Saskatchewan
Labour Relations Board

SASKATCHEWAN BUILDING TRADES COUNCIL, Applicant v UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1985, Respondent, WOODLAND CONSTRUCTORS LTD., Respondent and CONSTRUCTION WORKERS UNION, CLAC LOCAL 151, Respondent

PROGRESSIVE CONTRACTORS ASSOCIATION OF CANADA, Applicant v UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1985, Respondent, WOODLAND CONSTRUCTORS LTD., Respondent and CONSTRUCTION WORKERS UNION, CLAC LOCAL 151, Respondent

LRB File Nos. 078-24 and 092-24; August 1, 2024
Vice-Chairperson, Carol L. Kraft; Board Members: Shawna Colpitts and Kris Spence

For the Applicant, Saskatchewan Building Trades Council:	Greg D. Fingas
For the Applicant, Progressive Contractors Association of Canada:	Thomas W.R. Ross
For the Respondent, United Brotherhood of Carpenters and Joiners of America, Local 1985:	Jacob Axelrod
For the Respondent, Woodland Constructors Ltd.:	Michael H. Voss Laura Dunnigan
For the Respondent, Construction Workers Union, CLAC Local 151:	Richard F. Steele Carly M. Baker

Intervenor – Applications for Public Law Intervenor Status – Granted

REASONS FOR DECISION

Introduction:

[1] **Carol L. Kraft, Vice-Chairperson:** The Board provides these reasons for decision on two Applications to Intervene in a Certification Application brought pursuant to s. 6-9 or 6-10 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (the "Act").

Background:

[2] On February 24, 2024, United Brotherhood of Carpenters & Joiners of America, Local 1985 **("Local 1985")** filed an application for certification as bargaining agent of "all carpenter and carpenter apprentices at Woodland Constructors Ltd." ("**Original Application**").

[3] Construction Workers Union, CLAC Local 151 **("CLAC**") currently holds bargaining rights with respect to "all employees of Woodland except the General Manager, Office Manager, Office

and Sales Staff and Management Personnel" pursuant to an Order of this Board in LRB File No. 015-23.

[4] The Employer, Woodland Constructors Ltd. ("**Woodland"**) employs a variety of different tradespeople that fall within the scope of an all-employee unit represented by CLAC. Woodland says that, at the Cargill Site in particular, where a majority of Woodland's employees work, including those in the proposed bargaining unit, Woodland employs carpenters, cement finishers, electricians, labourers, operators and pipefitters, among others. In total, Woodland says it employs nearly 300 tradespeople in Saskatchewan.

[5] Woodland states in its Reply to the Original Application that the trade classifications referred to above are not "watertight". It describes its workforce as follows:

> *11. Additionally, the trade classifications noted above are not watertight. Rather, Woodland's employees constitute a highly integrated workforce in which employees can and do perform the work of different trades on any given day. This is particularly true of the cement finishers, masons and carpenters, not all of whom are "ticketed" or registered. As such, carpenters can and do perform the work of other trades, and the other trades can and do perform carpentry work.*
>
> *12. Importantly, Woodland's integrated workforce at the Cargill Site and other projects in Saskatchewan work closely to complete projects and tasks as a team. The trades working together are not clearly separated by craft lines nor are they distinct from one another in the projects and day to day tasks they are completing. Rather, they support one another by working in tandem to complete the work Woodland has been contracted to complete on different worksites.*[1]

[6] Saskatchewan Building Trades Council ("**Council**") and Progressive Contractors Association of Canada ("**PCA**") have both applied to the Board to be granted intervenor status in respect of the Original Application.

[7] The Council says in its Application to Intervene that it represents the following Affiliates who in turn represent over 7,000 organized construction workers in Saskatchewan:

> *i. Bricklayers Local 1*
> *ii. Construction and General Workers, Local, 180*
> *iii. International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, Local 771*
> *iv. International Association of Heat and Frost Insulators and Asbestos Workers, Local 119*
> *v. International Brotherhood of Electrical Workers, Local 529*
> *vi. International Brotherhood of Electrical Workers, Local, 2038*
> *vii. International Union of Painters and Allied Trades, Local 739*
> *viii. International Union of Elevator Constructors, Local 102*

[1] Woodland Reply to Application for Certification, paras. 11 and 12

ix. *Millwrights, Local 1021*
x. *International Union of Operating Engineers, Local 870*
xi. *Operative Plasterers & Cement Masons, Local 222*
xii. *United Association of Plumbers & Pipefitters, Local 179*
xiii. *Sheet Metal, Air, Rail and Transportation Workers, Local 296; and Teamsters, Local 395*[2]

[8] The Council says that its Affiliates have been certified to represent workers in craft bargaining in Saskatchewan since 1947 and that each of the Affiliates has been designated as a bargaining agent for and serves as bargaining agent for workers with a trade division pursuant to Part VI, Division 13 of *The Saskatchewan Employment Act.* Council says that its Affiliates consist of the majority of the unions which certify employers within the trade division structure pursuant to Part VI, Division 13 of *SEA*.

