of the significant documents that the Union relied upon in this hearing originated from The Western Producer, including documents which have been posted on its website.¹⁰² The Union was able to connect the dots; the Employer may have been able to do so, as well.

[87] The Union's request for costs is grounded in the argument that it was unreasonable for the Employer to contest the successorship application, particularly given the position taken by GVIC in the context of LRB File No. 003-02; that is, that it was a successor employer to the Pool.¹⁰³ In this regard, the Board notes that the extent of the relationship between GVIC and the Employer, including whether GVIC could be considered the Employer's privy, has not been determined. Respectfully, the Board considers itself to have insufficient evidence before it to fully

¹⁰⁰ *Monad*, at para 115.

¹⁰¹ *Andritz Hydro Canada Inc. v Timothy John Lalonde and Director of Occupational Health and Safety*, 2021 CanLII 61031 (SK LRB) [*Andritz Hydro*], at para 30.

¹⁰² For example, Exhibit U-31: "People, presses and publications (80th supp)" article, dated August 28, 2003.

¹⁰³ 2003 Decision, para 3.

grasp the relationship between those parties. If GVIC and the Employer were/are not sufficiently related such that GVIC could be considered the Employer's privy for the purposes of issue estoppel, it would be inappropriate to consider any concessions made by GVIC in LRB File No. 003-02 as binding on the Employer. Further, though without wanting to go too far down this rabbit hole in these reasons, there are circumstances where parties may be permitted to resile from concessions or admissions made in proceedings, depending on the context.¹⁰⁴

[88] Aside from the foregoing, the Union did not request costs in its pleadings, nor identify therein a violation of the Act, regulations, or Board decision or order.

[89] Accordingly, the Board declines the Union's request to award costs in its favour.

[90] This leaves for consideration any other relief which ought to be ordered in this proceeding.

[91] The Board will first address the Employer's suggestion that a representation vote should be directed amongst employees of The Western Producer, pursuant to s. 6-18(4)(d). This suggestion was made at a late stage during oral argument, and as one might expect, was vigorously opposed by the Union. The Employer suggested that employees should be given the opportunity to indicate their desire for continued representation by the Union, or lack thereof. The Union submitted that it is entitled to the presumption that it continues to enjoy majority support amongst the bargaining unit. The Board agrees with the Union. There are no circumstances before the Board suggesting that a representation vote is appropriate, or required.¹⁰⁵

[92] The Union has sought a declaration that the Employer is a successor employer for the purposes of s. 6-18 of the Act, and that the 1950 order applies to it and the Union. It acknowledges that there have been changes to the composition of the workforce since 1950, as evidenced in the collective agreements filed with the Board, including the most recent. As such, the parties will need to consider appropriate changes to the order. A joint application requesting an amended order pursuant to clause 6-104(2)(g)(i) could be filed,¹⁰⁶ if there is agreement on the changes. The Board's current practice would be to rescind the 1950 order and issue a new order in its place. If the parties are unable to come to an agreement – with respect to exclusions from the

¹⁰⁴ See, for example, *Harle v 101090442 Saskatchewan Ltd.*, 2016 SKCA 66, at para 45, and *P.W. Lorch & Associates Ltd v Saskatchewan*, 2015 SKQB 119, at paras 18-19. See also, generally, s. 6-112 of the Act.

¹⁰⁵ See, for example, *Construction Workers Union, Clac Local 151 v Technical Workforce Inc. and Woodland Constructors Ltd.*, 2023 CanLII 97985 (SK LRB), at para 68.

¹⁰⁶ See Form 15 of *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021*.

bargaining unit, for example – they will presumably need the Board to resolve any disputed matter(s) via a hearing, following an application.

[93] In the result, the Board concludes that it is appropriate to make the declarations sought by the Union. Therefore, an order will issue, pursuant to sections 6-103 and 6-18 of the Act, declaring that:

- a) The Employer is a successor employer and is subject to the March 17, 1950 order issued by the Board in LRB File No. 123-49, as amended by the Board's July 8, 1960 order issued in LRB File No. 072-60; and
- b) The Union represents the employees in the bargaining unit described in the abovementioned order.

[94] As a postscript, this case demonstrates the importance of updating certification orders in a timely manner. Either party bound by an order (including by virtue of a successorship) may apply to amend it, and amendments are often sought jointly or with the other party's consent.

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

DATED at Regina, Saskatchewan, this 5th day of **March, 2024**.

LABOUR RELATIONS BOARD

Michael J. Morris, K.C.
Chairperson