GRAIN AND GENERAL SERVICES UNION (ILWU – Canada), Applicant v HEARTLAND LIVESTOCK SERVICES, Respondent and NORTHERN LIVESTOCK SALES, Respondent

LRB File No. 043-24 and 113-24; February 12, 2025
Vice-Chairperson, Carol L. Kraft; Panel Members: Shawna Colpitts and Laura Sommervill
Citation: *Grain and General Services Union v Heartland Livestock,* 2025 SKLRB 4

Counsel for the Applicant, Grain and General Services Union (ILWU – Canada):	Dan LeBlanc
Counsel for the Respondent, Heartland Livestock Services:	Michael Phillips
Counsel for the Respondent, Northern Livestock Sales:	Steve Seiferling

Common Employer – *Section 6-20 Saskatchewan Employment Act* – Board reviews factors to be considered in making a declaration of a common employer – Board exercises discretion to order common employer declaration

REASONS FOR DECISION

Background:

[1] **Carol L. Kraft, Vice-Chairperson:** Grain and General Services Union (ILWU Canada) ("GSU") has made two applications to the Board. First, under LRB File No. 043-24, GSU seeks a declaration pursuant to s. 6-20 of *The Saskatchewan Employment Act* (the "Act") that Northern Livestock Sales ("NLS") and Heartland Livestock Services ("HLS") are a common employer. Secondly, and alternatively, under LRB File No. 113-24, GSU seeks a declaration pursuant to s. 6-18 of the Act that NLS is a successor employer.

[2] The applications arise out of a disposal of part of the HLS business to NLS on or about October 20, 2017 (the "Sale").

The Evidence:

[3] This matter was heard on October 21, 2024. GSU called two witnesses. Neither NLS nor HLS called any witnesses. Accordingly, the evidence in this matter consists of the testimony of the GSU witnesses along with the Replies filed by NLS and HLS.

GSU

[4] GSU was certified by this Board to be the bargaining agent for HLS on October 2, 2001, via Board Order on LRB File No. 198-01. The certification Order describes GSU as the bargaining agent for "…all employees of 324007 Alberta Ltd. operating as Heartland Livestock Services employed in Saskatchewan except those who are casual employees and those who are incumbents of the following positions…."

[5] Mason Van Luven testified on behalf of GSU. He testified that he became employed by GSU in the fall of 2021, part way through the life of the 2020–2022 collective bargaining agreement. He was assigned to service Local 7, being the members covered by the agreement. In addition to his personal involvement in bargaining since that time, he testified that he has reviewed and is familiar with the internal GSU files.

[6] Mr. Van Luven testified that GSU and HLS negotiated several collective agreements after the October 2, 2001 certification Order. He testified to his understanding that Stewart Stone was the HLS company spokesperson and negotiator on those collective agreements. He testified that his understanding was derived from his review of internal GSU files, along with conversations with colleagues who had been part of those negotiations.

[7] Mr. Van Luven testified that when he became involved in bargaining on behalf of GSU, it was Stewart Stone with whom he interacted on behalf of the company. He said Mr. Stone was the point person GSU worked with, and that Mr. Stone had ratified every preceding collective agreement for longer than he had been alive.

[8] The collective agreement between HLS and GSU in force at the time of the Sale ran from January 1, 2015 to December 31, 2017 (the "2015 – 17 CBA"). The listed signatory for the Company (HLS) is Stewart Stone. The cover page of the agreement defines the "Company" as "Heartland Livestock Services".

[9] Before the 2015 – 17 CBA expired, GSU received a letter dated October 20, 2017 (the "2017 Letter") from Brent Brooks on Northern Livestock letterhead which stated the following:

> *Re: Sale of Assets of Heartland Livestock Services to Northern Livestock Sales ("NLS")*
>
> *NLS, a Saskatchewan partnership, purchased or leased part of the livestock marketing business and certain assets of Heartland Livestock Services associated therewith formerly carried on by Heartland Livestock Services from the livestock marketing facilities occupied*

by Heartland Livestock Services in Prince Albert and Lloydminster, Saskatchewan. The closing date was October 20, 2017.

NLS acknowledges that in respect of unionized employees employed in such livestock marketing business and who work in, from or out of the Prince Albert and Lloydminster, Saskatchewan livestock marketing centres now operated by NLS, that NLS is the successor employer to Heartland Livestock Services for the purposes of the collective agreement governing their employment with Heartland Livestock Services, and NLS will be bound by the terms and conditions of such collective agreement in so far as such unionized employees are concerned.

Should you have any questions about anything included in this letter, please direct your questions to the undersigned at …..

We look forward to working with you.

Yours truly,
Brent Brooks, Manager, Northern Livestock Sales.

[10] Mr. Van Luven testified that he does not know whether NLS "purchased or leased" parts of HLS as referenced in the 2017 Letter. Nor does he know the terms of the "Saskatchewan partnership" referenced therein.

[11] GSU did tender into evidence various ISC Profile Reports, portions of which are referred to below.

***324007 Alberta Ltd**. was incorporated in 1985.*
Home jurisdiction is Alberta.
Registered Office: 100, 101 Riel Drive, St. Albert, Alberta
Power of Attorney: 600, 2103 – 11th Avenue, Regina
Nature of business is LIVESTOCK AUCTION SALES

Business Names Owned by Corporation are as follows:

Number	*Name*	*Type*
101029243	*Assiniboia Livestock Auction*	*Sole Proprietor*
101025560	*Heartland Livestock Services*	*Sole Proprietor*
102123824	*Heartland Order Buying Company*	*Sole Proprietor*
101277195	*Kelvington Stockyards*	*Sole Proprietor*
102020687	*Northern Livestock Sales*	*Partnership*
101038373	*Weyburn Livestock Exchange*	*Sole Proprietor*

***102029628 Saskatchewan Ltd**. was incorporated on August 11, 2017*
Nature of business is Support activities for animal protection
Registered Office: 822 9th St. W, Meadow Lake, Sk
The sole Director/Officer is Brent Brooks
The sole Shareholder is Brent Brooks

Business Names Owned by Corporation:

Number	*Name*	*Type*
102030687	*Northern Livestock Sales*	*Partnership*

Heartland Livestock Services:

Entity Type	*Business Name*
Entity Subtype	*Saskatchewan Business Name – Sole Proprietor*
Registration Date	*27-Sep-2001*
Expiry Date	*30-Sep-2025*
Nature of Business	*Livestock Services and Sales Business*
Physical Address:	*100, 101 Riel Drive, St. Albert., Ab*
Mailing Address:	*100, 101 Riel Drive, St. Albert., Ab*

Proprietor/Partners/General Partner(s):
(101024058) 324007 Alberta Ltd. 100, 101 Riel Drive, St. Albert., Ab

Northern Livestock Sales:

Entity Type	*Business Name*
Entity Subtype	*Saskatchewan Business Name – Partnership*
Registration Date	*25-Aug-2017*
Expiry Date	*31-Aug-2026*
Nature of Business	*Support activities for animal protection*
Physical Address:	*Box 186 (South Elevator Road) Prince Albert, Sk.*
Mailing Address:	*c/o Miller Thompson LLP, 600, 2103 – 11th Ave. Regina*

Proprietor/Partners/General Partner(s):
(101024058) 324007 Alberta Ltd.
(102029628) 102029628 Saskatchewan Ltd.