[9] PCA is an umbrella organization of employers in the construction industry. It states in its Application to Intervene that it represents construction and maintenance contractors across Canada, including Saskatchewan, and that its members employ more than 60,000 employees, and many thousands more in affiliated organizations. Its Application to Intervene describes its background as follows:

> 3. *PCA was established in 2000 by a group of unionized construction contractors that contribute significantly to commercial and industrial construction and maintenance across Canada. PCA members have unionized relationships primarily with non-building trades unions (unions that operate on an industrial or multi-trade basis). However, many PCA members are also affiliated with building trades unions, and other members operate on a non-union basis. PCA members have extensive experience operating across the jurisdictional boundaries of construction trades.*[3]

[10] These two Applications to Intervene came before a panel of this Board comprised of Members Shawna Colpitts, Kris Spence and myself as Vice-Chairperson. The Board has reviewed all the briefs and accompanying authorities filed by the parties and has found them helpful.

Preliminary Issue:

[11] CLAC asserts in its Reply to the Council's Application to Intervene that Council has failed to bring the Intervention Application within the time required by subsection 25(3) of *the Saskatchewan Employment (Labour Relations Board) Regulations, 2021.* However, on April 11, 2024, this Board ordered that the Application to Intervene by the Council dated April 5, 2024, was

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[2] Council Application to Intervene, para. 3
[3] PCA Application to Intervene, para. 3

accepted for filing as of the date of the Order. Section 6-115(1) of the Act provides that every board order is final and there is no appeal from that board order. Accordingly, Council is permitted to proceed with its Intervention Application.

Argument on Behalf of the Parties:

Woodland and CLAC

[12] Woodland and CLAC both oppose Local 1985's Application for Certification (the "Original Application"). Both raise several arguments as to why the applied-for bargaining unit is not appropriate.

[13] Woodland's submissions include an argument that "carve-out" craft units are not appropriate where it would result in a fragmented remaining all-employee bargaining unit. It says in its Reply to the Original Application:

> *17. Finally, while both "craft" and "all-employee" bargaining units may be appropriate in the construction industry, it must be an "either or" choice; that is, carve-out craft units are not appropriate where it would result in a fragmented remaining all-employee bargaining unit (i.e. a "hybrid" model is not appropriate). That is exactly what would result in the event this Application was granted.*

[14] CLAC's objections include similar arguments in its Reply to the Original Application. It asserts that a hybrid bargaining structure with some employees represented on a craft basis and others represented on an industrial, all-employee, basis is inappropriate. It is generally one or the other, but not a mixture of both[4]. It say that the applied-for bargaining unit would create a "prohibited and improper hybrid bargaining structure".[5]

The Saskatchewan Building Trades Council ("Council")

[15] The Council is seeking public law intervenor status. It also requests in the alternative that it be granted exceptional interest intervenor status.

[16] The Council seeks to intervene because, it says, both Woodland and CLAC have taken positions in the Original Application which raise general policy questions respecting the relationship between craft unions and all-employee units in the construction industry.

[17] In its Reply, the Council argues:

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[4] CLAC Reply para. 17(i)
[5] CLAC Reply para. 17(g)

The questions of whether a hybrid bargaining structure is "prohibited and improper" or whether there "must be an "either or choice" between craft units and all-employee units for a single employer, are ones expressly raised by the Respondents to the Certification Application, and ones which manifestly have an important public law dimension.[6]

[18] In its Submission for Intervenor status, the Council states:

> *9. The policy implications of these positions reach far beyond the specific circumstances of the Certification Application. The Respondents Woodland and Local 151 seek to have the Board use the Certification Application to implement a policy of broad application – one which is entirely novel in Saskatchewan labour relations jurisprudence – which would effectively bar all of the Council's affiliates from pursuing certification applications respecting any craft unit of an employer previously certified on an all-employee basis.*

Progressive Contractors Association of Canada ("PCA")

[19] PCA is seeking public law intervenor status. It argues that if the Board is going to consider a new approach in this case, which has wide ranging implications, it is appropriate that different perspectives be considered.

