BCLRB No. B58/2015

BRITISH COLUMBIA LABOUR RELATIONS BOARD

NORTHERN ACCESS SYSTEMS INC.

("Northern Access")

-and-

CONSTRUCTION AND ALLIED WORKERS' UNION,
LOCAL 68 AFFILIATED WITH THE CHRISTIAN LABOUR
ASSOCIATION OF CANADA

("CLAC")

-and-

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL NO. 280

("SMW")

-and-

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED
WORKERS, LOCAL NO. 118

("Heat & Frost")

PANEL:	Jitesh Mistry, Vice-Chair
APPEARANCES:	Mark E. Colavecchia, for Northern Access Timothy G. Charron, for CLAC Derrill Thompson, for SMW John MacTavish and Nicole E. O'Young, for Heat & Frost
CASE NO.:	68231
DATE OF DECISION:	April 8, 2015

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 CLAC has applied under Section 18 of the *Labour Relations Code* (the "*Code*") for certification as the exclusive bargaining agent for employees of Northern Access in British Columbia, excluding persons above the rank of working foreman, and office and clerical staff.

2 At the initial certification hearing before the Board, Heat & Frost and SMW applied for "interested party status" with respect to this matter. This decision solely deals with the interested party status applications.

II. BACKGROUND

3 Stuart Olson Inc. ("Stuart Olson") is a corporation which describes itself on its website as "an integrated construction services company".

4 Stuart Olson operates three business groups: the Buildings Group, the Industrial Group and the Commercial Systems Group.

5 Stuart Olson's Industrial Group operates both under the Stuart Olson brand, as well as several other corporate entities that it owns, including Northern Access and Fuller Austin Inc. ("Fuller Austin"). Both SMW and Heat & Frost hold long-standing bargaining rights (by way of Board certification) for their traditional craft units for employees of Fuller Austin. The Heat & Frost certification dates back to 1964; the SMW certification to 1970.

III. THE PARTIES' POSITIONS

Heat & Frost and SMW's Position

6 Heat & Frost and SMW submit interested party status in order to properly object to CLAC's application for certification on the grounds that it constitutes an untimely raid.

7 Heat & Frost submits that Northern Access and Fuller Austin "are likely common employers or alternatively a successorship has occurred" and, as such, CLAC's application constitutes an untimely raid.

8 Heat & Frost says that "[it] had intended on filing a common employer application for Fuller Austin and Northern [Access] concurrently with this submission, however, [it] has not yet been able to gather sufficient facts surrounding the nature of Northern [Access's] operations in British Columbia". Heat & Frost adds that it is continuing to investigate these facts, including awaiting document disclosure from both Stuart Olson

and the Board (the latter pursuant to the *Freedom of Information and Protection of Privacy Act,* R.S.B.C. 1996, c. 165).

9 SMW submits that it also intends to file a common employer application with respect to Northern Access and Fuller Austin, but that it has not yet been able to ascertain exactly what projects Northern Access is working on in BC and the nature of the work being performed on those jobs. SMW says that once it has obtained the necessary information it will be completing and filing its common employer application.

10 SMW further submits that, in the interim, it meets the test for being granted interested party status. SMW says the Board has ruled that it will not allow a checkerboard of bargaining units that combine craft units and all-employee bargaining units. SMW says that if its forthcoming common employer application is granted, then a CLAC all-employee certification would result in such a checkerboard of bargaining units.

CLAC's Position

11 CLAC submits that the applications for interested party status should be dismissed as contrary to the Board's long-held policy that certification applications should be dealt with on an expedited basis, notwithstanding that other parties may be asserting representational rights with respect to all, or part, of the bargaining unit in question. CLAC further submits that this approach has, in the past, led the Board to deny standing to third parties asserting bargaining rights based on assertions of successorship or common employer status.

12 CLAC further submits that it is not an outsider to this situation. Rather, it has a long-standing certification with Stuart Olson in BC, as well as a long-standing collective bargaining relationship with Northern Access outside of BC. CLAC says this is not a case where a corporate group is seeking to stymie legitimate, hard-won bargaining rights.

13 CLAC further says that its application for certification is for an all-employee bargaining unit. In contrast, Heat & Frost and SMW's bargaining rights with respect to Fuller Austin are craft-based certifications. CLAC suggests that the Board should hesitate to consider any applications that seek to reduce the number of employees entitled to the benefits of collective bargaining.