[12] When the 2015-2017 CBA expired, a renewal agreement was negotiated. This new agreement was in effect from January 1, 2018 to December 31, 2019 (the "2018-19 CBA"). The cover page for the 2018-19 CBA differed from the previous agreement, and now described the agreement as being between:

> ***Heartland Livestock Services/Northern Livestock Sales***
> *(hereinafter referred to as the "Company")*
>
> *And*
>
> ***Grain and General Services Union (ILWU – Canada)***
> *(hereinafter referred to as the "Union")*
> *Covering* ***GSU Local 7***

[13] The cover page of the 2018-19 CBA also added new language stating: "As set out in the Certification Order of the Canada Industrial Relations Board (sic) (Board Order No. #198-01)." (While the reference to the Canada Industrial Relations Board is clearly an error, the certification Order in LRB file No. 198-10 (Exhibit U-5 – Tab A) is undoubtedly referencing the Order in LRB File No. 198-01 filed as Exhibit U-5).

[14] Under Article 1 – Scope and Definitions, the 2018-19 CBA states:

> *THE COMPANY recognizes THE UNION for the duration of this Agreement as the sole bargaining agent for the purpose of collective bargaining in respect to wages and other conditions of employment on behalf of the employees of* ***Heartland Livestock***

> ***Services/Northern Livestock Sales*** *employed in the Province of Saskatchewan, except…*
>
> *(**emphasis added**)*

[15] The signature page on the copy of the 2018-19 CBA tendered as an exhibit contains only one signature **"**For the Company**",** and two signatures "For the Union". The date below the signature is completed by hand and states: "Sept.11/18". Two Letters of Understanding attached to the agreement are signed in the same manner. They are also dated in the same manner.

[16] The Union also tendered into evidence a copy of the 2018-19 CBA which tracked any changes from the previous agreement in red font ("Tracked 2018-19 CBA"). Mr. Van Luven testified that the practice of identifying any new wording or changes in red font was to make it clear to the members what had changed from the prior collective agreement. In this case, the prior collective agreement was the 2015-17 CBA. In the Tracked 2018-19 CBA, the signature page (page 26) has the name "Stewart Stone" typed in black font below the words, "For the Company". Below the name is typed the following in black font: "DATE: September 2018." Two Letters of Understanding attached to the agreement are signed and dated in the same manner.

[17] The 2018-19 CBA includes 29 Articles, many of which cover various terms and conditions of employment.

[18] The next collective agreement between the parties is for the period January 1, 2020 to December 31, 2022 ("2020-22 CBA"). The agreement consists of 29 Articles, many of which relate to terms and conditions of employment similar to the 2018-19 CBA.

[19] The cover page for the 2020-22 CBA states that the collective agreement is between "Heartland Livestock Services/Northern Livestock Sales" and Grain and General Services Union (ILWU – Canada). Unlike the 2018-19 CBA, the "hereinafter referred to" references are not included, i.e.: there is no reference to HLS and NLS "hereinafter referred to as the "Company". Like the 2018-19 CBA, the 2020-22 CBA refers to "the Company" throughout the body of the agreement when referring to the obligations of the Employer. There is no distinction in the body of the agreement between the obligations of HLS and NLS.

[20] The 2020-22 CBA had an expiry date of December 31, 2022. Mr. Van Luven testified that the parties began bargaining for a new collective agreement in October of 2022. He testified that there were three days of in-person bargaining: October 2022, December 2022 and January 2023. He said that he was on the GSU bargaining committee along with three others from Yorkton, Moose Jaw and Prince Albert.

[21] With respect to members of the Employer's bargaining committee, Mr. Van Luven testified that at first it was Stewart Stone and Brent Brooks and then in January, Stewart Stone invited David Nilsson to attend. He testified that at the January 10, 2023 bargaining session, Stewart Stone and Brent Brooks were physically present and David Nilsson attended electronically. Mr. Van Luven presented his notes from January 10, 2023, which indicate David Nilsson and Stewart Stone attended on behalf of HLS, and Brent Brooks attended on behalf of NLS.

[22] Mr. Van Luven testified that following the January 10, 2023 bargaining date, Mr. Stone stepped away from the bargaining table as he was retiring. Mr. Nilsson then became the Employer's lead negotiator.

[23] Mr. Van Luven testified that the parties did not meet for further in-person bargaining sessions after the January 10, 2023 date.

[24] Mr. Van Luven further testified that on February 2, 2023, Mr. Nilsson phoned him to raise concerns with the composition of GSU's bargaining committee. He said Mr. Nilsson also suggested they negotiate on a site-by-site basis. Mr. Van Luven testified that Mr. Nilsson's suggestion to "initiate negotiations on a site-by-site basis" was not a proposal to divide bargaining along NLS/HLS lines. On February 3, 2023, Mr. Van Luven responded to Mr. Nilsson by email stating that both positions were completely unacceptable to GSU.

[25] On February 3, 2023, Mr. Nilsson responded via email to Mr. Van Luven. Mr. Nilsson's email cc'd Brent Brooks via email to brent.mlsstockyards@sasktel.net, along with all members of GSU's bargaining committee. The email states: "As stated in our telephone conversation on February 2, HLS and NLS are not in agreement on this issue of who is "qualified" to sit at the table as part of the Union's bargaining unit." Mr. Van Luven said at the hearing that he expressed his view that the Employer had no say in the composition of the Union's bargaining unit.

[26] Mr. Van Luven testified that at no point did Brent Brooks respond to this email or otherwise indicate to Mr. Van Luven that Mr. Nilsson could not speak for the Employer.

[27] Mr. Van Luven testified that on March 14, 2023, GSU sent the Employer a "counter-proposal". When he received no response, he followed up with an email dated March 20, 2023, asking if there was "any update as to when the company will make their decision on this matter. He addressed the email to David Nilsson at dnilsson@hls.ca, stewart.stone@hls.ca, brent.mlstockyards@sasktel.net, and the GSU bargaining committee members.

[28] On March 23, 2023, Mr. Van Luven received an email from Mr. Nilsson. It was addressed only to Mr. Van Luven and states: "Please see the proposal from HLS in the attachment". The attached Proposal states at the outset:

> *This is the **Heartland Livestock/Northern Livestock (HLS/NLS) response** to the GSU's position as stated in your March 14, 2023, letter regarding unresolved matters in the renewal of the current collective bargaining agreement.*
>
> *Subject to ratification by the ownership, HLS/NLS is countering in an effort to settle current bargaining on the following terms…*
>
> *Regards,*
> ***For/HLS/NLS Bargaining Committee***
>
> **(Emphasis added)**

[29] Mr. Van Luven testified that throughout the course of this round of bargaining, GSU received only one single set of proposals on behalf of the Employer as opposed to two separate proposals. He said every time there was a counter-offer from the Employer, it came as a single package.

[30] Mr. Van Luven testified that between April 17 and April 27, 2023, the parties decided how to sign the agreed to collective agreement. The e-mail exchange was tendered in evidence.