[20] In its Application to Intervene[7], PCA describes its value as an intervenor as follows:

> *PCA members are active in the construction industry in Saskatchewan and elsewhere and have a demonstrable and genuine interest in the treatment of carve-outs in raid applications relating to all-employee construction bargaining units.*
>
> *...*
>
> *The appropriateness of construction bargaining units has evolved, and PCA and its members have been very active in that evolution, in Saskatchewan, and elsewhere. Carve outs are an important concept with implications for the construction industry. Carving out individual trade units from an all-employee construction bargaining unit in Saskatchewan would be a novel development that may have significant implications for the industry that transcend the immediate parties to this application. It will be relevant to compare the construction industry with other industries and with approaches in other jurisdictions.*

Relevant Statutory Provisions:

[21] The following provisions of *The Saskatchewan Employment (Labour Relations Board) Regulations* are relevant:

> ***Intervention***
> *20(1) In this section:*
>
> > *(a) "application to intervene" means an application in Form 17 (Application to Intervene);*

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[6] Council Reply para. 4
[7] PCA Application to Intervene, p. 2

(b) "original application" means an application made to the board pursuant to the Act and these regulations that is the subject of an application to intervene.

(2) An employer, other person, union or labour organization that is served with a copy of an application pursuant to section 19 and intends to intervene in the proceedings before the board shall file a reply in Form 18 (Reply).

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

(4) All replies and applications to intervene must be filed within 10 business days after the date a copy of the original application was given to the employer, person, union or labour organization by the registrar.

(5) The registrar shall provide a copy of every reply and every application to intervene to:

(a) the party that filed the original application;

(b) in the case of an application to intervene, any other party that filed a reply; and

(c) any other employer, person, union or labour organization that is directly affected by the application to intervene.

[22] The following provisions of the *Act* apply:

Determination of bargaining unit
6-11(1) If a union applies for certification as the bargaining agent for a unit or a portion of a bargaining unit or to move a portion of one bargaining unit to another bargaining unit, the board shall determine:

(a) if the unit of employees is appropriate for collective bargaining;

...

(2) In making the determination required pursuant to subsection (1), the board may include or exclude persons in the unit proposed by the union.

. . .

(7) In making the determination required by subsection (1) as it relates to the construction industry within the meaning of Division 13, the board shall:

(a) make no presumption that a craft unit is the more suitable unit appropriate for collective bargaining; and

(b) determine the bargaining unit by reference to whatever factors the board considers relevant to the application, including:

(i) the geographical jurisdiction of the union making the application; and

(ii) whether the certification order should be confined to a particular project.

...

6-112 (4) Without limiting the generality of subsections (2) and (3), in any proceedings before it, the board may, on any terms that it considers just, order that the proceedings be amended:

> *(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;*

Analysis and Discussion:

[23] The governing authority with respect to applications for intervenor status is this Board's decision in *Communication, Energy and Paperworkers Union of Canada v. J.V.D. Mill Services Inc. ("JVD Mill Services No. 1),* [8] where the Board recognized three classes of intervenor. Those are Direct Intervenor, an Exceptional Intervenor and a Public Law Intervenor.

[24] In *Construction Workers Union, Local 151 v Tercon Industrial Works Ltd*, 2012 CanLII 2145 (SK LRB) *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:

> ***[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:*
>
> > *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.*
> >
> > *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.*

[8] [2010] SLRBD No. 27, 199 CLRBR (2d) 228

[25] In *Construction Workers Union, CLAC Local 151 v Ledcor Industrial Limited ("Ledcor")*, [9] 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.*

[26] More recently, in *Saskatchewan Provincial Building and Construction Trades Council v Churchill River Employees' Association ("CREA")*,[10] 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.

Public Law Intervenor

[27] In determining when to grant public law intervenor status, the Board first considers whether the underlying application gives rise to an issue of public law. This analysis is conducted prior to and separate from the Board's consideration of the principles outlined in *R. v. Latimer ("Latimer")*.[11]

[28] With respect to determining whether an underlying application gives rise to an issue of public law, the Board stated the following in *CREA:*

> ***[43]*** *The Board begins by considering whether the present case raises a public law issue, and finds that it does. In coming to this conclusion, the Board has reflected on whether the underlying dispute has significance extending beyond the immediate parties, by raising questions of concern to society at large, or in this context, questions of concern to the labour relations community.*

[29] Both the Council and PCA have applied for Public Law Intervenor status.