Heat & Frost and SMW's Position in Final Reply

14 Heat & Frost maintains its position that it is an interested party in this matter as its rights may be affected if CLAC obtains a certification for an all-employee bargaining unit.

15 In final reply, Heat & Frost added a new ground to its interested party status application. Heat & Frost submits that it should also be granted interested party status

on the basis of what it describes as "new evidence" that discloses a lack of an adversarial relationship between Northern Access and CLAC.

16 The alleged new evidence arises out of Heat & Frost's disclosure request to Stuart Olson. In response, Stuart Olson provided answers to various questions posed by Heat & Frost, including the following:

- In response to question #1 b: "Which companies in the Industrial Group are currently operating in British Columbia?", Stuart Olson responded that **"Fuller Austin Inc. is currently operating in British Columbia. Northern Access Systems Inc. intends to begin operations soon".**

- In response to question #2: which requested "Descriptions of any projects on which **companies** in the Industrial Group are currently operating in British Columbia", Stuart Olson replied that **"Northern Access Systems Inc. has no current projects in British Columbia, but is intending to begin work on the Fort St. James Green Energy Project as a scaffolding sub-contractor".** (emphasis added)

17 Heat & Frost says that until this disclosure was made by Stuart Olson, it had assumed that CLAC applied for certification and Northern Access did not oppose the certification, because the latter was currently operating in BC. Heat & Frost says that the new evidence demonstrates that this is decidedly not the case: Northern Access is not yet operational in this province.

18 Heat & Frost submits that the facts of this case (in light of the new evidence) raise considerable concern that CLAC and Northern Access are not sufficiently adversarial, and may not be inclined to bring key issues or facts to the Board's attention. On this point, Heat & Frost notes that CLAC itself has admitted that it has a long-standing collective bargaining relationship with Northern Access outside of BC. Heat & Frost submits that this "'long-standing relationship' combined with the fact that Northern Access did not oppose certification of an all-employee unit that is not yet even in existence is evidence of a non-adversarial relationship, and an attempt to circumvent Fuller Austin's existing collective bargaining obligations".

19 In reply to CLAC's submission, Heat & Frost says that the fact that there are no other CLAC-certified Stuart Olson companies operating in BC, through which the Stuart Olson Industrial Group could avoid its existing collective bargaining obligations, CLAC and Northern Access are effectively attempting to create one.

20 In further reply to CLAC's submission, Heat & Frost submits that in the construction industry both craft units and all-employee bargaining units are appropriate for collective bargaining. Heat & Frost says that the real concern is not the potential reduction of the number of employees entitled to the benefits of collective bargaining, but rather that the potential for the Board's processes being used to certify a unit where there are no employees.

21 SMW adopts the final reply submissions of Heat & Frost in their entirety.

IV. ANALYSIS AND DECISION

22 Heat & Frost and SMW apply for interested party status on the grounds that Fuller Austin and Northern Access are likely common employers or a successorship has occurred between them. Heat & Frost and SMW say that, if either is the case, CLAC's application for certification constitutes an untimely raid. Based on the materials before me, neither Heat & Frost nor SMW have yet applied for a common employer or successorship declaration.

23 I find that the following passages from the Board's decision in *Geopac Inc.*, BCLRB No. B128/2013, 229 C.L.R.B.R. (2d) 234 ("*Geopac*"), are a complete answer to Heat & Frost and SMW's initial submissions in support of their interested party status application:

> I find *Alberni* is the case which states the policy of the Board under the Code correctly. The facts of the matter before me are consistent with the facts in *Alberni*. In that case, the Board made the following remarks:
>
>> The Boilermakers apply for interested party status in two competing applications for certification filed respectively by the IWA and the Association to represent employees of the Employer. The Boilermakers base their request for status on an application for successorship which is pending before the Board to have the Employer named as the successor to the entity to which the Boilermakers are certified.
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>> ***
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>> The Boilermakers argue that their entitlement to interested party status flows from its pre-existing representational rights. However, those representational rights relate to another entity, Alberni Engineering and Shipyard Ltd., not to this Employer. The issue becomes whether the Boilermakers' outstanding application for successorship provides sufficient grounds to establish a legally direct and material interest in these proceedings.
>>
>> I consider the *International Paper* case relied upon by the Boilermakers to be distinguishable. In that case, the applicant union that was seeking to intervene in a certification application filed by a second union already had recognized

representational rights at another location of the employer. Its material interest was founded on its existing certification rights at that other location: *Golden Spurs Productions Ltd.*, IRC No C184/90 (Reconsideration of IRC No. C145/90), p. 9. As the Boilermakers do not have a recognized collective bargaining relationship with this Employer, I do not find the reasoning in *International Paper* to be directly applicable.

