

UNITE HERE, Local 47, Applicant v ATCO FRONTEC LTD, Respondent and GEORGE GORDON DEVELOPMENTS LTD., Respondent Intervenor

LRB File Nos. 055-24 and 029-25; April 3, 2025

Vice-Chairperson, Carol L. Kraft (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act*)

Citation: *UNITE HERE, Local 47 v ATCO Frontec Ltd.*, 2025 SKLRB 16

Counsel for the Applicant, UNITE HERE, Local 47:

David B. Mercer, K.C.

Counsel for the Respondent, ATCO Frontec Ltd.:

Steve Seiferling

Counsel for the Respondent Intervenor, George Gordon Developments Ltd.:

Michael A. MacDonald

Pre-Hearing Production – s. 6-111(1)(b) *The Saskatchewan Employment Act* - *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021*, c S-15.1 Reg 11 – Union’s application for pre-hearing production of documents granted

REASONS FOR DECISION

[1] Carol L. Kraft, Vice-Chairperson: This is an application by UNITE HERE, Local 47 (“UNITE HERE” or the “Union”) for pre-hearing production of particulars or documents or things pursuant to Section 6-111 of *The Saskatchewan Employment Act* (the “Act”).

[2] On March 8, 2024, UNITE HERE applied to the Board to certify “all employees of ATCO Frontec Ltd. at PHP Jensen Discovery Lodge (sic) except for managers, office, clerical, security and maintenance trades personnel.”

[3] ATCO Frontec Ltd. (“Frontec”) filed a Reply with the Board on April 2, 2024 specifically claiming that it is not the Employer. It says the Employer is Wicehtowak Frontec Services (WFS) a joint venture of Frontec and George Gordon Developments Ltd. (“GGDL”) and states as a material fact to be relied upon by ATCO Frontec Ltd., *inter alia*, that:

5.c. Frontec has entered into a joint venture with GGDL, forming Wicehtowak Frontec Services, or WFS. The joint venture, WFS, was recently awarded work on the BHP Billiton mine site (the “Site”) in 2023...

...

e. *Frontec states that WFS, as a joint venture, is the true employer, since WFX is the party to which the work on the Site was awarded, and which is performing the work on the site.*

[4] GGDL applied and was granted Intervenor status by the Board and supports the assertions of ATCO Frontec Ltd. with respect to the “Joint Venture”.

[5] In August of 2024, both Frontec and UNITE HERE sought preliminary orders for disclosure from the Board. UNITE HERE’s request was for Frontec to “produce all documents and provide particulars related and relevant to Frontec’s objection to the certification application.”

[6] In a decision dated October 29, 2024, the Board dismissed both applications and determined that neither Frontec, nor UNITE HERE had complied with the evidentiary requirement in *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021, c S-15.1 Reg 11*, (the “Regulations”).

[7] UNITE HERE filed a second application for production of documents in February 2024, shortly before the scheduled dates for the hearing on February 10, 11 and 12, 2025. In filing this second application, UNITE HERE, once again, did not comply with the *Regulations*, having filed the second application less than 20 days before the commencement of the schedule hearing.

[8] Due to an unexpected illness, the February hearing dates were rescheduled to April 21, 22 and 23, 2025.

[9] UNITE HERE is now taking a third attempt at disclosure. After the hearing was adjourned, UNITE HERE filed Form 19 in support of its Application for Pre-Hearing Production of Particulars or Documents or Things on February 14, 2025. The prescribed Form 19 requires the applicant (UNITE HERE) to describe the Order it seeks. The Order requested by UNITE HERE is described as follows:

As to Atco Frontec Ltd.:

1. *Joint Venture Agreement between Atco Frontec Ltd. and George Gordon Developments Ltd.*
2. *Operational Agreements between Atco Frontec Ltd. and George Gordon Developments Ltd.*
3. *The contract between Atco Frontec and BHP to build and operate Jansen Discovery Lodge.*

As to George Gordon Developments Ltd.:

1. *Joint Venture Agreement between Atco Frontec Ltd. and George Gordon Developments Ltd.*
2. *Operational Agreements between Atco Frontec Ltd. and George Gordon Developments Ltd.*

[10] The application Form 19, which is the form of a sworn affidavit, sets out in paragraph 4 the reasons why the Union submits that the Order ought to be granted:

The Respondent, Atco Frontec Ltd. has objected to the Application of the Union for Bargaining Rights and is joined by George Gordon Developments Ltd. as Intervenor. The Respondent's Objection is that Atco is not the employer. It alleges that the employer is a Joint Venture between Atco Frontec Ltd. and George Gordon Development Ltd. called Wicehtowok Frontec Services. Accordingly, the Joint Venture Agreement, operational Documents, the contract with the site owner BHP are relevant and directly related to the issues before the Board.

[11] UNITE HERE's application includes copies of letters dated January 29, 2025 to counsel for Frontec and counsel for GGDL requesting copies of the documents described in paragraph 9 herein. However, there is no evidence that Frontec and GGDL have "failed, refused or objected to comply with that request" as specifically required by section 21 of the *Regulations*.

[12] Section 21 of the *Regulations* prescribes rules of procedure for pre-hearing production of particulars or documents and provides as follows:

Application re pre-hearing production

21(1) In this section, "original application" means an application made to the board pursuant to the Act and these regulations that is the subject of an application for pre-hearing production of particulars or documents or things.

(2) An employer, union or other person that intends to apply to the board for an order for pre-hearing production of particulars or documents or things pursuant to section 6-111 of the Act shall:

(a) file an application in Form 19 (Application for Pre-hearing Production of Particulars or Documents or Things), including evidence that the applicant has served the respondent with a sufficiently particularized request for production and that the respondent has failed refused or objected to comply with that request; and

(b) serve a copy of the application on all other parties to the original application, at least 20 business days before the date set for hearing of the original application.

(emphasis added)

[13] Both Frontec and GGDL oppose the Union's application for production. Aside from the issue that the request must satisfy the criteria applied by the Board in *Saskatchewan Building Trades Council v Woodland Constructors Ltd.*, 2023 CanLII 82026 at paras 13-14, the Respondents say:

That the Union has also made two other applications for disclosure, in this same matter, which have been denied. Frontec specifically pleads that the principle of res judicata applies to this application, as the matter of pre-hearing production has been decided, twice, and the Union has an obligation to raise its case fully in the first instance.

Further, The Union's application fails to comply with section 15(1) of the Regulations, in particular section 15(1)(b), which requires affidavit evidence to be filed in support of a request for an interim order.

[14] Frontec and GGDL say that the Union should be specifically aware of the requirements of section 15(1), as they were addressed in the Board's decision dated October 29, 2024, in this very same manner. However, the reference to Section 15(1) of the *Regulations* the October 29, 2024 decision, is with regard to an application for interim relief. UNITE HERE had applied for an order for production of documents and particulars under clause 6-103(2)(d) of the *Act*, rather than subsection 6-111(1) of the *Act*. The Board stated at para 36 that: "Even if there was some confusion about whether to bring the applications under clause 6-103(2)(d) of the *Act*, rather than subsection 6-111(1) of the *Act*, the absence of evidence from the parties is what is fatal to their applications."

[15] In the present application, UNITE HERE has applied under the appropriate section, s. 6-111(b) of the *Act*. Form 19 is the prescribed form and it is in the form of an affidavit. Accordingly, there is some evidence before the Board. The question is whether the Union's failure to provide evidence that Frontec and GGEL have failed, refused or objected to comply with its request for production is fatal to its application. Given that UNITE HERE has found it necessary to bring an application for production, it is reasonable to infer from the evidence included in Form 19 that Frontec and GGDL have failed, refused or objected to comply with its request for production.