[30] In accordance with the reasoning in *CREA*, the Board will address the Council's application to intervene as a public law intervenor first, and then will consider the exceptional intervenor category if necessary.

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[9] 2018 CanLII 53123 (SK LRB)
[10] 2020 CanLII 10513 (SK LRB)
[11] 1995 CanLII 3921 (SK CA) *(1995)* 128 Sask R 195

[31] The Council argues in its Application to Intervene that both Woodland and CLAC have taken positions which raise general policy questions respecting the relationship between craft units and all-employee units in the construction industry including:

> a. *That craft units are generally not appropriate for collective bargaining with an integrated workforce;*
>
> b. *That craft units are generally not units that encourage long-term industrial stability; and*
>
> c. *That employees should be prohibited from organizing on a craft basis in a workplace which has previously been certified with an all-employee bargaining unit:*
>
> i. *At all; or alternatively,*
>
> ii. *Absent their meeting an artificially high threshold, such as one requiring them to establish that an all-employee unit is or has become inappropriate.*

[32] Woodland submits that there are no compelling arguments as to how the Certification Application involves an issue of public law importance beyond the interests of the immediate parties. Woodland argues the Certification Application requires the Board to "make a narrow, straightforward, and discrete determination as to whether Local 1985 ought to be certified with respect to Woodland's carpenters and carpenter's apprentices who are currently represented by CLAC."[12]

[33] Woodland argues that this analysis will involve a determination with respect to the appropriateness of Local 1985's applied-for bargaining unit, as does every application made by a bargaining agent for bargaining rights before the Board. Woodland says the Board makes such determinations on a regular, routine and unexceptional basis and that such determinations should not reasonably form the basis of a public interest intervention by the Council.

[34] It is clear that many of the assertions made by Woodland in its Reply to the Original Application deal with issues solely between the parties to the Original Application. However, in its Reply to the Original Application, Woodland argues:

> *Finally, while both "craft" and "all-employee" bargaining units may be appropriate in the construction industry, it must be an "either or" choice; that is, carve-out craft units are not appropriate where it would result in a fragmented remaining all-employee bargaining unit (i.e. a "hybrid" model is not appropriate). That is exactly what would result in the event this Application were granted.*[13]

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[12] Woodland Brief, para. 14
[13] Woodland Reply, para. 17

[35] It is also clear that many of the assertions made by CLAC in its Reply to the Original Application deal with issues solely between the parties to the Original Application. These assertions do not give rise to a broader public interest. However, in its Reply, CLAC asserts that: "The Applied for Unit would create a prohibited and improper hybrid bargaining structure."[14]

[36] It is these assertions, and their implications, that broaden the reach of the Original Application.

[37] The Council argues in its Reply:

> *5. Both Woodland and Local 151 have thus taken positions which are not limited to a fact-specific assessment of the bargaining unit at issue, but assert the existence and application of universal prohibitions and mandates which would establish barriers to organizing with an exceptional impact upon the Council's affiliates. It is disingenuous for Woodland to insist that the Board close its eyes to Woodland's own pleadings in defining both the issues before it on the Certification Application, and the interest of the Council in the determination of those issues.*[15]

[38] The Council says that the policy implication of these positions reaches far beyond the specific circumstances of the Original Application. It argues that:

> *...Woodland and Local 151 seek to have the Board use the Certification Application to implement a policy of broad application – one which is entirely novel in Saskatchewan labour relations jurisprudence – which would effectively bar all of the Council's affiliates from pursuing certification applications respecting any craft unit of an employer previously certified on an all-employee basis.*[16]

[39] PCA argues that the present case has the potential to "break new ground". It says there is a public law or policy interest in the application of carve-outs within the construction industry and for that reason it, along with the Council, seek to intervene.

[40] PCA states in its Brief:

> *There has been an evolution in Saskatchewan from craft-based construction bargaining units only to multi-trade and all-employee bargaining units. The present case is an important part of that evolution, which will address if and when an all-employee unit can be carved out into a trade-specific unit. In such cases, the Board has accommodated intervenors to assist in making sound decision – sound in law and policy.*

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[14] CLAC Reply, para. 17(g)
[15] Council Reply, para. 5
[16] Council, Submissions on Application for Intervenor, para 9

[41] After having read the submissions from all parties in both the Original Application and Applications to Intervene, the Board finds that the underlying dispute does have significance extending beyond the immediate parties, by raising questions of concern to the labour relations community.

[42] The Board finds merit in the Council's argument that the questions of whether a hybrid bargaining structure is "prohibited and improper", or whether there "must be an 'either or choice' between craft units and all-employee units for a single employer are ones which have an important public law dimension. The policy implications of these positions reach beyond the specific circumstances of the Original Application.

[43] The Board also finds merit in the Council's argument that Woodland and Local 151 have taken positions which are not limited to a fact-specific assessment of the bargaining unit at issue. Their positions in the underlying dispute have significance extending beyond the immediate parties, by raising questions of concern to the labour relations community.

[44] The Board finds merit in PCA's submissions that the present case may be breaking new ground and may be an important part of the craft-based evolution in Saskatchewan. Issues regarding the relationship between craft units and all employee units and carve-outs have not previously been before the Board.

[45] The Board is satisfied that there is a sufficient public law aspect to the certification application to give it significance beyond the immediate parties.

Latimer **Principles**

[46] The next issue for the Board to consider is whether the Applicants should be granted status as public law intervenors. The Board takes into consideration the factors outlined in *Latimer,* which has been summarized as follows:

> *(1) whether the intervention will unduly delay the proceedings.*
>
> *(2) possible prejudice to the parties if intervention is granted.*
>
> *(3) whether the intervention will widen the lis between the parties.*
>
> *(4) the extent to which the position of the intervener is already represented and protected by one of the parties; and*
>
> *(5) whether the intervention will transform the court into a political arena.[9]*[17]

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[17] United Brotherhood of Carpenters and Joiners of America, Local 1999 v International Association of Heat & Frost Insulators and Asbestos Workers, 2021 CanLII 27335 (SK LRB), at para 9.

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

The Council's Application

[48] Woodland's position opposing the Council's application to intervene argues that there are no special circumstances that differentiate the Council from Local 1985, who will advance a similar interest (i.e. "there is no perspective which the Council could present that Local 1985 could not advance and no valuable perspective or contribution that the Council will bring to the Local 1985 Application.) Woodland also argues that Council's intervention will disrupt and delay proceedings and thus cause prejudice to all parties.

[49] CLAC argues that the Council's intervention will not assist the Board, there will be no fresh or impartial perspective, and in fact, the Council's involvement has, and will continue to, increase the cost, complexity and time required to deal with the Original Application.

[50] CLAC further submits that it has "legitimate concern based on historical precedent that Council will definitely not approach these proceedings in a neutral, impartial manner. CLAC says: "The Affiliates have much to gain if the Certification Application is successful and they are without doubt watching this proceeding with great interest. The Council has skin in the game in this matter."[18]

[51] Local 1985 does not oppose Council's Application to Intervene due to the "wider resonance of the issues raised by the Certification Application and by the respective Replies by Woodland and CLAC".[19] However, Local 1985 is also concerned that Council's participation may result in delays to the determination of the Certification Application and suggests that the Board impose conditions on the intervention.

[52] The Council's position is set out as follows:

- *It does not propose to delay the hearing of the Certification Application and that it will co-operate in settling timelines and scheduling hearings.*

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[18] CLAC Reply to Council's Application, para 19(a)
[19] Local 1985 Reply, para. 5(f)

- *There will be no prejudice to any party arising out of Council's participation as its intention is to only call such evidence as is necessary to address the issues raised in its intervention.*

- *Its intervention will not widen the lis between the parties as the appropriateness of the bargaining unit applied for is already in issue between the parties, and the question of the standard to be applied to a craft unit application in the context of any employer subject to an all-employee certification is a novel one.*

- *It offers an expanded and distinct perspective as to the policy which ought to be applied. Local 1985 is a single bargaining agent under Division 13 which is not affiliated with the Council. The Council is able to speak to both diversity of interests among its affiliates representing the majority of the designated bargaining agents, as well as the formal and informal mechanisms available to address issues of jurisdiction (both as between craft units and otherwise).*

- *It does not intend to duplicate evidence and is agreeable to providing an undertaking to the Board and to limiting terms in an order providing for its intervention.*

- *Nothing about the Council's intervention will result in a "more political" proceeding as its intervention is aimed solely at ensuring the Board's determination as to the policy to be applied to craft organizing includes the submissions of the bargaining agents most affected by that determination.*[20]

[53] The Council claims that it and its affiliates have an interest in ensuring that workers in the construction industry are able to exercise their right to organize upon the trade division lines set out under Part VI, Division 13 of the SEA.

[54] The Council seeks to present evidence and argument respecting:

(a) The trade division bargaining structure in the construction industry, and

(b) The importance of ensuring that construction industry employees are able to exercise the right to organize through craft units.[21]

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[20]Council Written Submissions, paras 17-26
[21] Council Application to Intervene, para. 3(g)

PCA's Application

[55] Woodland objects to the PCA's Application to Intervene and adopts and relies on its submissions with respect to Council's Application to Intervene.

[56] In the alternative, Woodland submits that should the Board grant Council's Application to Intervene, it ought to grant the same status to PCA because "There are no principled or reasonable grounds for distinguishing between these two entities for the purposes of determine whether to grant intervenor status in the Local 1985 Application."[22]

[57] CLAC in its Reply states that only if the Board grants intervenor status to Council, should PCA be granted the same standing. CLAC asserts that: [23]

- *PCA is a national construction association of unionized construction contractors that is independent from any specific union, be it building trades unions, or otherwise;*
- *PCA is a uniquely situated organization that will offer a unique and different perspective from the Council and the other parties, all of which will ensure the Board is given a complete picture of the policy considerations at issue;"*
- *PCA has its own unique position and perspective, and that its participation will not delay proceedings, or widen the lis, or prejudice the parties.*

[58] Local 1985 opposes PCA's Application to Intervene. It submits that[24]:

- *PCA will not be directly affected by the outcome of the Certification Application. It is neither a contractor or union but rather an "advocacy group for contractors who wish to promote a specific model of labour relations in the construction industry;*
- *PCA's members' interests are already represented in the Original Application by Woodland and CLAC (Woodland is a member of PCA and "most of the skilled workers employed by its various members 'belong primarily to the CLAC union';"*
- *Insofar as PCA's application can be read to raise issues beyond carve-outs in all-employee units in the construction industry, such submissions would widen the lis*

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[22] Woodland Reply Submissions, para. 5
[23] CLAC Reply, para. 11
[24] Local 1985 Reply, paras. 5

between the parties. PCA states that "[i]t will be relevant to compare the construction industry with other industries and with approaches in other jurisdictions." Local submits that the present matter is specifically about a certification application in the construction industry under Saskatchewan legislation; and

- *Local 1985 acknowledges that it did not oppose the intervention application by Council; however, it points out that Local 1985 is not a member of the Council. Council thus brings a different perspective to the Certification Application*

[59] Local 1985 submits that in the event the Board does grant intervenor status that its participation should be limited to only raising arguments relating to the issue of craft unit carve outs from all-employee units in the construction industry and that PCA should work to ensure that the arguments it raises are different in nature from those advanced by Woodland and CLAC.[25]

[60] PCA says its proposed intervenor status would be focused primarily on submissions to the Board.

[61] PCA accepts the issue in dispute relates to carve-outs. It is not interested in other issues in this case and there will be no widening of the dispute.

[62] PCA says it represents many different employers and while there may be similarities between PCA's position and the employer's position in this case, that does not necessarily apply to all the different aspects of the issues. PCA offers a broader perspective and represents many different employers. The purpose of allowing public interest intervenors is to provide the board with a broad perspective on issues of broad interest.

[63] PCA will not politicize the application. It will simply add balance to the perspectives being addressed before the Board.

[64] PCA also claims to be able to offer assistance to the Board. It states:

> *PCA can offer assistance to the Board in respect to the application of carve outs. PCA and its members have experience relating to the interplay of craft and all-employee bargaining units in other jurisdictions and in respect to non-union, building trades, and non-building trades environments. Unlike the Building Trades Council, PCA has experience relating to trade-based, multi-trade, and all-employee bargaining units.*[26]

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[25] Local 1985 Reply, para. 5(l)
[26] PCA Application to Intervene, para. 3

[65] PCA submits that its intervention will not unduly delay the proceedings. It expects its involvement would be limited to making submissions on the issues, namely, the application of carve-outs, whether or when they should be allowed, and the functioning of craft and all-employee or multi-trade units in construction.[27]

