

CONSTRUCTION WORKERS UNION, CLAC LOCAL 151, Applicant v LEDCOR UTILITY INFRASTRUCTURE INC., Respondent and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 2067, Intervenor

LRB File No. 100-25; December 18, 2025

Chairperson, Kyle McCreary; Board Members: Shelley Boutin-Gervais and Grant Douziech

Citation: *IBEW v CLAC*, 2025 SKLRB 58

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Certification – Appropriate Bargaining Unit – Board finds two employee unit does not justify the application of the build-up principle – The facts of the case do not justify the application of a principle reserved for rare and compelling cases.

REASONS FOR DECISION

Background:

[1] Kyle McCreary, Chairperson: The Construction Workers' Union, CLAC Local 151 ("CLAC") has applied for certification of an all employees bargaining unit with Ledcor Utility Infrastructure Inc. ("the Employer") pursuant to s. 6-9 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 ("the Act"). The International Brotherhood of Electrical Workers Local 2067 ("IBEW") was granted intervener status in this matter in *IBEW v CLAC*, 2025 SKLRB 50 (CanLII), and asks for the Board to make determinations related to the build-up principle in the Power Line Transmission industry.

[2] Based on the evidence filed, the Board finds that the Employer has performed contracts for SaskPower involving ground grid construction work, power pole replacement work, and manhole and duct work. At the time of application, the Employer had been awarded two contracts, and by November, the Employer had been awarded nine contracts.

[3] At the time of application, the Employer had two employees in the proposed unit. As of the November 10, the date of the Employer's affidavit, the Employer had three employees in the

proposed unit. The Employer does not intend to expand its workforce in the immediate future. IBEW asserts that the Employer should eventually have at least five employees in the proposed unit.

Relevant Statutory Provisions:

[4] This application is pursuant to s. 6-9 of the Act, which reads:

Acquisition of bargaining rights

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.*

(2) When applying pursuant to subsection (1), a union shall:

(a) establish that 45% or more of the employees in the unit have within the 90 days preceding the date of the application indicated that the applicant union is their choice of bargaining agent; and

(b) file with the board evidence of each employee's support that meets the prescribed requirements.

[5] The Board's authority to determine appropriate unit is set out in s. 6-11 of the Act:

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

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

(b) in the case of an application to move a portion of one bargaining unit to another bargaining unit, if the portion of the unit should be moved.

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

(3) Subject to subsections (4) to (6), the board shall not include in a bargaining unit any supervisory employees.

(4) Subsection (3) does not apply if:

(a) the employer and union make an irrevocable election to allow the supervisory employees to be in the bargaining unit; or

(b) the bargaining unit determined by the board is a bargaining unit comprised of supervisory employees.

(5) An employee who is or may become a supervisory employee:

(a) continues to be a member of a bargaining unit until excluded by the board or an agreement between the employer and the union; and

(b) is entitled to all the rights and shall fulfill all of the responsibilities of a member of the bargaining unit.

(6) Subsections (3) to (5) apply only on and after two years after the date on which subsection (3) comes into force.

[6] This matter is determined on affidavit evidence and without an oral hearing pursuant to clauses 6-111(1)(e) and (q):

Powers re hearings and proceedings

6-111(1) With respect to any matter before it, the board has the power:

...

(e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the board considers appropriate, whether admissible in a court of law or not;

...

(q) to decide any matter before it without holding an oral hearing.

Analysis and Decision:

[7] This matter was determined without an oral hearing. The Board finds the affidavit evidence sufficient to determine this matter and the parties have been given an opportunity to know the case to meet: *Stephen-McIntosh v SEIU-West*, 2025 SKLRB 2 (CanLII); *SEIU-West v City Centre Bingo*, 2025 SKLRB 34 (CanLII).