[31] He testified that he sent an email with the drafted 2023-24 CBA on April 17, 2023 to David Nilsson. His email stated:

> *I have attached the amended collective agreement which includes the items agreed to in our Memorandum of Settlement, as well as items previously acknowledged throughout the bargaining process. Please review on your end to see if I have missed anything, or if there are any errors or omissions. If it is satisfactory, the next step would be for me to courier a signing copy to you and Brent.*
>
> *On a related note, while the body of the CBA is under review for amendments, edits, or errors/omissions, the members are quite keen for their retro-pay in the interim. Is there an expected date where members' retropay will be calculated and deposited?*

[32] When he did not receive a response, he followed up with David Nilsson on April 19, 2023, and included Brent Brooks and Steve Torgerson in the email. Mr. Nilsson replied to Mr. Van Luven on April 19, 2023, saying "working on it".

[33] Mr. Van Luven sent another email to David Nilsson, Brent Brooks and Steve Torgerson on April 24, 2023 requesting an update. On April 25, 2023, David Nilsson replied to Mason Van Luven, and only Mr. Van Luven, stating: "Review of the amended collective agreement has been

completed. Looks fine. Thank you." The signature line stated: "David Nilsson Heartland Livestock Services".

[34] Mr. Van Luven then sent an email dated April 25, 2023 to David Nilsson, Brent Brooks with a cc to Steve Torgerson stating:

> *…That is exciting news! The final step is to take the amended collective agreement provided and agreed to and sign it. You and/or Brent can sign "for the company", and we the bargaining committee can sign "for the union". I can set it up in one of two ways:*
> *1) I can first mail you a signing copy, to which you would mail it to Brent, then Brent to Lori, Lori to Melissa, Mellissa to Paige, then Paige to me, or*
> *2) I can set up a digital version via Docusign or Adobe Sign which allows for digital signatures.*
> *Please advise which is your preference…*

[35] On April 26, 2023, Mr. Nilsson replied to Mr. Van Luven, and only Mr. Van Luven stating "Docusign will work".

[36] Mr. Van Luven testified to the process he followed with Adobe to have the collective agreement electronically signed. He administered the process and was the "administrator". He testified that by using Adobe, one can take a document, turn it into a PDF and include signature lines and the emails addresses for the recipients. He said the administrator can see who signed the document and who it went to next.

[37] He said he received notification that David Nilsson had signed, and that it was sent to Brent Brook's email address. He said he then followed up with an email to David Nilsson, with a cc to Brent Brooks and Steve Torgerson saying:

> *I successfully received your signed version of the contract, David. Brent, you're up next. Let me know if you didn't get it.*

[38] On April 27, 2023, Mr. Van Luven received an email from Brent Brooks stating: "Good day, Mason, Your email received. Thanks, Brent Brooks". Mr. Van Luven did not receive any other emails from Brent Brooks.

[39] Mr. Van Luven also referred to the Final Audit Report attached to the CBA. It is a receipt published at the end of the CBA and it outlines who emailed whom, who viewed it, who signed and who it went to next. It's a chronology. With respect to Brent Brooks at brent.mlsstockyards@sasktel.net the chronology is as follows:

Document e-signed by David Nilsson (dnilsson@hls.ca)
Signature Date 2023-04-27 – 7:23:19 PM GMT – Time Source: server
Document emailed to brent.mlsstockyards@sasktel.net for signature
2023-04-27 – 7:23:21 PM GMT
Email viewed by brent.mlsstockyards@sasktel.net
2023-04-27 – 7:30:58 PM GMT
Signer brent.mlsstockyards@sasktel.net entered name at signing as E
2023-04-28 3:15:34 PM GMT
Document e-signed by E (brent.mlsstockyards@sasktel.net)
Signature Date: 2023-04-28 – 3:15:36 PM GMT – Time Source: server
Document emailed to lbranton@hotmail.com for signature
2023-04-28 – 3:15:37 PM GMT

[40] Mr. Van Luven said he received notice through the system that bent.mlsstockyards@sasktel.net signed by "E". He was asked what he thought when he saw that the document was signed by "E". He said he just thought it was their prerogative to sign a document as they see fit. He said, it's their signature line and their email.

[41] Mr. Van Luven said he did not receive any inquiry or communication from Brent Brooks indicating that he did not know how to sign.

[42] The signature page on the 2023-24 CBA indicates that "David Nilsson" and "E" signed "For The Company".

[43] Mr. Van Luven was the last signatory to the 2023-24 CBA and signed on May 1, 2023. Following signatures, Mr. Van Luven created physical copies and mailed them to Local 7 members at the five locations where they work. Mr. Van Luven said that everyone would have received a copy of the signed CBA and that it was then made into booklets to be mailed to its members.

[44] The 2023-24 CBA again states that the collective agreement is between "Heartland Livestock Services/Norther Livestock Sales and Grain and General Services Union (ILWU – Canada), Local 7. Under Article 1 – Scope and Definitions it states:

> *THE COMPANY recognizes THE UNION for the duration of this Agreement as the sole bargaining agent for the purpose of collective bargaining in respect to wages and other conditions of employment on behalf of the employees of Heartland Livestock Services / Northern Livestock Sales employed in the Province of Saskatchewan, except those who are casual employees and those who are incumbents of the following positions….*

[45] The 2023-24 CBA, like the agreements that preceded it, speaks to the obligations of "the Company". There is no distinction between the obligations of HLS and NLS. Mr. Van Luven testified that as indicated in the collective agreements, the scope clause remained unchanged for three rounds of bargaining. It has been identical since NLS was added to the parties' description of the Company.

[46] The 2023-24 CBA also contained two Letters of Understanding. Mr. Van Luven stated that he had inserted one signature line for GSU and one signature line for "Heartland Livestock Services/Northern Livestock Sales". "David Nilsson" appears to have signed for "Heartland Livestock Services/Northern Livestock Sales".

[47] Steve Torgerson also testified on behalf of GSU. He has been the General Secretary of GSU since February 2023. He testified regarding an email he received from counsel for NLS on November 7, 2023. The email stated in part:

> *On a separate note, we are writing to inform you that NLS is a separate business from Heartland. In fact, they are direct competitors in a number of markets. Accordingly, please do not copy Heartland on correspondence to me, which is intended for NLS, or on correspondence to NLS.*
>
> *We therefore repeat the request that bargaining take place separately for NLS from the bargaining for Heartland. NLS is not willing to bargain at the same table as a competitor.*
> *…*

[48] Mr. Torgerson testified that he did not recall the substances of the email that preceded the response. But on November 8, 2023, Mr. Torgerson replied on behalf of GSU stating: "We will no longer include anyone from Heartland Livestock Services in our correspondence with you." Mr. Torgerson testified that since he received this email, he has not copied Mr. Nilsson on correspondence to Mr. Brooks or Mr. Seiferling, but that he has done so simply in response to the request from counsel for NLS.

[49] Both Mr. Torgerson and Mr. Van Luven testified that this was the first time NLS had advised GSU of its position that it was a competitor with HLS.

[50] Mr. Van Luven testified that when the Employer alleged that they were distinct employers, that they were competitors, that the Union made the common employer application.

[51] Mr. Van Luven was asked why the Union did not file a common employer application until six years after the Union received the 2017 Letter from NLS. He was asked and answered the following question:

> *Q. You received the October 20, 2017, letter – GSU had in October 2017, but didn't file the common employer application until six years later. Why is that:*
>
> *A. We were under zero presumption that anything had changed between us and the company. At that point, Stewart Stone was still our point person for labour relation issues. We had received dues remittances from Livestock, and so on. If there was grievance related to a NLS employee or HLS employee, Stewart Stone was the person we did labour relations with. We had undertaken bargaining a few months shortly thereafter with Stewart Stone. We did not see that anything between the union and the company had changed….*

[52] The Union also tendered into evidence documents regarding the way union dues were submitted to the Union. Mr. Van Luven testified that when the union dues are remitted, they are sent together in an envelope from Nilsson Bros. Inc. Corporate Office, 100, 101 Riel Drive, St. Albert, Alberta. He testified that in the same envelope, they receive dues from HLS, NLS and Wildlife.

[53] The Union tendered into evidence a copy of the envelope along with copies of the following documents:

> a. *A cheque from Nilsson Bros. Inc. for $35.50 for "Lloydminister GSU Dues". It is accompanied by a "**Payroll Item List by Division**" Lloydminister which indicates "Northern Livestock Lloydminster – Salary". The member's name for Lloydminster is on the List.*
>
> b. *A cheque from Nilsson Bros. Inc. for $803.92 for "Swift Current GSU Dues" and "Yorkton GSU Dues". It is accompanied by:*
> i. *A document entitled: "**Payroll Item List by Division** Heartland Swift Current" – 324007 Alberta Ltd. op Heartl" for Swift Current with the members' names on the List.; and*
> ii. *a "**Payroll Item List by Division"** Yorkton - Heartland – 324007 Alberta Ltd. op Heartl" for Yorkton with the members' names on the List.*

[54] The three documents entitled "Payroll Item List by Division" also contain the employee I.D. numbers for each of the employees named therein.

[55] The cheques from Nilsson Bros. Inc. include the same physical and mailing address as 324007 Alberta Ltd. Both cheques are drawn from the same bank account.

HLS

[56] According to the HLS Reply, sworn by David Nilsson on March 28, 2024, HLS owns and operates livestock auction marts in Swift Current, Moose Jaw and Yorkton, Saskatchewan. Prior to October 20, 2017, it owned and operated auction marts in Prince Albert and Lloydminster,

Saskatchewan. In or about October 20, 2017, HLS sold and leased certain assets associated with its livestock marketing business in Prince Albert and Lloydminster to NLS (the "Sale").

[57] HLS further states in its Reply that the employees of the auction marts in Lloydminster and Prince Albert were employed exclusively by NLS. It says HLS and NLS are not associated or related and since the 2017 Sale, the business of Yorkton, Swift Current and Moose Jaw have been carried on separately from the business in Prince Albert and Lloydminster. It says that while NLS is a partnership between HLS and 10202968 Saskatchewan Ltd., NLS is functionally and economically independent from Heartland, as its Prince Albert and Lloydminster operations, employees, and businesses are managed and directed exclusively by Brent Brooks and 10202968 Saskatchewan Ltd.

NLS

[58] In the NLS Reply sworn by Brent Brooks on March 1, 2024, NLS says that it is a livestock marketing business with a number of locations across northern Saskatchewan. The two locations at issue in this matter are the operations located in Prince Albert, Saskatchewan and Lloydminster, Saskatchewan. The HLS Reply further states that each of NLS and HLS operates independently, with separate financial control and management, no interrelationship of operations and are represented separately to the public. Except to the extent that both NLS and Heartland are bound to the GSU collective agreement, there is no centralized control over labour relations.

[59] According to the NLS Reply, Mr. Brooks states that he is the owner and operator of NLS and that following the completion of the Sale, he acknowledged that NLS was a successor employer to Heartland via the 2017 Letter. NLS states that it continues to recognize that it is a successor employer to Heartland.

[60] Mr. Brooks further says in the NLS Reply that he did not sign the 2018-19 CBA, nor did he sign the 2020-22 CBA. He says he was directly involved in the bargaining of the 2023-24, at least at the outset. After the first few bargaining sessions, he says he raised the issue that bargaining should be separate for NLS and HLS, since they are separate businesses. He says he stated that he would not be involved in bargaining until bargaining was separated. Following that discussion, Mr. Brooks says he did not participate any further in the bargaining of the 2023-24 CBA.

[61] Mr. Brooks further states in the Reply that in late 2023, he instructed his legal counsel to contact GSU and attempt to set up a separate bargaining process for NLS, separate and apart

from HLS. He says the GSU refused to bargain separately with NLS and claimed that he had signed the 2023-24 CBA virtually.

[62] Mr. Brooks says in the Reply that when asked to provide evidence of a signature, the GSU provided a document that appears to have been electronically signed with the letter "E". He says this is not one of his initials and he has never signed any document with the letter "E". He is unsure how the document came to be signed with the letter "E" but that he did not sign the 2023-24 document.

Argument on behalf of GSU:

[63] GSU argues that despite negotiating three collective agreements with GSU, appearing at an arbitration concerning the 2023-24 CBA, NLS takes the position that they never agreed to the 2023-24 CBA and that they are not required to negotiate at the same table as HLS. They take this position because they allege that they are in direct competition with HLS, despite a well-established history of negotiating alongside HLS.

[64] GSU argues that NLS is a common employer with HLS and so covered by the certification Order issued by this Board. GSU submits that the common employer declaration should issue. This, it asserts, would keep the bargaining relationship as it has been since 2017. The Union argues the declaration should be granted due to three primary issues:

a. The Employer has bargained as a cohesive entity since the 2017 Succession Letter. This implicitly acknowledges that the Employer is a single entity;

b. The parties' scope clause in the collective agreements has consistently acknowledged that the NLS/HLS is a single Employer.

c. When the Employer remits union dues, it does so cohesively.

[65] GSU argues that the acts of bargaining, negotiating scope clauses and remitting union dues are the most central labour relations actions that employers take. Each of these points is in favour of the common employer declaration.

[66] GSU's sought remedy is required to maintain its viable bargaining unit, and to preserve the stability of its bargaining relationship with the Employer.

Argument on behalf of NLS:

[67] NLS argues that GSU bears the onus of proof in establishing that there is basis for a declaration of common employer, and that it has failed to discharge that onus. NLS argues GSU has failed to provide evidence that:

a. HLS and NLS are sufficiently related businesses;

b. That the two businesses share common control and direction; and

c. That there is a valid and sufficient labour relations purpose, reason, interest or goal for the designation.

[68] NLS requests the application for common employer be dismissed in its entirety. NLS also seeks an order for costs against GSU for not responding to a new ownership declaration (the Successor Letter) in October 2017 and for bringing an unnecessary application.

[69] NLS further submits that a separate certification Order, recognizing the GSU's certification for NLS as a successor to Heartland, is appropriate, in the circumstances.

Argument on behalf of HLS:

[70] HLS repeats and adopts the submissions made by NLS with respect to the disposition of the common employer application.

[71] HLS argues that based on the application of the criteria for establishing a common employer, HLS and NLS are not under common direction and control.

[72] HLS argues that a common employer declaration would alter, rather than give effect to, the labour relations realities arising out of the disposition of the Prince Albert and Lloydminster livestock markets. Rather than preventing the erosion of the Union's bargaining rights, the common employer declaration would expand the Union's bargaining rights to include the terms and conditions of employment of employees of NLS's distinct, pre-existing business, without bargaining collectively with that business.

Relevant Statutory Provisions:

[73] The following provisions of the Act are relevant:

> ***6-20****(1) On the application of any union or employer affected, the board may, by order, declare more than one corporation, partnership, individual or association to be one*

> *employer for the purposes of this Part if, in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by one person through the different corporations, partnerships, individuals or associations.*
>
> *(2) Subsection (1) applies only to corporations, partnerships, individuals or associations that have common control or direction on or after October 28, 1994.*

Analysis and Discussion:

[74] A fair amount of time at the hearing was spent on the question of whether Mr. Brooks electronically signed the 2023-24 CBA. After completing its review of all the evidence and arguments in this matter, the Board finds that whether or not Mr. Brooks signed the 2023-24 CBA is not determinative of the issue the Board needs to decide in this matter.

Onus of Proof

[75] The burden of proof is on the Union to demonstrate that it is more likely than not that the Respondents' businesses, undertakings or other activities are associated or related and are carried on under common control or direction.

Common Employers

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[76] The Board described the purpose of the common employer provision in *International Union of Operating Engineers, Hoisting & Portable & Stationary, Local 870 v North American Construction Group Inc., et.al*., (2014) 234 CLRBR (2d) 168, 2013 CanLII 60719 (SK LRB) ["*North American Construction Group*"]:

> *[60] In response to the complex and often murky realities of corporate organization, most Canadian jurisdictions have enacted legislation that authorizes labour boards to pierce the corporate veil and find that two (2) or more related businesses ought to be treated as one (1) common employer for the purposes of labour relations. Saskatchewan has such a provision for the construction industry in s. 18 of The Construction Industry Labour Relations Act, 1992. Many corporations operate in an associated or related fashion and these corporations may be operated under common direction and control for a variety of legitimate business reasons. However, if the purpose or effect of a corporate organization or reorganization is to avoid collective bargaining obligations (for example, by permitting the transfer of work that would normally be completed by a unionized company to a non-union a related company operated under common direction and control – a practice commonly known as "double breasting"), then this Board has authority pursuant to s. 18 to pierce the corporate veil, so to speak, and declare both employers to be one (1) for the purposes of collective bargaining. The affect of a common employer designation is to cause the employees of both the union and non-union employers to fall within the scope of a trade union's bargaining unit. Obviously, it is a powerful tool granted by the legislature for the purpose of achieving a particular remedial effect.*

[77] In *Re ATU, Local 588 and Regina (City) et al.,* [1999] Sask LRBR 238 [*Wayne Bus*], the Board discussed the purpose of section 37.3 of the Act:

> *[124] One of the primary purposes of common employer legislation is to prevent the erosion or undermining of existing bargaining rights, as may occur, for example, when work is diverted from a unionized employer to an associated non-union entity. Historically, the most common example of this erosion has been the creation by unionized contractors of non-unionized "spin-offs" in the construction industry. In Saskatchewan The Construction Industry Labour Relations Act, 1992, c. C-29.11, contains specific provisions applicable to the construction industry; s. 37.3 of the Act applies to all other sectors.*

[78] This case does not present with the facts typically seen in applications for common employer declarations. This is not a case of "double-breasting" or "spin-offs". The Union is not asking the Board to "pierce the corporate veil". Rather, the Union is saying that following the Sale, and since the parties negotiated the 2018-19 CBA, HLS and NLS presented themselves as a common employer, and are now trying to back away from that fact. The Union's position, in essence, is that HLS and NLS have been related parties ever since the 2017 Sale, and that they are now trying to change the narrative. GSU says the effect of this new characterization is to erode the Union's bargaining power. The Union therefore now seeks a common employer declaration to confirm that NLS and HLS are one employer for the purposes of Part VI of the Act.

[79] The four prerequisites for a common employer declaration are set out in *Re Comfort Cabs Ltd. and USW (2015), 258 CLRBR (2d) 174:*

> *[61] A review of this Board's jurisprudence reveals that there are four (4) prerequisites of a common employer declaration:*
>
> *1. The application must involve more than one corporation, partnership, individual or association and at least one of those entities must be a certified employer.*
>
> *2. The subject entities must be "sufficiently related" to a unionized employer through their involvement in associated or related businesses, undertakings or other activities.*
>
> *3. The subject entities must be operated under "common control and direction".*
>
> *4. The designation must serve a valid and sufficient labour relations purpose, interest or goal. See: Wayne Bus, supra. In other words, there must be a compelling labour relations reason for making the declaration and the benefits of doing so must outweigh the mischief such declaration is likely to cause.*

[80] More recently, in *United Brotherhood of Carpenters and Joiners of America, Local 1021, v International Cooling Tower Inc.*, 2023 CanLII 24873 (SK LRB) [*International Cooling Tower*], the Board noted that the language used in *Comfort Cabs* should be adjusted where it conflicts with the language of the provision under consideration (emphasis added):

> *[116] It is helpful to note that aspects of the language used in Comfort Cabs are derived from clause 18(1)(b) of The Construction Industry Labour Relations Act, 1992, SS 1992, c C-29.11 [CILRA]. This is made clear by the Board's reference to United Brotherhood of Carpenters and Joiners of America, Local 1985 v Graham Construction and Engineering Ltd., et. al., [1998] Sask LRBR 719[6] [Graham Construction] and upon review of the reasons in Graham Construction.*
>
> *[117] When Graham Construction was decided, Clause 18(1)(b) of the CILRA, 1992 permitted the Board to make a declaration if "a corporation, partnership, individual or association is sufficiently related to a unionized employer that, in the opinion of the board, they should be treated as one and the same." The current legislation does not include a similar provision. Nor does it contain a similar "sufficiently related" test. Moreover, it is the businesses, undertakings or other activities that are to be associated or related, pursuant to section 6-79.*
>
> *[118] Therefore, the language that was used in Comfort Cabs should be adjusted to ensure consistency with the language of the provision, as outlined herein.*

[81] With respect to the second prerequisite from *Comfort Cabs*, s. 6-20 does not use the words "sufficiently related entities"; it speaks of *associated or related businesses, undertakings or other activities* being carried on.

[82] Further, with respect to the third prerequisite, s. 6-20 requires that these businesses, undertakings or other activities be carried on under common control *or* direction, rather than common control *and* direction. In *International Cooling Tower* the Board suggested that "control" and "direction" are not necessarily synonymous. At paragraph 169 the Board said: **"***Control" focuses on matters of the general orientation of the entity; "direction" focuses on the day-to-day management.* The common control or direction must be by *one person*, through different corporations, partnerships, individuals or associations. "Person" is defined in *The Legislation Act*[1] and includes a corporation.

[83] Finally, the Board notes the following general principle as per *Book Insulations*[2]*:*

> *[44] In assessing a common employer application, the Board is focused on determining the true employer of the employees in question for labour relations purposes. In performing this assessment, the Board undertakes a functional assessment of the "actual seat of fundamental control or direction of the activities that determine employment and working conditions of the employees":*
>
> > *The inquiry under each of ss. 2(g)(iii) and 37.3 of the Act is directed to determining the "true employer(s)" for labour relations purposes of the employees in question. A functional analysis to identify the actual seat of fundamental control or direction*

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[1] *The Legislation Act*, SS 2019, c L-10.2, s 2-29: "In an enactment: … "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person[.]"

[2] *International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v Book Insulations Ltd*., 2019 CanLII 98480 (SK LRB) [*Book Insulations*]

> *of the activities that determine employment and working conditions of the employees must be undertaken in both instances using similar criteria. The results of the exercise may identify more than one "common" employer exercising fundamental control or direction. A detailed examination of the relationship between the entities involved and their relationship to the work place must be undertaken using various criteria outlined below. Wayne Bus, at paragraph 128.*

[84] The Board will now review each of the four requirements.

The application must involve more than one corporation, partnership, individual or association with at least one of those entities a certified employer

[85] NLS suggested in argument that since both Respondents in this application recognize that they are already certified, the Union has no rights to preserve or gain via this application, and that this application could therefore be dismissed at the first stage.

[86] However, NLS goes on to say that on a basis test, there are two businesses involved, and both are certified by GSU. It does not seriously dispute this requirement.

[87] Two businesses are involved where previously there was one. Further, the Board finds that the Union does have rights to preserve. If the common employer application is not granted, there is potential for imminent erosion of Union bargaining strength.

[88] The Board finds that the first requirement is met.

The business, undertakings or other activities of the two entities must be associated or related

[89] As noted above, s. 6-20 does not use the words “sufficiently related entities”; it speaks of *associated or related businesses, undertakings or other activities* being carried on.

[90] According to the Reply filed by HLS, both HLS and NLS operate auctions marts in their respective locations.

[91] Further, according to the profile reports tendered in evidence by GSU, NLS and HLS have a common owner: 324007 Alberta Ltd.

[92] The ISC records tendered in evidence show the following:

a) 324007 Alberta Ltd. owns the business Heartland Livestock Services.

b) 102029628 Saskatchewan Limited was incorporated on August 11, 2017. Its sole director and shareholder is Brent Brooks. It owns Northern Livestock along with 324007 Alberta Ltd.

c) NLS is a partnership between 324007 Alberta Ltd. and 102029628 Saskatchewan Limited.

d) HLS is a business (a sole proprietorship) fully owned by 324007 Alberta Ltd.

[93] 324007 Alberta Ltd. has ownership interests in both HLS and NLS. To put it another way, the businesses of HLS and NLS are both owned in whole or in part by the same company.

[94] NLS argues that under the second stage of the test, this Board has clarified that simply being related entities is not a determining factor. It says that the only evidence provided by the Union is the profile reports. It says there was no evidence called on what the information in the profile reports means. The Union, it says, did not call any evidence on either business, or the undertakings or activities of NLS or HLS.

[95] This Board has stated in *Atco Frontec Ltd. v United Food and Commercial Workers Union, Local 1400*, 2024 CanLII 13528 (SK LRB):

> ***[53]*** *The second prerequisite requires that the businesses, undertakings or other activities of ASL and Frontec be associated or related. In International Cooling Tower, the Board commented as follows with respect to this prerequisite:*
>
> > *[141] Relevant Saskatchewan case law has considered the following in determining whether the businesses, undertakings, or other activities are associated or related:*
> >
> > > *a. Functional integration (Wayne Bus, at paragraph 152; North American at paragraph 66, ftnt 3);*
> > >
> > > *b. Commercial connection, including evidence of a significant degree of interdependence in the carrying on of an enterprise in which the parties to the relationship have a mutual or reciprocal interest. This could include common directors, officers or shareholders (structural) but does not need to (Wayne Bus, at paragraph 153);*
> > >
> > > *c. Common interest or common purpose (Wayne Bus, at paragraph 152).*
> >
> > *[142] All three of these elements are described in the following excerpt from Wayne Bus:[17]*
> >
> > > *The concept of "association" is predicated upon the organization or alliance of two or more individuals or entities out of a common interest or for a common purpose; their respective activities may be combined in a manner that results in an organization that is functionally independent of either 'associate' alone.*
> > >
> > > *The concept of "relation" connotes connection in a commercial sense. The connection need not be structural, as in the case of companies that have common directors, officers or shareholders, but may arise because of a*

> *significant degree of interdependence in the carrying on of an enterprise in which the parties to the relationship have a mutual or reciprocal interest.[73]*

[96] The Board reads these cases to say that the businesses need not be associated and related. One is sufficient. Secondly, contrary to NLS' submission that simply being related entities is not a determining factor, in the Board's view, a structural connection, is in and of itself, sufficient. As noted in the excerpt above, a commercial connection "could include common directors, officers or shareholders (structural) but does not need to." Common ownership of two businesses would similarly fall within a commercial connection. The connection "need not be structural but may arise because of a significant degree of interdependence in the carrying on of an enterprise in which the parties to the relationship have a mutual or reciprocal interest …". The Board takes this to mean that there does not have to be a structural relationship to fulfil the criteria and that it may be filled by other evidence. The Board is not saying that the structural evidence itself is insufficient.

[97] This point is further stated by this Board in *International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v Book Insulations Ltd*., 2019 CanLII 98480 (SK LRB):

> ***[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.*
>
> ***[48]*** *The Respondents argue that the Board's analytical focus must be on the activities, as opposed to the structure, of the entities. In considering this argument, the Board has again been guided by the modern rule of statutory interpretation. Section 6-79 allows the Board to make a declaration if it finds that associated or related businesses, undertakings or other activities are carried on under common control or direction. The distinction between the categories of "corporation, partnership, individual or association" and "businesses, undertakings or other activities", combined with the phrase "carried on" suggests that the provision is more concerned with the active businesses, undertakings or other activities of the organization or individual, than with the structure of the organization itself. But that certainly does not mean that the Board should ignore evidence of organizational structure altogether.*
> …

[98] Later in the decision, after setting out the four factors, the Board stated:

> ***[57]*** *The second requirement is that the businesses, undertakings or other activities be associated or related. The businesses in question are those that are operated by Hallbook and Book. Both companies primarily serve contractors by performing insulation work, in both the industrial and commercial areas. They both perform work or have performed work in Saskatchewan. As is discussed more in the next section, the corporate structure*

> *discloses common and interconnected directors and shareholders. The entities are not organized out of a common interest or for a common purpose, and so are not "associated", but in a commercial sense, the businesses are related.*
>
> (emphasis added)

[99] The Board finds the second requirement is met.

The subject entities must be operated under "common control and direction"

[100] As noted above, with respect to the third prerequisite, s. 6-20 requires that these businesses, undertakings or other activities be carried on under common control *or* direction, rather than common control *and* direction. "Control" and "direction" are not necessarily synonymous. "Control" focuses on matters of the general orientation of the entity whereas "direction" focuses on the day-to-day management.

[101] *Comfort Cabs* also emphasizes consideration of the *Walters Lithographic* factors when examining whether common control and direction applies. These factors are:

1. Is there common ownership and/or financial control?
2. Is there common management?
3. Is there any interrelationship of operations?
4. Is there centralized control of labour relations?
5. Do the Employers represent themselves to the public as a single integrated enterprise?