[16] In its October 29, 2024 Decision, the Board clearly set out the statutory and regulatory requirements for bringing an application for production. Further, in that Decision, at para 38 the Board reminded that parties that they must fully engage in the disclosure process before resorting to the Board for resolution and that they must make all reasonable efforts to resolve disclosure issues before resorting to the Board. At para 41, the Board stated:

[41] In summary, parties are obliged to make all reasonable efforts to disclose documents and particulars to enable the other party or parties to know the case they have to meet. Further, if a party objects to disclosing documents, it must provide sufficient explanation for its refusal, and the party receiving the objection must consider the merits of the objection. This is all a mandatory part of the process which must take place well before any hearing on the underlying application, and well before a party applies to the Board for an order for production of documents or particulars.

[17] This is the Union's third application for production of documents. In the prior two applications, the Union failed to comply with the *Act* and *Regulations*. UNITE HERE has now come back to the Board a third time. The Board also has concerns with the lateness of the application brought by the Union. But for the unexpected adjournment of the hearing, this matter would have proceeded in February without the Union having obtained disclosure of the documents it now seeks. Be that as it may, given the new hearing dates, the Union is within the time frame set out in the *Regulations*.

[18] Frontec and GGDL argue that the Union's application should be dismissed as it is *res judicata*. The Union's previous applications have been unsuccessful for procedural non-compliance. The substance or merits of those applications has not been considered by the Board. Accordingly *res judicata* does not apply. The Board is therefore prepared to consider the application on its merits.

[19] The documents the Union seeks are identified in its materials. The Respondents do not deny the existence of such documents. Rather, they claim the Union is on a fishing expedition.

[20] As already noted, Frontec specifically alleges that the Employer is Wicehtowak Frontec Services (WFS), a joint venture of Frontec and GGDL, and states as a material fact to be relied upon by Atclo Frontec Ltd., *inter alia*, that:

5.c. *Frontec has entered into a joint venture with GGDL, forming Wicehtowak Frontec Services, or WFS. The joint venture, WFS, was recently awarded work on the BHP Billiton mine site (the "Site") in 2023...*

...
e. *Frontec states that WFS, as a joint venture, is the true employer, since WFX is the party to which the work on the Site was awarded, and which is performing the work on the site.*

[21] GGDL applied and was granted Intervenor status by the Board and supports the assertions of ATCO Frontec Ltd. with respect to the "Joint Venture".

[22] Given the position of Frontec and GGDL in the underlying application, the documents appear to be relevant to not only UNITE HERE but to Frontec and GGDL as well. The Union's application identifies relevant and related documentation as to the issues before the Board in the underlying application set for hearing commencing April 21, 2025. The Board has determined that production of the documents sought is in accordance with the *Air Canada* principles outlined in *Saskatchewan Building Trades Council v. Woodland Constructors Ltd.* More particularly, the

information is arguably relevant, sufficiently particularized and potentially probative with respect to the allegations in the pleadings filed by ATCO and GGDL.

[23] Accordingly, UNITE HERE's application for production is granted. With these Reasons the following Order will issue:

a) As to ATCO Frontec Ltd., the Board orders the following documents be disclosed to UNITE HERE no later than 5:00 p.m. on Monday April 14, 2025:

- i. Joint Venture Agreement between ATCO Frontec Ltd. and George Gordon Developments Ltd.;
- ii. Operational Agreements between ATCO Frontec Ltd. and George Gordon Developments Ltd.; and
- iii. The contract between ATCO Frontec and BHP to build and operate Jansen Discovery Lodge.

b) As to George Gordon Developments Ltd., the Board orders the following documents be disclosed to UNITE HERE no later than 5:00 p.m. on Monday April 14, 2025:

- i. Joint Venture Agreement between ATCO Frontec Ltd. and George Gordon Developments Ltd.
- ii. Operational Agreements between ATCO Frontec Ltd. and George Gordon Developments Ltd.

DATED at Regina, Saskatchewan, this **3rd** day of **April, 2025**.

LABOUR RELATIONS BOARD

Carol L. Kraft
Vice-Chairperson