[66] PCA in its written submissions summarizes its perspective as follows:

> *The Employer in this case is engaged in the construction industry. It is one employer with a specific factual background and experience. It is directly affected by this case and offers an essential perspective. PCA represents over 150 employers with a wealth of different experience with different industries, geographic settings, and unions. It would also provide a broad and valuable perspective that is different from other parties.*
>
> *The issue of carve-outs in this case relates to a specific context of industrial construction with an employer in that industry, but the outcome of this case will be relevant to many different contexts. PCA represents employers in respect to long-term and turnaround maintenance, pipeline construction heavy and highway construction, commercial and institutional construction, and work in industrial shops and other stationary industries. The Board's decision will potentially affect all these other areas of construction, maintenance, and manufacturing. The effects of the Board decision are far broader than just industrial construction.*
>
> *For example, in turnaround maintenance, non-building trades unions and contractors use multi-trade crews. How do you carve out one trade when the crew is working in more than one trade, sometimes on a daily basis? Similar considerations apply in respect to long-term maintenance, roadbuilding construction, and industrial and institutional construction. Many workplaces also employe personnel with tickets in multiple trades. PCA's experience allows it to address such considerations for the Board.*[28]

Analysis and Decision:

[67] In *J.V.D. Mills Services #1*, the Board reiterated the *Latimer* factors, and then reflected on the role of the Board in exercising its discretion when assessing an intervenor application:

> *[25] The Court in Latimer, supra, also noted that "[A]s a matter of discretion, the court is not bound by any of these factors in determining an application for intervention but must also balance these factors against the convenience, efficiency and social purpose of moving the case forward with only the persons directly involved in the "lis".*
>
> *[26] The Board has also recognized that it must be cognizant of balancing the interests of the parties in having access to make representations to the Board and preserving the resources of the Board. As noted by the Board in Re: Merit Contractors Association [13] at [page 124/125]:*
>
> > *These statutes represent an embodiment of public policy, and a wide range of persons may have an "interest" in a broad sense, in bringing to*

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[27] PCA Application to Intervene, para. 4
[28] PCA Reply to Argument of Local 1985, p. 3

> *our attention various issues which may arise in conjunction with the implementation of these policies. As both the courts and other tribunals like our own have concluded, however, some limits must be set in allowing the assertion of interests which are contingent in nature. In Canadian Council of Churches v. The Queen (1992), 1992 CanLII 116 (SCC), 88 D.L.R. (4th) 193, the Supreme Court of Canada expressed the concern in this way:*
>
> > *. . . I would stress that the recognition of the need to grant public interest standing in some circumstances does not amount to a blanket approval to grant standing to all who wish to litigate an issue. It is essential that a balance be struck between ensuring access to the Courts and preserving judicial resources. It would be disastrous if the Courts were allowed to become hopelessly overburdened as a result of the unnecessary proliferation of marginal or redundant suits brought by well-meaning organizations pursuing their own particular cases certain in the knowledge that their cause is all important. It would be detrimental, if not devastating, to our system of justice and unfair to private litigants.*

[68] The Board must seek to achieve a balance between the preceding factors and the important goals of litigation convenience, efficiency, and judicious use of the Board resources. Underlying all these considerations is a concern for fairness to the parties and for the promotion of a balanced, transparent, healthy and effective labour relations environment.

[69] In considering the principles enunciated in *Latimer,* the Board has determined the following:

[70] With respect to the first principle, delay, the Board is aware that adding a party inevitably adds some delay to proceedings, but the intervention of the proposed intervenors will not unduly delay or protract the proceedings.

[71] Further, the Council has stated that it does not intend to duplicate evidence and is agreeable to providing an undertaking to the Board and to limiting terms in an order providing for its intervention.

[72] PCA submits that its intervention will not unduly delay the proceedings. PCA has indicated that it expects its involvement would be limited to making submissions on the application of carve-outs, whether or when they should be allowed, and the functioning of craft and all-employee or multi-trade units in construction.