[102] In *International Brotherhood of Electrical Workers, Local 2038 v Stuart Olson Industrial Contractors Inc.,* 2021 CanLII 46897 (SK LRB) this Board held at para. 88:

> ***[88]*** *Not one of the Walters Lithographic factors is dispositive of the issue, nor is the list of factors a set of mandatory preconditions for the exercise of the Board's discretion. Each case will be determined on its particular facts, and no two cases will be exactly alike. In one situation, a factor may be particularly influential, having shed light on the reality of the relationships involved. In another case, the same factor may be less revelatory and therefore less important.*

[103] NLS argues that the Union provided no evidence of common control or direction between the parties. NLS argues the Union failed to provide evidence of the day-to-day operations. NLS says there was no evidence of who imposes discipline, who pays, who controls the day-to-day work, or whether employees are passed back and forth between operations. NLS argues that the Union attempted to satisfy this requirement on the basis that NLS and HLS bargained together. NLS says, however, that evidence of who handles the day-to-day labour relations is required:

who handles the grievances, who handles the hiring and firing, who handles the arbitration? NLS says given the lack of evidence and the evidence that NLS treats the businesses as separate via the Successor Letter in October 2017, and that the businesses are competitors via the email in November 2023, no common direction or control can be found in this case. NLS says the only evidence we have is that the parties may have bargained together in the past.

[104] For the reasons that follow, the Board finds that the evidence does establish a common employer.

Factor 1:

[105] Regarding the first factor, the Board finds that there is common ownership: HLS and NLS are owned in whole or in part by the same company.

Factors 2, 3 and 4:

[106] A crucial part of the evidence in this case is the fact that HLS and NLS contracted with GSU as one entity: "the Company". This is clear from the 2018-19 CBA. None of the parties provided any case law that resembles the present fact situation, and the Board finds that the common employer jurisprudence must be considered in light of this distinguishing feature. As noted in *Stuart Olson,* each case must be determined on its particular facts, and not one of the *Walters Lithographic* factors is dispositive of the issue, nor is the list of factors a set of mandatory preconditions for the exercise of the Board's discretion.

[107] In the Board's view, the fact that NLS and HLS contracted as "the Company" shortly after the Sale is compelling evidence that these two businesses were indeed a common employer. The 2018-19 CBA, which was the first collective agreement following the Sale, specifically refers to HLS and NLS as "the Company". Only one individual signed the agreement and the Letters of Understanding "for the Company". The 2018-19 CBA does not distinguish between HLS employees and NLS employees. Further, it provides the same classifications, scale of wages and work schedule as in the 2015-17 CBA between HLS and GSU. The 2015-17 CBA was the agreement immediately preceding the 2018-19 CBA.

[108] The 2018-19 CBA and 2020-22 CBA set out pages of other examples of terms and conditions of employment without any distinction or modification between HLS and NLS. For example, the 2018-19 CBA defines HLS and NLS as "the Company". According to the terms of the agreement, in certain instances, the service of an employee is treated the same regardless of the location of their employment. For instance, Article 1 – Definitions – states that "SENIORITY

shall be defined as all service with the Company". Therefore, an employee working in Moose Jaw (HLS) could move to the Prince Albert location (NLS) without a loss of seniority.

[109] Similarly, sick leave and disability benefits provided under Article 8 indicate eligible employees "who have completed 90 days or more continuous service with the Company shall be entitled to benefits…". Again, given that "the Company" is defined as HLS/NLS, this provision indicates that accumulation of days at one location is transferable with that individual to another location.

[110] Also, Article 9 provides a Pension Plan and states:

> ***Heartland Livestock Services/Northern Livestock Sales/Grain Services Union (ILWU) – Canada) Defined Contribution Plan****, effective September 19, 2001, arises out of and forms part of the Collective Agreement between the Company and the Union.*
>
> *Ninety days from the date of employment with the Company, all full-time employees engaged on or after September 20, 2011, shall, as a condition of employment, join the Heartland Livestock Services/Norther Livestock Sales/Grain Services Union (ILWU) – Canada Defined Contribution Pension Plan.*

[111] Notably, the 90-day trigger for joining the Plan is based on employment with the Company. It does not distinguish between working at HLS and NLS.

[112] The collective agreements also indicate joint benefits plans. For example:

> *Article 8 – Benefit Plans, the 2018/19 CBA states that "The Company will participate in the Group Life Insurance Plan designated as Policy 770352 carried by GroupSource.".*

[113] Notably, HLS and NLS do not hold separate policies.

[114] The evidence also shows that payment of GSU union dues for HLS and NLS employees is made by one common payor: Nilsson Bros. Inc. Its address on the cheque is the same as the physical and mailing address for 324007 Alberta Inc. (324007 Alberta Inc. owns HLS and is a partner in the ownership of NLS.) The documents accompanying payment of the union dues, "Payroll Item List by Division", indicate employee numbers for each of the individuals employed in each "Division".

[115] Also, Mr. Van Luven testified that whether a grievance related to a NLS employee or an HLS employee, Stewart Stone was the individual GSU dealt with.

[116] The Board finds common management or interrelationship of operations and centralization of labour relations (factors 2, 3 and 4) are shown by the following:

a. That HLS and NLS contracted as one employer - "the Company";

b. That there is no distinction between HLS and NLS in the collective agreements;

c. That HLS and NLS are named together on various pension and benefit plans;

d. That seniority and sick leave are based on employment with "the Company" rather than employment with HLS or NLS;

e. That union dues are received from the same payor, accompanied by a document entitled "Payroll Item List by Division" from the same bank account, in the same envelope from a company with the same address as the company who owns HLS.

f. That Stewart Stone (HLS) handled all grievances whether from HLS or NLS;

[117] The Respondents also argued that employers that are in competition with one another cannot be said to be under common direction and control. As noted earlier, neither NLS nor HLS called any evidence to support their characterization that HLS and NLS are in competition with one another, other than the general references to same in their respective Replies. In any event, the evidence, in the Board's view, shows that it is more likely than not that the Respondents' businesses are associated or related and are carried on under common control of direction.

[118] With respect to the replies filed by the Respondents, the Board notes the following comments from *International Brotherhood of Electrical Workers, Local 2038 v Stuart Olson Industrial Contractors Inc.*, 2021 CanLII 46897 (SK LRB) are applicable:

> ***[13]*** *…First, the replies filed in these proceedings contain a concise statement of the material facts which are intended to be relied upon. The submissions within the replies are, in so far as they are matters of fact, declared to be true to the best of the declarant's information, knowledge and belief, and, in so far as they are matters of opinion, are reasonably and honestly believed by the declarant. In this case, the declarants are individuals who would normally be in possession of the facts that are outlined in those replies. The replies meet the threshold of reliability to be considered as evidence in these proceedings.*
>
> ***[131]*** *However, the weight to be given to the replies is another matter. The declarants did not testify, and their comments were not subject to cross-examination. Although there is no property in witnesses, evidence about the companies' internal operations is within the companies' possession and control. Subpoenaing a witness to testify on behalf of an adverse party is not necessarily realistic, especially if the evidence is to be presented in an examination-in-chief. Applying for, or requesting, the cross examination of a declarant or affiant is in many cases going to be limited by the contents of the reply in question. Therefore, if the applicant raises a prima facie case, it is for the Respondent to decide*

> *whether to call evidence to refute that case, and to then do so. Depending on the circumstances, it may not be sufficient to suggest that the applicant had an opportunity to cross examine on content of the replies.*

[119] The Respondents do not bear the onus of proof in this case; however, particularly in light of the unusual fact in this case that the parties contracted as one entity immediately following the Sale, the Board expects the Respondents would have called evidence to explain and support their statements that they are independent businesses and competitors. While the Board does not draw an adverse inference, it does attribute little weight to the statements in the Respondents' Replies.