In contrast, **in other cases, where an interest is contingent on the occurrence of future events, the Board has not been inclined to grant an applicant interested party status**. ...

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Applying those principles to this case, the Boilermakers do not have at present a legally recognized claim to representational rights with this Employer. If the Boilermakers establish their claim that a successorship has occurred and a declaration should issue, the question of the effect of that successorship declaration on other certifications can be addressed at that time. The issues raised by the Association in relation to the effect of the *Cicuto* decision could then be argued. If the Association succeeds in its argument, then while a successorship may have existed as of the date of the disposition in 1993, those rights may have been extinguished by the granting of a certification to the successful applicant in these competing applications for certification of a wall-to-wall unit. If the Association does not succeed in its argument on the effect of the *Cicuto* decision, then the Board's power to vary or cancel under Section 142 could be invoked.

That contemplated process is not only the most efficient way to proceed, but it is also consistent with the Board's policy to have applications for certification dealt with expeditiously. By contrast, the delay necessary to hear the successorship application would prejudice the interests of the employees in having the representation of their choice in that interval. These applications for certification should accordingly proceed in the usual manner recognizing that the Board has the necessary authority to grant remedial relief under its variance power should that prove necessary. If a

> successorship declaration is eventually granted, the Board would be required to re-examine the bargaining unit configurations and to consider the arguments based on the *Cicuto* decision alluded to by the Association. If the Boilermakers are ultimately successful, the Board has the necessary powers under Section 142 to restore the previous state of affairs or to fashion alternative remedies: *Burns International Security Services Ltd.,* BCLRB No. 40/86. (paras. 1, 24-26, 32 and 33)

> **In the case before me, Local 2404 has no certification with the Employer; only IUOE does. Local 2404 currently has no recognized collective bargaining relationship with the Employer. The fact it filed its Successor/Common Employer Application before IUOE filed its applications does not make Local 2404's interest any less contingent. I find the principles stated in *Alberni* apply. The interest of Local 2404 remains contingent and has not yet crystallized. I therefore deny its application to be a party in the proceedings in IUOE's applications under Sections 18 and 142.** (paras. 9-10, emphasis added)

24 I note that in *Geopac*, as well as the cases cited in it, the party seeking interested party status had actually filed an application for a common employer and/or successorship declaration. In the case at hand, Heat & Frost and SMW's interest in this matter is even more remote and contingent as they have not yet filed any such common employer or successorship applications.

25 With respect to Heat & Frost's position that its alleged new evidence discloses a lack of an adversarial relationship between Northern Access and CLAC, I find that this argument is contingent upon Heat & Frost being granted standing in these proceedings; because it has no such standing to make these arguments, I am not required to consider them: *Geopac*, para. 11.

26 In any case, even if I were to consider Heat & Frost's alternative argument, I would find that it does not carry sufficient merit to warrant further consideration. Heat & Frost has not drawn my attention to any case authority requiring a union and employer to ensure their relationship is sufficiently adversarial before proceeding to certification. Nor has Heat & Frost made any application to the Board (based upon materials before me) to have CLAC declared not to be a trade union under the *Code* on the grounds that it is dominated or influenced by an employer: Section 1(1) of the *Code*.

27 Furthermore, this is not a case where there is simply no basis for the certification application. The "new evidence" relied upon by Heat & Frost does not suggest that Northern Access has *no* prospects at all for work in BC. Rather, Northern Access makes it clear (through the response from Stuart Olson to Heat & Frost) that "[Northern Access] *intends* to begin operations [in British Columbia] soon […and] is *intending* to

begin work on the Fort St. James Green Energy Project as a scaffolding sub-contractor" [emphasis added].

V. CONCLUSION

28 Heat & Frost and SMW's applications for interested party status are dismissed.

29 I remain seized of this matter. My office will be in contact with the parties (i.e., CLAC and Northern Access) to discuss further steps.

LABOUR RELATIONS BOARD

"JITESH MISTRY"

JITESH MISTRY
VICE-CHAIR