[73] With respect to the second principle, while an intervention always poses potential prejudice to the original parties, this needs to be weighed against the potential to assist the Board. Given the assistance the Board is likely to gain from the intervenors, the Board finds there will be no undue prejudice to the parties to the Original Application. As stated by this Board in *CREA* at para 59:

> *...Prejudice should be understood in terms of the overall fairness to the original parties. The Board notes that all interventions involve some minimal prejudice by contributing to the complexity, the cost to the client, and the resource allocation to the file. If the Board's only goal was to avoid greater complexity it would deny intervenor status in every case. As with all the Latimer factors, the Board's assessment of prejudice must also be assessed in context and weighed against the remaining factors.*

[74] With respect to the third principle, the Board has determined that the intervention will not widen the *lis* between the parties. The appropriateness of the bargaining unit and the question of policy or the standard to be applied to a craft unit application in the context of an employer subject to an all-employee certification are directly in issue in the Original Application.

[75] With respect to the fourth principle, the Board finds the positions of the intervenors offer a broader perspective than the parties to the Original Application.

[76] With respect to the fifth principle, the Board finds that the intervention will not transform the hearing int a political arena. In *Latimer*, the Court of Appeal stated, when considering this criterion: "This case has given rise to some public debate in respect of matters which are more moral or political than legal, and more properly dealt with by Parliament than by the courts. I am satisfied that the applicants intend to confine themselves to matters of law." Neither the Council or PCA indicated an intention to make submissions that strayed beyond matters of law. The policy concerns here are not political in the sense contemplated in *Latimer.*

[77] In granting intervenor status, the Board is mindful of the comments from Mr. Justice Brown in *Saskatchewan (Environment) v Saskatchewan Government Employees Union*, [29] at para. 41:

> *b. There must exist the reasonable prospect that the process will be advanced or improved by their addition as an intervenor. This includes demonstrating that, as an intervenor, they will bring a new perspective or special expertise to the proceedings that would not be available without their participation. Merely echoing the position of one or more of the parties indicates they will not provide the requisite value;*

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[29] 2016 SKQB 250 (CanLII)

[78] The Board finds that there is a reasonable prospect that both the Council and PCA will advance or improve the Board's understanding of the issues it will face on the Original Application.

[79] Furthermore, issues regarding the relationship between craft units and all employee units and carve-outs have not previously been before the Board. The question of policy or the standard to be applied to a craft unit application in the context of an employer subject to an all-employee certification is a novel one. This Board has exercised a certain flexibility in granting intervenor status in matters that have the potential to break new ground: *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) para 44.

[80] Weighing all of these considerations against the interests of the parties, the resources of the Board, and the importance of promoting the timely resolution of disputes, the Board is satisfied that the Council and PCA should be granted public law intervenor standing in this case subject to the limitations outlined hereafter.

[81] The Board wishes to note that it has relied upon the representations made by the Council and PCA in their submissions regarding limits on their participation. The Board has arrived at its decision, in part, based on these representations. In this regard, the Board accepts that PCA may make submissions, both written and oral, with respect to the application of carve-outs, whether or when they should be allowed and the functioning of craft and all-employee or multi-trade units in the Saskatchewan construction industry. The Board has also decided to allow the Council to call evidence within the parameters set out in the Order. Furthermore, the Board wishes to remind the Intervenors of their responsibility to present factual, reliable evidence and/or submissions that assist the Board in determining the appropriateness of a craft unit application in the context of an employer subject to an all-employee certification.

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

Decision and Order

[83] For the reasons set out above, there will be an Order as follows:

The Council

(a) The Council is granted public law intervenor status in this matter;

(b) The Council may provide evidence and argument on the following matters, including the ability to call its own witnesses and cross-examine the witnesses of other parties, but not so as to duplicate the evidence submitted by other parties:

i. The trade division bargaining structure in the construction industry;

ii. The importance of ensuring that construction industry employees are able to exercise the right to organize through craft units; and

iii. the application of carve-outs, whether or when they should be allowed and the functioning of craft and all-employee or multi-trade units in the Saskatchewan construction industry;

(c) Any written submissions shall not exceed 25 pages and any oral submissions shall not exceed 30 minutes at the hearing.

PCA

(a) The PCA is granted public law intervenor status in this matter;

(b) PCA shall not be permitted to call evidence or to cross-examine witnesses;

(c) PCA may not introduce any legal argument with respect to any issue other than the application of carve-outs, whether or when they should be allowed and the functioning of craft and all-employee or multi-trade units in the Saskatchewan construction industry;

(d) Any written submissions shall not exceed 25 pages and any oral submissions shall not exceed 30 minutes at the hearing.

DATED at Regina, Saskatchewan, this **1st** day of **August, 2024.**

LABOUR RELATIONS BOARD

Carol L. Kraft
Vice-Chairperson