[120] The Respondents argued that joint collective bargaining with the Union is the only activity carried on in common by HLS and NLS, but that that is a function of NLS's successor obligations rather than centralized control over labour relations. However, neither NLS nor HLS provided any evidence of joint bargaining until the 2022-23 round of bargaining.

[121] The evidence shows that GSU dealt only with HLS in both the 2018-19 CBA and the 2020-22 CBA. The process that occurred during bargaining for the 2022-23 CBA differed from the bargaining process that culminated in the 2018-19 CBA and 2020-22 CBA. Mr. Stone retired at some point during the last round of bargaining. He brought in David Nilsson as his replacement. There is evidence to suggest that Mr. Nilsson continued to bargain on behalf of both NLS and HLS. However, Mr. Brooks for the first time became involved on behalf of NLS. In November 2023, Mr. Brooks, also for the first time, advised GSU that NLS was a separate business from and in competition with HLS and that it wanted to bargain independently.

[122] In the Board's opinion, nothing that occurred in 2022 and 2023 takes away from the Board's finding that NLS and HLS were related companies from the time they entered into the 2018-19 CBA. Although the Respondents' behaviour in 2022-23 appears to be a retraction from their previous representations as "the Company", what transpired in the previous years cannot be erased. The Respondents cannot simply declare in 2023 that they are not a common employer without any explanation, clarification or contradiction of the evidence showing otherwise.

Factor 4:

[123] The final criteria from *Walters Lithographic* is whether the employers represent themselves to the public as a single integrated enterprise. There was no evidence from GSU on

this point other than the Union's evidence that HLS and NLS represented themselves as single enterprise to GSU. However, as noted earlier, it is not necessary that all factors be present.

The designation must serve a valid and sufficient labour relations purpose, interest or goal

[124] This Board has clearly indicated that the purpose for the common employer declaration is to prevent actual or imminent erosion of the Union's bargaining rights, not to expand those bargaining rights.

[125] HLS argues that the only purpose achieved by the GSU's requested declaration is a wrongful expansion of the Union's bargaining rights so as to extend to NLS the terms and conditions of employment entered into between HLS and the Union without bargaining collectively with NLS. It says in light of NLS's successor obligations, the Union's bargaining rights have been preserved and there are no labour relations purposes served by the requested declaration.

[126] NLS similarly argues that there is no labour relations reason to make a common employer declaration and that any declaration which applies to HLS and NLS would artificially enhance the GSU's bargaining power inappropriately. NLS argues that GSU is seeking to expand its bargaining power by asking this Board to combine two independent businesses.

[127] Valid and sufficient labour relations purposes may include preventing the actual or imminent erosion of a union's bargaining rights, as opposed to an expansion of rights: *International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v Book Insulations Ltd*., 2019 CanLII 98480 (SK LRB)

[128] In this case, the concern is with the fragmentation or erosion of bargaining rights. The Union is not seeking to expand its bargaining rights to include NLS. In its simplest form, the Union is saying that HLS/NLS have been a common employer since the 2017 Sale and that they are now trying to argue they are not a common employer.

[129] The legislation is concerned with erosion of bargaining rights, regardless of whether that result was intended. Mr. Torgerson, on behalf of the Union, gave evidence that the common employer declaration is required to maintain a viable bargaining unit. At the time of the hearing in October 2024, there were a total of seven people in the bargaining unit: four in Swift Current (HLS); two in Yorkton (HLS) and one in Lloydminster (NLS). If the Employer's argument succeeds, this unit will be divided into one unit containing six members and another with a single member. The Board finds that this would constitute an erosion of GSU's bargaining rights.

[130] Finally, NLS argues that the delay in GSU's bringing the common employer declaration application should result in a finding that the labour relations harm outweighs any benefit. It says that the delay would cause labour relations harm to both NLS and HLS.

[131] In *Book Insulations,* the Board cautioned against delay in bringing a common employer application, suggesting that "the longer the delay and the greater the number of employees that could potentially be unilaterally swept in, the more likely a common employer declaration will do more labour relations harm than good".

[132] As the Board has already noted, this is an unusual common employer application, and the concern addressed in *Book Insulations* is not present. Further, the Board finds that GSU has a reasonable explanation for the delay.

[133] It is not in dispute that GSU took no steps to apply to the Board pursuant to the successorship provisions of the Act when it was notified by NLS on October 20, 2017, that NLS was a successor employer. Mr. Van Luven testified that it was not until NLS took the position on November 7, 2023, that it was a separate business from HLS and in competition with HLS, that GSU felt the need to file a common employer application. Up until that point, Mr. Van Luven said the bargaining unit was stable and it appeared that all parties agreed that Local 7 remained the cohesive bargaining unit. GSU explained why it did not pursue an application to the Board and, given the actions of HLS and NLS, it is not unreasonable for the Union to have concluded there was no need to pursue an application. HLS and NLS represented as one Company – as one employer.

[134] Given that HLS continued to bargain with GSU in the same manner as it had prior to the 2017 Sale, that HLS and NLS were referred to as one (i.e.: "the Company"), that Stewart Stone handled all grievances regardless of whether they involved HLS or NLS, it was reasonable for GSU to conclude that nothing had really changed, and that GSU was dealing with one common employer.

[135] Based on the evidence as a whole, the Board finds that NLS fell under the control or direction of HLS following the Sale. NLS and HLS were related companies when they negotiated as one with GSU following the 2017 Sale. Following the 2017 Sale and the Successor Letter, HLS represented to GSU that they were acting together as "the Company"; that they were the employer. For the reasons this Board has outlined above, the Board finds that HLS and NLS were related businesses when bargaining took place for the 2018-19 CBA.

[136] There is no evidence that anything changed until 2022-23. Beginning at some point in the last round of bargaining, HLS and NLS started to advance the position that they are not and have never been related employers. Had they taken that position from the outset, we would be dealing with a different set of facts. GSU may have brought a timelier application, or it may not have brought an application at all. The common employer declaration the Union now seeks is to continue the status quo. The Board fails to see what alleged harm may be experienced by HLS and NLS in continuing the labour relations the Respondents precipitated. On the other hand, by now seeking to change the characterization of their relationship from that of related businesses to independent businesses, the Union is harmed.

Decision and Order:

[137] Considering all of the evidence in this matter, the Board finds that it is appropriate to exercise its discretion under s. 6-20 of the Act to declare HLS and NLS to be one Employer for the purposes of Part VI of the Act. As a result, with these Reasons an Order will issue that the Application for Common Employer pursuant to section 6-20 of *The Saskatchewan Employment Act* in LRB File No.043-24 is granted.

[138] In light of the Board's decision, there is no need to consider GSU's successorship application under section 6-18 of *The Saskatchewan Employment Act* in LRB File No. 113-24.

[139] The Board thanks the parties for the submissions they provided, all of which were reviewed and considered in making a determination in this matter.

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

DATED at Regina, Saskatchewan, this **12th** day of **February 2025.**

LABOUR RELATIONS BOARD

Carol L. Kraft
Vice-Chairperson