[8] The onus in this application is on CLAC to establish that the applied for unit is an appropriate bargaining unit. CLAC has applied for an all-employees unit with limited exceptions. When determining that a bargaining unit is appropriate, the Board considers factors including the size of the proposed unit: whether the proposed unit will be able to bargaining effectively, the community of interest shared by the employees in the proposed unit, organizational difficulties in particular industries, the promotion of industrial stability, the intention of the parties, the organizational structure of the employer, the effect that the proposed unit will have upon the employer's operations, and the historical patterns of organization in the industry: *North Battleford Community Safety Officers Police Association, v. City of North Battleford*, 2017 CanLII 68783 (SK LRB); *Canadian Union of Public Employees v Phoenix Residential Society*, 2023 CanLII 72599 (SK LRB); *Canadian Union of Public Employees v Town of Preeceville*, 2024 CanLII 121019 (SK LRB); *United Brotherhood of Carpenters & Joiners of America, Local 1985 v CLAC Local 151*, 2025 SKLRB 48 (CanLII); *Teamsters v GFL*, 2025 SKLRB 57. When considering that this is an all employee unit, and the Board's preference for large units and the related positive impacts on

industrial stability and bargaining, the Board finds an all-employees unit is an appropriate unit for collective bargaining.

The Build Up Principle:

[9] IBEW asks the Board to make two declarations in this matter. One is that the Power Line Transmission construction and maintenance is to be treated differently at law than the construction industry generally. The second is to determine how build-up applies in the Power Line Transmission industry. The Board does not see these issues as necessary to determine in this matter. As discussed below, whether viewed through the lens of the construction industry or as the policy applies generally, the build-up principle is inapplicable to this case. The Board declines to make determinations beyond what is necessary to determine the matter before it.

[10] The Board has discussed the application of the build-up principles in cases such as *Communications, Energy and Paperworkers Union of Canada v. J.V.D. Mill Services Inc.*, 2011 CanLII 2589 (SK LRB), *United Food and Commercial Workers, Local 1400 v K-Bro Linen Systems Inc.*, 2015 CanLII 43773 (SK LRB), and *Canadian Union of Public Employees v Town of Preeceville*, 2024 CanLII 121019 (SK LRB). The Court of King's Bench has discussed the build-up principle in *United Food and Commercial Workers, Local 1400 v K-Bro Linen Systems Inc.*, 2016 SKQB 161 (CanLII), and *Construction Workers Union, Local 151 v Saskatchewan Labour Relations Board and Technical Workforce Inc.*, 2017 SKQB 197 (CanLII). From these cases, the Board has made it clear that the build up principle is a policy that the Board can use but should be used sparingly and only in compelling circumstances, and as it relates to the construction industry, the principle should be used rarely. For the Board to consider using the build up principle to dismiss a certification application, the facts of a case must raise "legitimate concerns about the essential representative character of the Union": *Unite Here, Local 47 v SNC Lavalin O & M Logistics Inc.*, 2012 CanLII 26870 (AB LRB) at para 22.

[11] Whether the build up principle is applied as it is to a general unit or to a construction unit, it would be inapplicable to this case. At the date of application, there were two employees. The Employer states there are now three employees. IBEW asserts that the Employer will have to hire at least five employees. This is a speculative assertion as the Employer is completing contracts with the workforce it currently employs. Regardless of whether the increase in the workforce is to three or five, these increases do not signify the "rare" circumstances where build-up would be applied in the construction industry or the "compelling circumstances" required for the use of the build-up principle generally. The magnitude of increase in the workforce is minimal, and the

current workers and future workers appear likely to be of the same trade. There is no reason for the Board to inquire further into concerns about the representational character of the union.

[12] As a result, with these Reasons, an Order will issue in relation to LRB File No. 100-25 that:

- a. The ballots held in the possession of the Board Registrar pursuant to the Direction for Vote issued in this matter on June 16, 2025, be tabulated in accordance with *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021*, RRS c S-15.1 Reg 11;
- b. The result of the vote be placed in Form 24 and that form be advanced to a panel of the Board for its review and consideration

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

DATED at Regina, Saskatchewan, this **18th** day of **December, 2025**.

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson