

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

LRB File No. 055-24; May 26, 2025

Vice-Chairperson, Carol L. Kraft; Board Members: Randy Powers and Curtis Talbot

Citation: *Unite Here, Local 47 v Atco Frontec Ltd.*, 2025 SKLRB 24

Counsel for the Applicant, Unite Here, Local 47: David B. Mercer

Counsel for the Respondent, Atco Frontec Ltd.: Steve Seiferling

Counsel for the Respondent, George Gordon Developments Ltd.: Michael A. MacDonald

Certification Application – *The Saskatchewan Employment Act* – s. 6-9 and s. 6-1(1)(i)(iii) – Atco Frontec Ltd. determined to be the true employer at Jansen Discovery Lodge despite its joint venture with George Gordon Developments Ltd. – Board found Atco exercised fundamental control over employment matters and granted the Union’s application for certification, rejecting claims that operational practices differed from the governing agreements

REASONS FOR DECISION

Background:

[1] Carol L. Kraft, Vice-Chairperson: UNITE HERE, Local 47 (“Local 47” or “the Union”) has applied pursuant to section 6-9 of *The Saskatchewan Employment Act* (the “Act”) for an order to be designated as the certified bargaining agent for all employees of Atco Frontec Ltd. (“Atco”) at the BHP Jansen Discovery Lodge (the “Certification Application”). The Certification Application was filed with the Board on March 8, 2024.

[2] In its Reply to the Certification Application, Atco Frontec Ltd. (“Atco”) described itself as a business headquartered in Alberta that has operated on sites in Canada for over 30 years, including more than 10 years in Saskatchewan. Atco stated that it entered into a joint venture with George Gordon Developments Ltd. (“GGDL”) to form Wicehtowak Frontec Services (“WFS”).

[3] Atco’s Reply denied that it was performing work at the Jansen mine site, which is owned by BHP Billiton. Atco asserted that the work was awarded to WFS and is being carried out by the joint venture. Accordingly, Atco maintained that WFS is the true employer at the site.

[4] GGDL was granted standing as a Direct Interest Intervenor on October 4, 2024 (see LRB File No. 164-24). GGDL did not file a Reply in these proceedings.

[5] For the reasons that follow, the Board has determined that Atco is the true employer and that the applied for unit is an appropriate unit for collective bargaining.

Evidence:

[6] The Union called three witnesses: Ashley Sigouin, Alexandra Barron and Nabil Sanduga. Atco called one witness, Ian Buehler. GGDL called one witness, Don Ross.

Ashley Sigouin

[7] Ashley Sigouin testified under subpoena. She has worked for Atco since 2020, including at other sites in British Columbia. She began her employment at Jansen Discovery Lodge on September 12, 2023.

[8] She testified that she was hired through Atco's HR department in Calgary and received an offer letter on Atco letterhead. Her T4 slips, pay stubs, benefits documents, and training materials all identified Atco Frontec Ltd. as her employer.

[9] Ms. Sigouin testified that WFS was not identified as her employer in any document throughout any of her hiring, training, or other aspect of her employment at Jansen Discovery Lodge. She said she believed her employer to be Atco.

[10] She provided extensive documentary evidence supporting this belief, including:

Offer Letter (Sept. 12, 2023):

- Issued on Atco letterhead and signed by Robert Varga, Executive Chef.
- Repeated references to Atco as the employer, including benefits, reporting structure, and onboarding requirements.
- Contact information for HR was provided via an Atco email address.
- The letter explicitly states the agreement is between the employee and Atco.

T4 Slips (2022–2024):

- Issued by Atco Frontec Ltd. for employment in both B.C. and Saskatchewan.
- All list Atco's Calgary address as the employer's location.

Paystub (Jan. 24, 2025):

- Identifies Atco Frontec Ltd. as the employer. She testified that all her pay statements since starting have consistently named Atco as her employer.

Workplace Documents and Materials:

Ms. Sigouin submitted numerous documents bearing the Atco name or logo, including:

- Time clock photo
- Pay statement instructions
- Toolbox meeting topics
- Safety training forms
- Alcohol & drug policy
- Employee referral and integrity brochures
- EFAP (HumanaCare) documents
- Emergency wellness contact card
- Safety alerts
- Training module screenshots
- Food delivery labels
- LinkedIn profile of Atco's Senior Director of Camp Services
- Fitness for Work form

[11] Ms. Sigouin explained that a “toolbox” is a daily in-person meeting held on-site to discuss safety topics and operational updates. These meetings are a routine part of camp life and are typically led by supervisory staff.

[12] Ms. Sigouin further testified that on March 21, 2025, she attended a toolbox meeting where Brad Spence told employees they were not Atco employees, but WFS employees. She stated she was shocked and disturbed by this statement, as it contradicted everything she had experienced and been told up to that point. She described it as an orchestrated attempt to change the narrative. She noted that Mr. Spence was wearing an Atco jacket at the time.

[13] Ms. Sigouin also testified that her former colleague, Shelley Alde, who passed away in December 2024, received a termination letter from Atco in July 2024, and later shared it with her. Despite objections from Atco's legal counsel, the Board admitted the letter into evidence. Issued by Atco and signed by Assistant Lodge Manager Moh Sidhu, the July 12, 2024 letter confirmed that Atco had terminated Ms. Alde's employment with cause, citing a violation of safety protocols

during her July 5 shift at the Jansen Discovery Lodge. The letter outlined her final pay, the end of her benefits, and her continued obligation to maintain confidentiality. It also stated that Atco would submit her Record of Employment to Service Canada. The only mention of Wicehtowak Frontec Services was a logo at the bottom of the second page.

[14] In cross examination by Atco's counsel, she agreed that she was not involved with the "corporate stuff" and wouldn't know anything about how the businesses are set up on site.

[15] Ms. Sigouin also testified in cross-examination that she has been on site since 2023 and had previously worked for Atco at other sites, namely Bellmont and Clearwater, B.C. She explained that she did not apply for her current role as 3rd cook through a job posting. Instead, after taking the summer off, she was told by Atco's HR department to contact them when she was ready to return to work, at which point they arranged for her placement at Jansen Discovery Lodge. She noted that all job postings she had seen were issued by Atco.

[16] She was asked if she was familiar with the name Wicehtowak. She said she has seen it around the site. She said there is a logo around their site that says Wicehtowak. She could not say whether it says "Wicehtowak Frontec Services".

[17] Atco's counsel suggested to Ms. Sigouin that there may have been more than one meeting with Mr. Spence. She responded that she had not attended any others. When counsel proposed that she couldn't be certain whether other meetings occurred, Ms. Sigouin replied that she regularly communicates with all her coworkers and was confident someone would have told her, especially given the significance of what Mr. Spence had said.

[18] It was also suggested to Ms. Sigouin that the uniforms in the kitchen say Wicehtowak. She said not all of them, but some do. She said there are people that wear Atco uniforms on occasion and some that have no logo at all. She said her uniform does have Wicehtowak on it. She also said Mr. Spence told them at the toolbox meeting to disregard what he was wearing, namely, the Atco jacket.

[19] Regarding menu branding, she stated that a system recently introduced displays menus on TV screens, some of which now show the Wicehtowak name. She said this change was very recent.

[20] Ms. Sigouin said she was unaware that Atco was the project manager or responsible for HR and payroll. She also confirmed she had never seen the joint venture or management services

agreements. When asked about hearing Wicehtowak was her employer, she recalled it being mentioned only once—recently at a toolbox meeting—which she believed was part of an effort to change the narrative on site.

[21] In cross-examination by GGD's counsel, Ms. Sigouin stated that Atco was responsible for hiring. She identified her hiring contact as someone from Atco's HR Department, referencing her offer letter, which included an Atco email address for that individual. She also confirmed that the person who signed her offer letter, an executive chef, had the authority to hire her.

[22] Ms. Sigouin was shown Shelley Alde's termination letter and asked about Moh Sidhu, who signed it. She recognized him as the former Assistant Lodge Manager and agreed that the role had authority to terminate employees. She added that similar roles are sometimes referred to as operations managers.

[23] She identified Fidel Yusef, present at the March 21, 2024 toolbox meeting, as an operations manager she had known for some time and worked with at other camps. She stated she had never met Brad Spence before and did not know his position.

[24] In redirect examination, Ms. Sigouin said she knew Fidel Yusef from previous employment at Atco. She said he was employed by Atco. She said she could be wrong about the title of operations manager specifically, and that it might be vice operations or assistant, but that he occupied those positions on behalf of Atco.

Alexandra Barron

[25] Ms. Alexandra Barron, a union witness, testified under subpoena. She has worked at Jansen Discovery Lodge for three years.

[26] She testified that she was hired by Atco and submitted her April 25, 2024 hiring letter as evidence. The letter, on Atco letterhead and signed by Marcel Houwer, Senior Director of Camp Services, confirmed her position as a 2nd Cook and outlined employment terms, including a 90-day probation, benefits, and pre-employment conditions. The letter made no mention of Wicehtowak, WFS, or any joint venture.

[27] Ms. Barron also submitted her May 31, 2024 paystub and her 2024 T4 slip, both of which listed Atco as her employer. She testified that all her pay statements had consistently done so since she began working.

[28] She was temporarily laid off effective December 20, 2024, and provided a layoff letter from Atco dated December 11, 2024. The letter, signed by Fadl Youssef, Operations Manager, confirmed the layoff, outlined the suspension of Atco group benefits, and stated that Atco would file her Record of Employment with Service Canada. A Wicehtowak Frontec Services logo appeared only at the bottom of the last page.

[29] Ms. Barron returned to work on January 6, 2025, as scheduled.

[30] Ms. Barron testified that on March 21, 2025, she attended a toolbox meeting where Brad Spence told employees they did not work for Atco Frontec and should consider themselves employees of WFS, despite wearing an Atco jacket. Ms. Barron testified this was the first time she had heard such a statement and that she had never received any written notice indicating she was not employed by Atco.

[31] In cross examination by Atco's counsel, Ms. Barron testified that her uniform is plain and does not display the Wicehtowak name.

[32] She acknowledged that the new menu boards at the camp now display the WFS name, but noted this was a recent change. While she was aware of safety awards at the site, she had not seen a safety belt labeled with Wicehtowak, contrary to what was suggested.

[33] Ms. Barron confirmed that the March 21 toolbox meeting was the only meeting she attended where Mr. Spence informed employees about their employer.

[34] She agreed she is not involved in the corporate side of operations and does not know the formal responsibilities of different entities, only what she has personally experienced and understood.

[35] In cross-examination by GGDL's counsel, Ms. Barron testified that her work is directed by the executive chef, or by the under chef in their absence. She was unsure whether Operations Manager Fadl Youssef, who signed her layoff letter, had hiring authority but agreed he could recall employees from layoff.

[36] When asked who she believed had hiring authority, Ms. Barron said HR, and identified "Princey" as the on-site individual responsible. She believed Princey's hiring decisions were based on operational needs, such as requests from the executive chef. She also agreed that the operations manager could direct Princey to hire for other roles.

[37] In redirect Ms. Barron was asked who the HR person on site represents themselves as being employed by. She said Atco.

[38] When asked by the Board about the WFS logo on the menu boards, Ms. Barron explained that the new digital boards (tv's), introduced about a month ago, display the WFS name, whereas the previous boards were handwritten on whiteboards.

Nabiel Sanduga

[39] The Union's final witness was Nabiel Sanduga, a Union Representative for Local 47. He has worked with the Union since 2008, initially in field camps for about two years before becoming a representative. He currently handles most of the grievances, negotiations, and organizing for Local 47.

[40] Mr. Sanduga testified that he is well-acquainted with the remote camp industry. He stated that Local 47 is the primary union representing workers in camps across Alberta, as well as in the B.C. Corridor and Terrace, British Columbia.

[41] He also testified that, through his work on other collective agreements involving Atco, he became familiar with Marcel Houwer, Atco's Senior Director of Camp Services. Mr. Houwer was involved in managing camps at those other locations.

[42] Before filing the certification application, Mr. Sanduga learned of Atco's involvement at Jansen Discovery Lodge when a few individuals visited the Union's office seeking information. During their meeting, they provided him with termination letters from Atco, along with their T4 slips and Records of Employment – all of which listed the employer as ATCO Frontec Ltd., 5302 Forand Street SW, Calgary, AB.

[43] Counsel for Atco objected to these documents on the basis that they were hearsay; however, the board exercised its discretion to admit the documents.

[44] Before the certification application, Mr. Sanduga conducted an online job search for Saskatchewan camp jobs and found multiple listings under Atco, including positions such as General Kitchen Helper, Camp Attendant, and Front Desk Clerk in Jansen, and several roles in Leroy, Saskatchewan. The job ads described Atco as the hiring company and referred to the Jansen Discovery Lodge. The ads also included privacy statements referencing the ATCO Group

of Companies. None of the ads mentioned Wicehtowak Frontec Services (WFS), GGD, or any joint venture.

[45] He submitted printouts and screenshots of these job postings, noting that clicking “Apply on Company Site” redirected him to the Atco website.

[46] After the certification application was filed, Mr. Sanduga repeated the search on January 27, 2025, and again found job ads for positions at Jansen Discovery Lodge under Atco. He also found 11 positions listed with Atco on the BHP website and three on Atco’s own site, none of which referenced WFS or a joint venture.

[47] During cross-examination, Atco’s counsel presented four job descriptions (Exhibits E1–E4) on plain paper, identifying Wicehtowak Frontec Services as the employer. These included roles such as 3rd Cook, Salad and Sandwich Maker, and Janitor. While these ads included similar privacy language referencing the ATCO Group, they lacked any indication of where or when they were posted. Mr. Sanduga disputed their visibility, stating he had not encountered them in his searches and explained the platforms and links he used, which directed him to Atco’s website.

[48] Counsel for GGD only questioned Mr. Sanduga about his receipt of the email containing the WSF Joint Venture Agreement and the Management Services Agreement.

Ian Buehler

[49] Atco called only one witness, Ian Buehler. Mr. Buehler testified that he is employed by Atco and has been since February 2024. He is the Senior Director of North American Sales and Operations based out of Calgary. He is responsible for overseeing camp services across North America, including the Jansen Discovery Lodge.

[50] With respect to the Jansen site, he testified that from a project management perspective the Jansen Discovery Lodge team reports to him. He said he frequently visits the site.

[51] Mr. Buehler described the Jansen Discovery Lodge as a 2,500 bed facility supporting BHP’s mine expansion. He said they oversee the entirety of the camp operations which includes all management oversight, front desk activity, housekeeping, kitchens, food and beverage services and maintenance services within the general footprint of the camp.

[52] Mr. Buehler was asked who runs that camp. He said “WFS is the operator of the camp”, but Atco handles the day-to-day operations including payroll, human resources, accounts payable and general administration.

[53] He said Atco takes care of the majority of what he would categorize as the administrative burden for the site, and that is why a lot of things show up on Atco Frontec letterhead. Some examples he said were payroll, where they have systems in place to manage that, accounts payable, and other general administrative activities. He said they are responsible for the majority of the hiring, although they work very closely with GGD L’s office for the purposes of hiring staff for that site.

[54] Mr. Buehler testified that WFS is a “separately registered joint venture,” though he was unsure whether it is incorporated. He confirmed it is not a partnership. He stated that Atco is designated as the Project Manager, responsible for both administrative and operational oversight.

[55] Regarding decision-making with GGD L, Mr. Buehler described the process as “highly consultative,” noting that GGD L can at times be directive. He cited the 2024–2025 contract negotiations with BHP as an example, explaining that Don Ross, representing GGD L, participated extensively and negotiated directly with BHP on behalf of WFS. He also noted that Brad Spence, GGD L’s Director of HR and Training, is actively involved in on-site training and workforce engagement.

[56] Mr. Buehler stated that while WFS maintains separate banking arrangements, payroll and other administrative functions are processed through Atco’s Oracle system, which is used across all Atco entities.

[57] On the question of who was awarded the BHP contract, Mr. Buehler testified that, formally, the contract was awarded to WFS. However, he expressed the view that GGD L was effectively awarded the project, regardless of its partner.

[58] Mr. Buehler reiterated that Atco, as Project Manager, is responsible for day-to-day operations and administrative functions, including payroll and systems management. He explained that GGD L participates in the Management Committee, with two representatives from each party. GGD L’s responsibilities include involvement in HR decisions—particularly when hiring or terminating GGD L members—exercising first right of refusal on most positions, contributing working capital, and participating in major decisions.

[59] Mr. Buehler described a joint training program for Indigenous workers, administered by Atco with input from GGD. While Atco delivers the training, GGD helps design and facilitate it. He characterized the program as a joint responsibility, delivered under the WFS banner.

[60] Mr. Buehler tendered four job descriptions (E1 to E4) as full exhibits. He testified that these originated from the “back end of their internal posting site,” though he acknowledged he was not entirely sure how the system functioned. He explained that the descriptions are uploaded internally and then published on Atco’s external job site via the Oracle platform. As an example, he stated that if one were to search the site today, they would likely find a janitor/laundry attendant position listed with WFS as the employer.

[61] Mr. Buehler was asked about the language in job descriptions stating, “WFS is a partnership between George Gordon Developments Ltd. (GGD) and Atco Frontec Ltd.” He responded that this reflects how the parties generally refer to the relationship, even though it is not a legal partnership.

[62] Mr. Buehler also addressed the job postings referred to by Mr. Sanduga. He acknowledged that many of the postings listed Atco as the employer, even though, in his view, the work was being performed under the WFS joint venture.

[63] He attributed the Atco branding in those postings to “administrative error.” He explained that the recruitment team is small and handles hundreds of postings each month, which can lead to mistakes. He noted that old postings are sometimes recycled from other sites or projects and may not reflect the correct employer name. Mr. Buehler stated that Atco has endeavoured to present itself as WFS across the board, but acknowledged that errors in posting still occur. Despite these inconsistencies, he maintained that the work is being performed by WFS. Mr. Buehler’s testimony also addressed the job ads referred to by Mr. Sanduga. Mr. Buehler admitted that many job ads listed Atco as the employer even though he said the work was being performed under the WFS joint venture.

[64] In cross examination by counsel for the Union, Mr. Buehler agreed that the parties to the WFS Joint Venture Agreement are bound by the contents of that agreement.

[65] He testified that there were no exceptions, amendments, or alterations to the wording in the WFS Joint Venture Agreement that would in some way relieve people from the responsibilities set out therein.

[66] Mr. Buehler was asked if he would agree that the party that exercises control and direction and control over employees is the project manager, Atco Frontec, he said “sure”.

[67] When Mr. Buehler was asked if he’d agree that the credit facility that is used by the joint venture is the Atco credit facility, he said that that would be outside of his scope to answer. He agreed that Atco, in its sole discretion, determines the cash call.

[68] In redirect, Mr. Buehler was asked if GGD L has a role in the hiring process. He said Atco is exclusively responsible for the hiring process, as per the WFS Joint Venture Agreement. However, in practice, Atco works directly with GGD L on a “reasonable number” of hiring practices. He said this includes sourcing people and developing roles, particularly for Indigenous hires. He estimated that approximately 37% of the workforce came from GGD L at the time, though that number may have declined due to site ramp-down. For those hires, GGD L would be involved.

Don Ross

[69] George Gordon Developments Ltd. called one witness, Don Ross. Mr. Ross testified that he is the CEO of GGD L and has been for the last couple of years. He described himself as the boss and said that everybody reports to him. He said he manages the operations of the company and reports to an independent board of directors. He said the First Nations are the shareholders and they appoint three directors.

[70] Mr. Ross testified that, in his view, the origins of the BHP contract dates back 14 years, when George Gordon First Nation (GGFN) negotiated a “life of the mine” relationship agreement with BHP. He explained that GGFN had filed a lawsuit against BHP, the Government of Canada, and the Government of Saskatchewan, claiming that mineral rights granted to BHP were located on GGFN lands and should have been allocated under the Treaty Land Entitlement (TLE) framework.

[71] As a result of that litigation, GGFN and BHP entered into a relationship agreement in 2020. Mr. Ross stated that this agreement, in his view, supersedes any arrangements involving GGD L, as it was made directly between the leadership of GGFN and BHP. He emphasized that the camp was built 14 years ago by GGFN, is located on their land, and is now managed by them. He described it as a “GGFN camp” and said its inclusion in the relationship agreement reflects GGFN’s long-term role in its operation. Mr. Ross testified that GGFN intended on providing site services through GGD L. Since GGD L did not have the experience in providing such services, he said GGD L sought help from Atco, an experienced site services provider.

[72] In this regard, GGDJ entered into the WFS Joint Venture Agreement and Management Services Agreement with Atco to build capacity and eventually transition operations to Indigenous control. GGDJ is a 51% owner of the joint venture and Atco is a 49% owner.

[73] When asked whether GGDJ could perform the work for BHP without Atco's involvement, Mr. Ross said yes. He said it is GGDJ's business model. He stated that the joint venture was intended to help GGDJ build capacity by learning from experienced partners like Atco. The long term goal, he explained, is for GGDJ to eventually take full control – managing, owning and operating companies on behalf of the GGFN.

[74] Mr. Ross said because GGDJ is 51% owner, they are the bosses, in that sense. He said they have a management board of directors, consisting of himself as CEO, the Board Chair and two senior representatives each from GGFN and Atco. Mr. Ross said for all intents and purposes they have the board that sets the direction but any real tough decisions that impact their nation are made by them.

[75] Mr. Ross was asked about the WFS Joint Venture Agreement and the Management Services Agreement. He was asked to describe what Atco as the Project Manager does – to describe what that looks like in practice. Mr. Ross testified that Atco manages the day-to-day operations of the camp but under GGDJ's direction. He said Atco's job is to train and build capacity for GGDJ.

[76] When asked about who is responsible for ensuring labour is in place, Mr. Ross testified that Atco handles hiring, but emphasized that "we" created a skills program to build First Nations capacity. He explained that "Wicehtowak" means working together in partnership, and that both parties work together on identifying, training, and recruiting staff. While Atco manages day-to-day operations, he stressed that GGDJ is an active partner. At the board level, they set key performance indicators (KPIs) for senior management, which include hiring, training and promoting Indigenous staff. Mr. Ross stated that he holds his team accountable to these KPI's.

[77] With respect to the cash call referenced in the WFS Joint Venture Agreement, Mr. Ross was asked if he experienced a cash call and what that looks like. Mr. Ross said GGDJ is 51% owner and if there's a cash call, they have to come up with 51%.

[78] With respect to recruitment and payroll services, Mr. Ross testified that Atco is responsible to make sure payroll is there. He said if they need the operating capital that is when "we" do a

cash call, but he said Wicehtowak is the employer as far as he was concerned and Atco as their managing partner will manage the day to day, including payroll and oversight of vacations and all those day-to-day operations of the camp.

[79] Mr. Ross stated that since becoming CEO, he visits the site less frequently than he did as Senior VP, when he was there monthly. However, he noted that he has been involved in onboarding from the beginning.

[80] Mr. Ross was asked about the first onboarding that he completed on site. He testified that he was personally involved in the initial onboarding process at the Jansen Discovery Lodge when operations began under the joint venture. He stated that onboarding was part of the “indigenization” of the camp, a key goal of the joint venture with BHP and Atco. During onboarding, GGDL branding and cultural elements were introduced, including flags, posters, and a teepee at the front of the camp, as well as messaging that emphasized the camp was operated by Indigenous people and for Indigenous benefit. He said he personally addressed new employees, telling them: “This is Wicehtowak Frontec Services – you’re working for Wicehtowak Frontec Services now.” Mr. Ross described this as a symbolic and practical transition from Atco to WFS as the employer, aligning with GGDL’s long-term goal of building Indigenous capacity and leadership in operations.

[81] Mr. Ross explained that part of their agreement with BHP was the indigenization of their camp. Mr. Ross described indigenization as a central goal of the joint venture between GGDL and Atco, aimed at building Indigenous capacity and leadership in camp operations. He stated that cultural symbols were prominently displayed at the camp to reflect Indigenous ownership and leadership. These elements were intended to show all workers and contractors that the camp was operated by Indigenous people and to encourage other companies to hire Indigenous workers.

[82] Mr. Ross emphasized that the environment was designed to be culturally safe and supportive, including access to, Smudging rooms, Elders and Spiritual counselling. He also described the creation of an “aunty in residence” role—an Indigenous support figure available to assist employees with personal or cultural challenges they may face while working in camp. He explained that uniforms with the WFS logo were distributed during onboarding and that he personally handed them out. Mr. Ross acknowledged that the transition from Atco to WFS as the perceived employer was challenging for some employees, especially those who had long histories with Atco. He described this as a “transition” that was still ongoing.

[83] Mr. Ross confirmed that Brad Spence, GGDL's Director of Employment and Training, works directly for him. He said that Mr. Spence regularly visits the Jansen Discovery Lodge and is involved in workforce communications. He acknowledged being aware of Mr. Spence's visit to the site on March 21, 2025. Mr. Ross stated that he "probably sent" Mr. Spence to deliver the message that employees were not Atco employees but WFS employees, describing it as part of a broader transition to shift employee identity from Atco to WFS.

[84] When asked why Brad Spence wore an Atco-branded jacket while delivering the message, Mr. Ross said Atco had given them "lots of swag", and Mr. Spence simply wore what was available. He downplayed its significance, though he acknowledged that "logos matter".

[85] Mr. Ross said that this shift is part of a broader Indigenous leadership initiative, emphasizing that employees are now working for First Nations. While the message had been introduced years earlier, he acknowledged that Atco's systems such as KPIs, SOPs and operational structures, remain in use. He explained that WFS is learning and incorporating these systems with the goal of eventually transitioning them into Wicehtowak GGDL systems. He concluded by saying that WFS is not there yet, but that using Atco's systems was part of the agreement until GGDL builds its own.

[86] In cross-examination by Union's counsel, Mr. Ross confirmed that the terms and conditions of the WFS Joint Venture Agreement are binding on GGDL. He acknowledged that the Agreement requires Atco only to strive for a 20% minimum threshold of First Nations employment at the site. He also agreed that the Management Services Agreement is binding on GGDL, that Atco is designated as the Project Manager, and that Atco is responsible for hiring and remuneration.

[87] When asked about discipline and dismissal, Mr. Ross stated that these functions are carried out "in partnership" with GGDL. However, when pressed on this point, he conceded that the Agreement grants Atco sole discretion in these matters and does not require joint decision-making with GGDL. He maintained that, despite the language of the Agreement, decisions are made collaboratively in practice through the board of directors, which includes equal representation from both parties.

[88] Mr. Ross acknowledged that this collaborative approach is not reflected in the Agreement, which explicitly grants Atco sole authority in at least twelve provisions. Nonetheless, he did not

retract his earlier testimony that the Agreement is binding, instead asserting that the practical reality differs from the written terms and that the parties operate in partnership.

[89] Mr. Ross reiterated that the transition from Atco to WFS as the recognized employer is ongoing. He emphasized that the long-term goal is to build Indigenous capacity and eventually replace Atco's systems with those developed by WFS.

[90] In cross examination by Atco's counsel, Mr. Ross testified that approximately 40% of the workforce at the site is Indigenous, though not exclusively from GGFN. He stated that the joint venture aims to increase Indigenous participation and that his goal is to reach 100% Indigenous employment.

[91] When asked who is responsible for the employees at the camp, Mr. Ross responded that WFS, the joint venture, holds that responsibility. He stated that the board of directors is responsible for ensuring sufficient operating capital to meet payroll, maintain inventory, and fulfill obligations under the agreement with BHP.

[92] Mr. Ross testified that if a First Nations employee were not paid, they would likely contact GGDL's office or Brad Spence directly. He added that employees might also reach out to the "aunty in residence," a culturally specific support role, or even to their own chief or councillor, who would then escalate the concern to him. Mr. Ross stated that such matters would ultimately reach his desk if serious, at which point he would raise them with his Atco counterpart on the management board.

[93] He agreed that Atco handles the mechanics of payroll but emphasized that decisions about who gets paid and how much are made by the board of directors, which sets the budget and pay rates.

[94] Mr. Ross testified that hiring decisions, particularly for senior management roles, are made jointly by GGDL and Atco. He emphasized that, in practice, the parties operate collaboratively, regardless of the formal language in the agreements. He stated that this joint approach also applies to decisions regarding employee terminations.

[95] With respect to discipline, Mr. Ross explained that Atco generally handles disciplinary matters. However, he noted that GGDL becomes involved when the issue concerns senior management. He also acknowledged that front-line supervisors have discretion to manage discipline within their own teams.

[96] As to who makes overall decisions about the camp, Mr. Ross stated that the management board is responsible and that, in his experience, Atco generally follows the board's lead.

Argument on behalf the Union:

[97] The Union argued that Atco is the true employer. In support of its argument, the Union relies upon the following cases: *L.I.U.N.A., Local 183 v York Condominium Corp No. 46*, 1977 CarswellOnt 938, [1977] O.L.R.B. Rep. 645 ("*York Condominium*"); *Regina (City) v. A.T.U. Local 588*, 1999 CarswellSask 995, [1999] Sask. L.R.B.R. 238, [1999] S.L.R.B.D. No. 21 54 C.L.R.B.R. (2d) 161; *Canadian Salt Co. v. U.F.C.W. Local 1400*, 2010 S.L.,R.B.D. No. 19, [2010] S.L.R.B.D. No. 25, 191, C.L.R.B.R. (2d) 29; *PAFHQ Construction GP Ltd. v. IUPAT, Local 739*, 2013 CarswellSask 890, 238 C.L.R.B.R. (2d) 57 ("*PAFHQ*"); *IABSRI, Local 771 v Matrix Labour Leasing Ltd.* 2018 CarswellSask 612, 21 C.L.R.B.R. (3d) 111 ("*IABSRI*").

[98] The Union argues that Atco has control over hiring, firing, payroll and discipline. It exercises direction and control over the employees. It claims that WFS is a "hollow vessel" incapable of meaningful labour relations as discussed in *PAFHQ*.

Argument on behalf Atco:

[99] Atco argues that the Union has filed an application for certification for the wrong employer. Atco is not the true employer. Atco argues that it was the Joint Venture that was awarded work, and that WFS is the "legal employer" of all the work at the worksite. Atco argues that the reality of the working relationship differs from what appears in the agreements.

[100] In its closing argument, Atco emphasized that WFS is not a legal entity such as a corporation or partnership, but rather a contractual arrangement between Atco and GGD for a specific project. It described the joint venture as a cost and responsibility sharing agreement. Atco's counsel urged the Board to focus on the practical reality rather than the formal language of the WFS Joint Venture Agreement, arguing that administrative functions—such as payroll, hiring, and issuing layoff letters—were delegated to Atco, which he characterized as handling the "mechanical functions" of the arrangement.

[101] Atco contended that, of the seven *York Condominium* factors, the only one the Union satisfied was employee perception. It argued that this factor alone is not determinative. For the remaining factors, Atco asked the Board to consider the actual working relationship, asserting that Mr. Ross plays a central role in operations and is ultimately responsible for hiring and firing

decisions. Atco emphasized Mr. Ross's position on the management committee as evidence of his influence.

[102] Following Atco's closing argument, the Board asked for certain clarification. While Atco's Reply stated that WFS is the true employer, its oral argument suggested that GGD, through Mr. Ross, might be the directing mind in employment matters. In response, Atco clarified that neither GGD nor Atco alone is the directing mind. Instead, decisions are made jointly through a management committee, with both GGD and Atco playing roles. Atco argues that the Union's certification application overlooks GGD's involvement in this shared decision-making structure.

[103] While Atco acknowledged that it issues hiring and layoff letters, it argued that the real decision-making authority rests with Mr. Ross, or at minimum, that he is consulted in all such matters. Atco highlighted this point in relation to the 37%–40% of the workforce who are Indigenous employees.

[104] Atco relies on the following cases: *Cleary Harbors Industrial Services Canada, Inc.*, and *IBEW, Local 2038, Re*, 2014 CarswellSask 801, 2015 C.L.L.C. 220-023; *Canadian Salt*, and *IABSRI*.

Argument on behalf George Gordon Development:

[105] GGD argues that WFS is the true employer, relying on the *York Condominium* factors. In its written submissions, GGD applies each factor as follows:

1. **Direction and Control:** The WFS Management Committee has final authority over employment policies, while lower-level managers oversee daily operations.
2. **Remuneration:** Both GGD and Atco contribute to payroll and operations. Mr. Ross testified that GGD sometimes borrows funds from Atco to meet its obligations.
3. **Discipline:** While lower-level managers may impose discipline, the WFS Management Committee becomes involved when necessary.
4. **Hiring:** Atco handles hiring due to its established HR systems, but GGD plays a significant role, particularly in recruiting from GGFN.
5. **Dismissal:** Mr. Ross testified that he was directly involved in the dismissal of the operations manager who preceded Fadl Youssef.
6. **Employee Perception:** Ms. Barron and Ms. Sigouin viewed Atco as their employer. Ms. Barron's uniform had no logo, while Ms. Sigouin's bore the WFS logo.

7. **Intent to Create Employment Relationship:** Both Mr. Ross and Mr. Buehler testified that WFS was intended to be the employer, and no alternative intention was expressed by either GGDL or Atco.

Relevant Statutory Provisions:

[106] The following statutory provisions are applicable:

6-1(1) *In this Part:*

...
(i) **“employer”** means:

...
(iii) *with respect to any employees of a contractor who supplies the services of the employees for or on behalf of a principal pursuant to the terms of any contract entered into by the contractor or principal, the contractor or principal as the board may determine for the purposes of this Part;*

...
6-9(1) *A union may, at any time, apply to the board to be certified as bargaining agent for a unit of employees appropriate for collective bargaining if a certification order has not been issued for all or a portion of that unit.*

Issue:

[107] The issue in this matter is whether Atco or the WFS joint venture is the true employer for labour relations purposes at the Jansen Discovery Lodge. The Union argues that Atco is the true employer, citing extensive documentary and testimonial evidence. Atco and GGDL argue that WFS is the employer, asserting that the joint venture was awarded the work and is responsible for operations. The Board must determine which entity exercises fundamental control over employment matters and is therefore the appropriate party for collective bargaining.

Discussion and Analysis:

[108] The Union bears the burden of proving that the proposed bargaining unit is appropriate, including correctly identifying the employer. Based on the evidence available to it, including employment documents, job postings, and workplace materials, it was reasonable for the Union to conclude that Atco was the employer. There was no indication that any other entity exercised control over employment matters.

[109] Testimony from Ms. Sigouin and Ms. Barron strongly supports this conclusion. Both witnesses testified that they were hired and paid by Atco, and that Atco was responsible for training, supervision, discipline, and termination. Their employment documents, including T4s, pay stubs, and benefits materials, all identified Atco as the employer. They also described their

surprise when, on March 21, 2025, Brad Spence informed them at a toolbox meeting that they were WFS employees and not Atco employees.

[110] The Board accepts the testimony of both witnesses, including their account of Mr. Spence's statement. Ms. Sigouin testified that she was "shocked and bothered" by what was said, describing the meeting as "an orchestration" and stating, "I was just shocked. It felt like they were trying to make us feel that way." This was the first time she had been told she was not an Atco employee, and she emphasized that the statement directly contradicted everything she had experienced up to that point. The Board finds this testimony credible and persuasive, and considers it suggestive of a recent effort to reframe perceptions of the employment relationship at the site.

[111] The Board also accepts Ms. Sigouin's testimony that she would likely have known if similar meetings had occurred. This calls into question the extent to which Atco's message was previously communicated to employees.

[112] Union representative Mr. Sanduga testified that he conducted multiple job searches both before and after the certification application and found only postings listing Atco as the employer. None referenced WFS or GGDL. He submitted screenshots and printouts of these postings and explained the platforms and search methods he used. The Board finds his testimony to be clear, credible and well-documented. His cross examination did not undermine his credibility or the substance of his evidence. He remained consistent in describing his search process and results, and the Respondents did not challenge the authenticity of the postings he submitted or offer persuasive evidence to contradict his findings. The Board finds that Mr. Sanduga's testimony was credible and reliable, and it contributed meaningfully to the Board's understanding of how Atco presented itself to prospective employees.

[113] Atco's witness, Mr. Buehler, attributed the Atco-branded job postings to "administrative error," explaining that the recruitment team sometimes reused outdated postings or failed to update employer names. He claimed that Atco was trying to present itself as WFS but acknowledged inconsistencies in execution.

[114] The only documentation submitted by the Respondents were the job descriptions marked Exhibits E1 to E4. Mr. Buehler testified that these were job descriptions identifying Wicehtowak Frontec Services (WFS) as the employer. He stated these were generated from the "back end" of Atco's internal posting system and published via Atco's Oracle platform. He acknowledged he

was not entirely sure how the system functioned but claimed that similar postings could be found online at the time of the hearing.

[115] The Board finds Atco's attempt to explain this as an "administrative error" is unpersuasive, particularly given the volume and consistency of the Atco-branded postings. While occasional posting errors may occur, it is highly unlikely that every posting found during Mr. Sanduga's searches resulted from repeated oversight. Moreover, Atco provided no details about how such an error could have occurred. For instance, who created the supposed "correct" job descriptions or who was responsible for posting them.

[116] The Board notes that Atco did not provide any verification as to when or where the E1–E4 postings were published. Moreover, if those postings were still available online, as Mr. Buehler claimed, producing a copy would have been straightforward. Additionally, there was no evidence presented that any of the four positions identified in E1 to E4 were ever filled, or that WFS conducted interviews or made hiring decisions for them. Accordingly, the Board finds that the job descriptions in Exhibits E1 to E4 do not support the Respondents' position that WFS is the true employer. Rather, they highlight inconsistencies between the Respondents' assertion that WFS is the employer and the public-facing materials that consistently identified Atco as the employer.

[117] The Board also finds that the WFS Joint Venture Agreement and the Management Services Agreement unambiguously designate Atco as the Project Manager, granting it exclusive authority over employment matters, including hiring, discipline, payroll, and operational decisions. This authority is consistently reflected in both the documentary evidence and the testimony of witnesses.

[118] The Board notes that Mr. Buehler's testimony conflicted with the WFS Joint Venture Agreement and Management Services Agreement in several key areas:

HR Authority: Mr. Buehler claimed GGDL is fully involved in HR, particularly for GGDL members. However, the Agreements grant Atco sole discretion over hiring, firing, payroll, discipline, and employment policies. They designate Atco as the Project Manager with unilateral control over these functions.

Training: Mr. Buehler stated that training is jointly administered. In contrast, the Agreements assign Atco full responsibility for developing and delivering training and creating operating procedures.

Operational Control: Mr. Buehler suggested GGDL is central to major decisions. The Agreements, however, authorize Atco to make operational

decisions independently, except in limited cases requiring Management Committee approval.

[119] While Mr. Buehler emphasized collaboration with GGD, his testimony downplayed or contradicted the legal structure and authority outlined in the agreements.

[120] Beyond the absence of contractual authority, the Board finds that WFS lacks the operational infrastructure necessary to function as an employer in any meaningful sense. WFS does not maintain its own payroll system, human resources department, or administrative support. As previously noted, all core employment functions, including hiring, onboarding, issuing pay, administering benefits, and terminating employees, are carried out by Atco using its own systems, personnel, and branding. There is no evidence that WFS has ever independently executed any of these functions. This structural incapacity further supports the conclusion that WFS is not the true employer, but rather a nominal entity through which Atco continues to exercise full operational control.

[121] Mr. Ross emphasized in his testimony that WFS is the employer and that Atco's role is limited to managing daily operations and building capacity for GGD. He asserted that GGD is actively involved in hiring, discipline, and terminations, and that decisions are made jointly through a management board. However, this portrayal of GGD as a co-decision maker is inconsistent with the WFS Joint Venture Agreement and the Management Services Agreement, both of which grant Atco exclusive authority over employment-related matters. While collaboration is encouraged, the Agreements do not grant GGD decision-making authority. GGD is given only a consultative role.

[122] Mr. Ross acknowledged that the agreements are binding but claimed that "in reality" decisions are made jointly and that the agreements do not reflect how things actually operate on the ground. The Board finds this assertion unpersuasive. While collaboration may occur, it does not override the clear and binding contractual terms. The legal authority to make employment decisions rests solely with Atco, and Mr. Ross's testimony does not establish that GGD exercises any independent or enforceable authority in this regard.

[123] If the actual practice truly differed from the agreements, the Board would have expected detailed evidence explaining how such a practice functions, including who makes final decisions, how authority is delegated, and how this arrangement is communicated to employees and third parties. No such evidence was provided. Instead, the testimony relied on general statements

about partnership and collaboration, which are insufficient to displace the formal legal structure. Accordingly, the Board finds that Mr. Ross's testimony does not establish that GGDL or WFS exercises fundamental control over employment matters.

[124] The Board further notes that the Respondents' failure to clearly communicate any alleged deviation from the governing agreements has broader implications beyond the immediate employment relationship. In labour relations, third parties, including unions, regulators, and prospective employees, must be able to rely on consistent and transparent representations of who the employer is. When the public-facing documentation, such as job postings, offer letters, and T4 slips, uniformly identifies Atco as the employer, it creates a legitimate expectation that Atco is the entity responsible for employment matters. Any departure from this representation, if not clearly disclosed and documented, risks misleading third parties and undermining the integrity of the certification process. The absence of evidence showing how the alleged joint decision-making structure was communicated to these third parties, including BHP, further supports the conclusion that Atco is the true employer.

[125] Finally, the Respondents failed to offer any explanation or justification for why every T4 slip submitted into evidence listed Atco as the employer. Atco claimed that the joint venture could not be named on the T4s, yet it provided no legal authority to support this assertion. There was no reference to tax legislation, interpretation bulletins, or relevant case law to substantiate the claim. This absence of supporting evidence significantly weakens Atco's position and reinforces the appearance that Atco, not the joint venture, is the actual employer for tax and employment purposes.

[126] Upon review of all of the evidence, the Board finds the Union's evidence to be substantial, credible, clear and well-documented. It was supported by employment contracts, pay stubs, T4 slips, job postings and termination letters. The Union's evidence is consistent with the WFS Joint Venture Agreement and the Management Services Agreement which gives Atco broad authority over employment matters.

[127] On the other hand, the Board found the evidence from Atco and GGDL to be vague at times and unsupported by documentation. Their evidence was based on the oral testimony which often contradicted the WFS Joint Venture Agreement and the Management Services Agreement. The Board also rejects the Respondents arguments that the reality differed from the terms of the Agreements. The Board further finds that attempts to shift the employer identity to WFS (e.g., toolbox meeting statements, job postings) to be recent and unconvincing.

[128] The Board has also considered the credibility of Mr. Buehler and Mr. Ross. While both witnesses appeared sincere and knowledgeable in their respective roles, the Board found aspects of their testimony to be vague, internally inconsistent, or unsupported by documentation. In particular, their assertions that the practical reality of the employment relationship differed from the governing agreements were not substantiated with sufficient detail or corroborating evidence. Where their testimony conflicted with the clear language of the WFS Joint Venture Agreement and the Management Services Agreement, the Board preferred the documentary evidence and the testimony of the Union's witnesses. As a result, the Board gives their evidence limited weight on the specific question of who exercised fundamental control over employment matters.

[129] The Agreements clearly grant Atco broad authority over nearly all aspects of the operation, and the evidence demonstrates that Atco exercised this authority in practice. The Union's witness testimony and supporting documentation consistently reinforce this conclusion. In contrast, the claims by Atco and GGDL, that the Agreements were merely symbolic or not followed, are not supported by sufficient or credible evidence to outweigh the Union's case.

[130] Having reviewed the evidence, the Board will now turn to the legal analysis.

[131] The criteria consistently relied upon by this Board in determining which parties are the true employers of certain employees are set out by the Ontario Board in *York Condominium*:

1. *The party exercising direction and control over the employees performing the work.*
2. *The party bearing the burden of remuneration.*
3. *The party imposing discipline.*
4. *The party hiring the employees.*
5. *The party with the authority to dismiss the employees.*
6. *The party who is perceived to be the employer by the employees.*
7. *The existence of an intention to create the relationship of employer and employees.*

[132] This Board has also noted that there is no fixed set of criteria, and it is not necessary for the Union to show the existence of all of these factors. In *International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v Book Insulations Ltd.*, 2019 CanLII 98480 this Board stated:

[47] To be clear, there is no fixed set of criteria. It is not necessary for the Union to demonstrate the existence of all of these factors. However, the foregoing factors have been repeatedly relied upon by this Board, due to their relevance to the question at hand. This question is answerable only through an assessment of the totality of circumstances in the given case. The weight of each factor will vary depending on the facts and the purpose of the assessment. No single factor will necessarily translate into fundamental control.

Factor 1: Direction and Control

[133] The WFS Joint Venture Agreement and the Management Services Agreement speak for themselves and are clear and compelling evidence that Atco is the true employee of the employees at the Jansen Discovery Lodge. These two Agreements leave no doubt that Atco is the party exercising direction and control over those performing the work.

[134] The WFS Joint Venture Agreement consists of 34 pages. It is made effective November 25, 2013 and Amended and Restated March 1, 2021. The preamble states in part:

AND WHEREAS ATCO and GGDJ entered into this Agreement for form an unincorporated single purpose joint venture to provide camp accommodation services to the Jansen Camp (the "Jansen Camp Services JV") on the terms and conditions set out herein (the "Agreement").

[135] While Atco and GGDJ argue that the Management Committee of WFS has final say on employment policies, the Agreements say otherwise.

[136] To begin with the JV Agreement defines "Business of the Wicehtowak Frontec Services JV" as follows:

The Business of the Wicehtowak Frontec Services JV shall be to provide BHP with Camp Services at the Jansen Camp and Site Services at the Jansen Mine Site, including the borrowing of funds or obtaining of other financing for such purpose and the ownership of all such other assets and the conduct of all such activities ancillary to the provision of Camp Services and Site Services as the Project Manager may deem appropriate. Subject to the terms of this Agreement, the Wicehtowak Frontec Services JV shall have, without limitation, the power to do any and every act and thing necessary, convenient or incidental to the accomplishment of the purposes of the Wicehtowak Frontec Services JV.

[137] The "Project Manager" is defined as Atco. It is given authority and unfettered discretion in most aspects of the joint venture. Thus, while the "Business of the Wicehtowak Frontec Services JV" says that Wicehtowak Frontec Services JV "shall have, without limitation, the power to do any and every act and thing..." that power is "subject to the terms of the Agreement" and the terms of the Agreement repeatedly place the decision making power in the hands of Atco.

[138] The Agreements designate Atco as the "Project Manager", granting it broad and exclusive authority over operational and employment-related decisions. For example: Article 7.1 of the Joint Venture Agreement states: *"All final employment and contracting decisions shall be made by the Project Manager."*

[139] The Management Committee referred to by the Respondents at the hearing, and in support of their argument that the joint venture holds the power, is addressed in Article 5 of the WFS Joint Venture Agreement. Its responsibilities are specifically enumerated, and its powers overall are subject to the authority of the Project Manager. Accordingly, the Management Committee's authority is limited to the specific matters outlined in Article 5.2, none of which extend to the control over employment matters. All other operational decisions fall within the discretion of the Project Manager, Atco. The operational control rests with Atco who has the broad authority to make decisions without approval from GGDJ or the WFS joint venture.

[140] Schedule B to the WFS Joint Venture Agreement further provides that: *"All applications received from GGDJ band members for positions within the Jansen Camp will be given priority provided that the applicant from GGFN can, in ATCO's sole discretion as the managing partner, be deemed qualified and capable..."*

[141] These provisions are not merely administrative. They confer unilateral authority on Atco to hire, discipline, and dismiss employees, and to determine employment qualifications and policies. While the Agreements encourage consultation with GGDJ, they do not require joint decision-making.

[142] The Management Services Agreement reinforces this structure. It authorizes Atco to:

- Select and negotiate with a union, if required;
- Administer employee benefits;
- Provide training and staffing resources;
- Oversee the establishment and maintenance of a resume library
- Establish and implement the hiring policies;
- Advise and direct site personnel in the advertising for and interviewing of prospective candidates;
- Advise and direct on all matters pertaining to termination, dismissal and severance of its employees.
- Make all decisions necessary to fulfill the joint venture's obligations.

[143] Section 31 of the Management Services Agreement states: *"The Project Manager is hereby authorized to make all decisions and take, or cause to be taken, all actions as may be necessary to perform the responsibilities and obligations of the Jansen Camp Services JV..."*

[144] The Board finds that these provisions are clear and establish that Atco, not WFS or GGD, holds the authority to manage employment matters. Assertions by the Respondents that the “practical reality” differs from the Agreements are not supported by credible evidence. In fact, both Mr. Ross and Mr. Buehler acknowledged that the Agreements are binding and have not been amended. Atco and GGD largely ignored the agreements in their arguments. The testimony of Mr. Ross and Mr. Buehler shows that there was collaboration and consultation, both of which are consistent with what the Agreements provide, however, this does not demonstrate that the WFS Joint Venture had actual control or direction over the employees.

[145] Accordingly, the Board gives significant weight to the contractual language. The Agreements are not symbolic; they are the legal framework governing the employment relationship. The Board finds that Atco exercises fundamental control over employment and is therefore the true employer for the purposes of the Act.

[146] As stated above, the central issue is not whether collaboration and consultation occur in managing the business. Those clearly do. The real question is who holds the authority to direct and control the employees. The Board finds that this authority clearly rests with Atco.

Factor 2: Remuneration

[147] GGD argues that GGD and Atco bear the burden of remuneration. GGD points to Mr. Ross’ testimony that both parties are responsible for contributing to both payroll and operations, and that GGD sometimes borrows money to do so.

[148] While GGD argues that both it and Atco share responsibility for payroll and operations, the Agreements make clear that Atco holds exclusive authority over financial decisions. Atco alone approves all payments and determines when and how Distributable Cash is allocated. Although both parties may contribute funds when needed, Atco controls the financial mechanisms, including cash calls and disbursements. Therefore, while there is some shared financial responsibility, Atco ultimately bears and controls the burden of remuneration.

Factors 3, 4 and 5: Discipline, Hiring, and Dismissal

[149] Under the WFS Joint Venture Agreement, Atco is granted authority over employee discipline, hiring, and dismissal. Although Atco must consult with GGD and GGFN, it retains the final decision-making power in these areas.

[150] The Board finds that both testimonial and documentary evidence confirm Atco's control over staffing decisions. Ms. Sigouin testified under cross-examination that after a summer break, Atco's HR department instructed her to contact them directly when she was ready to return to work, and they would arrange a placement. This direct communication demonstrates an ongoing employment relationship with Atco and reinforces the conclusion that Atco, not WFS, was responsible for hiring and placement. It also aligns with the authority granted to Atco under the WFS Joint Venture and Management Services Agreements.

[151] The Union submitted three termination letters, each on Atco letter head and addressed to individual employees, as further evidence of Atco's role in dismissals. These documents reinforce the conclusion that Atco exercised employer functions, including termination.

[152] Atco objected to the letters as hearsay. However, under section 6-111(1)(e) of the Act, the Board has discretion to accept any evidence it considers appropriate, regardless of its admissibility in a court of law. As noted in *United Food and Commercial Workers, Local 1400 v Saskatchewan Joint Board, Retail*, 2015 SKQB 84, the Board is not bound by strict evidentiary rules and may determine its own procedures.

[153] This discretion was reaffirmed in *Conrad Parenteau v Saskatchewan Government and General Employees' Union*, 2019 CanLII 57379 (SK LRB), where the Board emphasized its broad authority to admit evidence it deems appropriate.

[154] The Board accepted the termination letters into evidence after reviewing them and hearing testimony from the affected individuals. Ms. Sigouin testified that she received a copy of a termination letter dated July 12, 2024. Two additional letters dated October 23, 2023, and September 26, 2023, were presented to Mr. Sanduga during unionization discussions. All three letters were issued on Atco letterhead.

[155] Atco and GGDL had the opportunity at the hearing to dispute the authenticity or accuracy of the termination letters, including through rebuttal evidence or cross-examination, but chose not to do so. Their silence supports the Board's finding that Atco was responsible for the employment decisions in question.

[156] The Board finds that the combination of testimonial and documentary evidence clearly supports the conclusion that Atco exercised authority over hiring, discipline, and dismissal.

Factor 6: Employee Perception

[157] There is no doubt that the employees who testified perceived Atco to be their employer. Atco conceded this factor in closing argument.

[158] The Board further notes that the cross-examinations of both Ms. Sigouin and Ms. Barron did not undermine their credibility or the substance of their testimony. Each witness remained consistent and forthright in describing their employment relationship with Atco. While both acknowledged limited knowledge of corporate structures and noted the presence of WFS branding on some materials, these admissions did not contradict their clear and well-supported belief that Atco was their employer. The cross-examinations did not elicit any contradictory or clarifying information that would diminish the weight of their evidence. Accordingly, the Board places full weight on their testimony in determining the nature of the employment relationship.

Factor 7: Intention to Create Employment Relationship

[159] GGD L argues that both Mr. Ross and Mr. Buehler testified that WFS was intended to be the employer. It argues that there was no other intention expressed on behalf of GGD L or Atco.

[160] The Agreements, along with the Union's evidence, raise doubts about whether there was ever a genuine intention to establish WFS as the actual employer. While the Agreements reflect a commitment to consultation and collaboration, they assign all operational and employment authority to Atco. Notably, Schedule "B" of the WFS Joint Venture Agreement includes a clause stating that the Project Manager "will strive to obtain at least 20% employment participation" from GGFN or other affected First Nations communities. This language is clearly aspirational rather than mandatory. The absence of a binding requirement to meet even this modest threshold further undermines the claim that WFS was intended to be the employer of record.

[161] The Board also finds that Mr. Sanduga's testimony regarding job postings and recruitment materials is relevant to the issue of employer identity. His evidence directly supports the Union's position under the last two of the *York Condominium* factors: employee perception and the intention to create an employment relationship.

[162] The job advertisements he located and submitted into evidence consistently identified Atco Frontec as the employer and directed applicants to Atco's corporate website. The ads made no mention of WFS or GGD L. This public-facing representation of Atco as the hiring entity is significant because it reflects how prospective employees would reasonably understand the

employment relationship at the time of application. It also reinforces the perception among current employees, such as Ms. Sigouin and Ms. Barron, that Atco was their employer.

[163] Moreover, the consistency of these postings over time, both before and after the certification application, undermines the Respondents' claim that WFS was the intended or actual employer. In the absence of persuasive evidence that WFS conducted its own recruitment or maintained a distinct public identity, the Board finds that Atco's branding and recruitment practices support the conclusion that it functioned as the true employer.

Summary of the Factors:

[164] The Board's reliance on the *York Condominium* factors was reaffirmed in *Regina (City) v. Amalgamated Transit Union, Local 588*, 1999, [1999] Sask L.R.B.R. 238, [1999] S.L.R.B.D. No. 21, 54 C.L.R.B.R. (2d) 161. In that case, the Board discusses the concept of "melded status", acknowledging that in many cases, multiple entities may appear to share employer responsibilities. The Board emphasizes that shared responsibilities do not preclude a finding of a single true employer, as long as one party exercises "fundamental control." It said:

134 This Board has adopted the criteria identified in York Condominium, supra, as well as other factors and concepts to determine the identity of the employer of certain employees for labour relations purposes....

135 Most cases dealing with this issue involve entities who share traditional employer responsibilities. Indeed, it is this appearance of a "melded status," as it is called in some of the jurisprudence, that leads to the issue of the identity of the employer for the purposes of the Act. In these cases, the employees have a relationship with more than one organization or entity, each of which exhibits some characteristics of employer status.

136 In Lakeland Regional Library, supra, the Board analyzed the various factors to determine which entity had "fundamental control over industrial relations matters affecting the employees," despite the fact that some responsibilities were shared. The Board stated, at 65:

The picture that emerges from an evaluation of all of the foregoing factors is that it is the Respondent who has fundamental control over industrial relations matters affecting the employees. It establishes their rates of pay, pays their wages and supervises them on a day-to-day basis. It shares responsibility for their hiring, and although it theoretically shares responsibility for their termination, it has been found to have the authority to unilaterally terminate them.

[165] The *Lakeland Regional Library* reasoning applies squarely to the present case, where Atco, despite the assertion of shared responsibilities, retains unilateral authority over employment matters under the governing Agreements. *Lakeland Regional Library* shows that even where responsibilities are shared, the Board looks for the party with the ultimate authority. This supports

the Board's rejection of GGDL's argument that joint-decision making in practice overrides the contractual terms.

[166] Taken together, the *York Condominium* factors overwhelmingly support the conclusion that Atco is the true employer. While GGDL and WFS may have consultative roles, they do not exercise fundamental control over employment matters.

[167] Offer letters issued to employees, including Ms. Sigouin and Ms. Barron, were authored and signed by Atco, welcomed them to the "Atco Team," and clearly identified Atco as the employer. These letters, along with job advertisements submitted by Mr. Sanduga, confirm that Atco was solely responsible for recruitment and setting the terms and conditions of employment.

[168] As emphasized in *Canadian Salt*, the key question is with whom the employees entered into their employment contracts. In this case, all evidence indicates that employees at the Jansen site entered into contracts with Atco.

[169] Atco also determines and administers employee compensation, including wages and benefits such as dental, medical, life insurance, and short-term disability. In any employment dispute, it is Atco—not WFS or GGDL—that employees would reasonably look to for remedy.

[170] Even where responsibilities are shared, as noted in *Lakeland Regional Library*, the decisive factor is which entity exercises fundamental control over industrial relations. Atco clearly fulfills this role, as it hires, supervises, disciplines, and trains employees, sets wages, and establishes workplace policies and training programs.

[171] Section 6-1(1)(i)(iii) of the Act grants the Board discretion to identify the true employer based on sound labour relations principles. As noted in *Canadian Labour Law* by George Adams¹ this includes ensuring that the party controlling the "purse strings" is the one at the bargaining table. The Board finds that Atco holds this financial and operational authority.

[172] The Management Services Agreement further reinforces Atco's role. It states that the Project Manager (Atco) *will* be responsible for selecting and negotiating with a union, if required. The use of "will" indicates a binding obligation, confirming Atco's formal authority over labour relations.

¹ *Canadian Labour Law*, Second Edition, George Adams, at pp. 6-68 to 6-69

[173] In conclusion, the Board finds that Atco is the true employer. It exercises comprehensive control over employment matters, and the evidence clearly supports this finding, despite Atco's efforts to attribute shared authority to WFS or GGDL.

[174] In closing submissions, Atco's legal counsel argued that the Union's certification application, which names Atco as the employer, overlooks the fact that 37% to 40% of the workforce is Indigenous. He questioned whether this omission suggests that Indigenous employees would be excluded from the proposed bargaining unit. Atco appeared to imply that GGDL, not Atco, may have authority over Indigenous employees, while Atco retains control over the rest. However, Atco provided no legal rationale or evidence to support the exclusion of Indigenous workers from union representation.

[175] In response, the Union firmly rejected this implication, affirming that all employees, regardless of Indigenous status, should be included in the bargaining unit. The Union also emphasized its commitment to equal treatment and representation for all workers.

Disclosure:

[176] The Board notes with concern that Atco and GGDL did not voluntarily disclose the WFS Joint Venture Agreement or the Management Services Agreement. These documents were only produced after the Board issued a formal disclosure order in *Unite Here, Local 47 v ATCO Frontec Ltd.*, 2025 SKLRB 16 (CanLII). This lack of transparency undermines the credibility of the Respondents, particularly given that both Mr. Buehler and Mr. Ross later acknowledged the agreements were binding.

[177] The Respondents' reluctance to disclose these Agreements, documents that define the very joint venture structure on which they based their argument that WFS is the true employer, raises the inference that they may have anticipated the Agreements would not support their position. Atco's characterization of the Union's disclosure request as a "fishing expedition" was disingenuous, particularly given that the Respondents relied on the existence of the joint venture to contest the Union's application, while withholding the documents that governed it.

[178] In a prior proceeding involving these parties - *Unite Here, Local 45 v Atco Frontec Ltd.*, 2024 CanLII 104400 (SK LRB) – the Board advised that parties, particularly those represented by counsel, are expected to resolve disclosure issues cooperatively and in good faith. In this case, the Respondents did not meet that expectation.

[179] Although the Board ordered disclosure of the contract between Atco and BHP, such agreement was never produced. The Respondents did not provide an explanation for its absence, nor did the Union pursue the matter further. Similarly, the “Accommodation Agreement,” which is referenced in both the Joint Venture and Management Services Agreements and appears to define the scope of services and operational authority, was also not disclosed. While the absence of these documents did not affect the Board’s findings, it is nonetheless concerning given their apparent relevance to the question of who exercises control over employment matters.

[180] The Board finds that the absence of these documents did not materially affect its findings. The evidence already before the Board, including the Joint Venture and Management Services Agreements, testimonial evidence, and employment records, was sufficient to determine the true employer. While the failure to disclose raises transparency concerns it does not warrant an adverse inference.

45% Threshold:

[181] Atco’s counsel argued that the certification vote was fundamentally flawed for two reasons: first, because it did not name WFS, the entity Atco claims is the true employer, and second, because the Union allegedly underestimated the number of employees in the proposed bargaining unit. Atco asserted that the Union’s estimate of 93 employees was “grossly incorrect,” claiming the actual number was closer to 117.

[182] However, Atco provided no evidence to support this claim. In fact, the employee list Atco submitted to the Board prior to the March 27, 2024 Direction for Vote Order listed only 109 employees. This undermines Atco’s assertion and casts doubt on the alleged discrepancy.

[183] In response, the Union noted that this issue had already been addressed by the Board in an earlier application. In *Unite Here Local 47 v Atco Frontec Ltd.*, 2024 CanLII 104400 (SK LRB), the Board held that the 45% threshold is a preliminary administrative step and not subject to retrospective challenge. The Board reaffirmed this approach in *Canadian Union of Public Employees v The Town of Preeceville*, relying on the Saskatchewan Court of Appeal’s decision in *UFCW, Local 1400 v Affinity Credit Union*, 2015 SKCA 14.

[184] As explained in *Preeceville*, the 45% threshold is assessed at the time of application and is not intended to be litigated at a full hearing. The Board is not required to conduct a detailed evidentiary review of employee numbers at that stage. This approach ensures efficiency and avoids unnecessary disruption in the workplace.

[185] If Atco disagreed with the Board's earlier ruling of October 29, 2024, its proper recourse was to seek judicial review. It cannot now re-litigate the same issue before the Board.

Conclusion:

[186] The Board concludes that Atco Frontec Ltd. is the true employer of the employees at the Jansen Discovery Lodge for the purposes of *The Saskatchewan Employment Act*.

[187] This conclusion is based on the following key findings:

- **Fundamental Control:** Atco exercises comprehensive control over employment matters, including hiring, discipline, payroll, and operational decisions. This authority is clearly established in the WFS Joint Venture Agreement and the Management Services Agreement, both of which designate Atco as the Project Manager with exclusive decision-making power.
- **Operational Reality:** The evidence demonstrates that Atco—not WFS or GGDL—performs all core employment functions. Employees are hired, paid, trained, and disciplined by Atco personnel using Atco systems and branding. WFS lacks the infrastructure to function as an independent employer.
- **Employee Perception:** Employees consistently identified Atco as their employer, based on offer letters, pay stubs, T4 slips, and workplace communications. The Board found this perception to be credible and well-supported.
- **Documentary Evidence:** The Union's evidence, including job postings, employment documents, and termination letters, overwhelmingly pointed to Atco as the employer. In contrast, the Respondents' claims were often vague, unsupported by documentation, and inconsistent with the governing agreements.
- **Legal Framework:** Under the *York Condominium* factors and relevant case law, Atco meets the criteria of the true employer. Even where responsibilities are shared, the decisive factor is who holds fundamental control—and that party is Atco.
- **Labour Relations Stability:** Recognizing Atco as the employer ensures that the party with actual authority is at the bargaining table, promoting effective and stable labour relations.

[188] The Board also rejects Atco's challenge of the statutory threshold as this issue was previously addressed.

[189] The Board acknowledges the Joint Venture's commitment to advancing Indigenous participation in economic development and promoting long-term community benefits through employment, training, and business opportunities for GGFN. While these goals are commendable, the joint venture does not exercise operational control over the workforce. For the purposes of *The Saskatchewan Employment Act*, the entity that holds and exercises that control, and therefore the true employer, is Atco.

[190] Correctly identifying the employer is essential to ensure meaningful collective bargaining and stable labour relations. The entity recognized as the employer holds the legal responsibility for negotiating with the union, administering employee benefits, and ensuring compliance with labour laws. Misidentifying the employer can lead to confusion, undermine the effectiveness of collective bargaining, and create instability in labour relations. It is essential that the party with actual control over employment matters is the one at the bargaining table, as this ensures that negotiations are meaningful and that the rights and interests of employees are adequately represented

[191] Although the Respondents did not dispute the appropriateness of the bargaining unit, the Board has reviewed the scope of the unit and is satisfied that it is appropriate for collective bargaining within the meaning of section 6-9 of the Act.

[192] Also, for the reasons outlined herein, the Board concludes that Atco Frontec Ltd. is the true employer.

[193] As a result, the Board will issue an Order as follows:

- (1) that all employees of Atco Frontec Ltd. at BHP Jansen Discovery Lodge in the Province of Saskatchewan except managers, office, clerical, security and maintenance trades personnel, is an appropriate unit of employees for the purpose of bargaining collectively;
- (2) that Atco Frontec Ltd. is the true employer of the said bargaining unit;
- (3) that the ballots held in the possession of the Board Registrar pursuant to the Direction for Vote issued March 27, 2024 in the within proceedings be unsealed, and the ballots contained therein tabulated in accordance with *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021*; and

- (4) that the results of the vote be placed into Form 24 and that form be advanced to a panel of the Board for its review and consideration.

[194] The Board thanks all parties for their submissions, each of which was carefully reviewed and considered in reaching this decision.

[195] This is a unanimous decision.

DATED at Regina, Saskatchewan, this **26th** day of **May, 2025**.

LABOUR RELATIONS BOARD

Carol L. Kraft
Vice-Chairperson