Labour Relations Board
Saskatchewan

ST. THOMAS MORE COLLEGE FACULTY UNION (1977) (NO AFFIL.), Applicant v. ST. THOMAS MORE COLLEGE, Respondent

LRB File No. 105-02; September 26, 2003
Vice-Chairperson, James Seibel; Members: Gerry Caudle and Leo Lancaster

For the Applicant: Ted Koskie
For the Respondent: Neil Gabrielson, Q.C.

Bargaining unit – Appropriate bargaining unit – Community of interest – Differences in qualifications, working conditions and collective bargaining aspirations between existing unit and proposed add-on are broad and deep – To permit add-on would run contrary to employer's administrative structures, history of bargaining between union and employer and efficient and effective shape of union organization at other post secondary institutions in province – Board concludes that proposed bargaining unit not appropriate.

***The Trade Union Act*, ss. 2(a), 5(a) and 5(k).**

REASONS FOR DECISION

Background:

[1] St. Thomas More College Faculty Union (1977) (No Affil.) (the "Union") is designated as the bargaining agent for a unit of employees of St. Thomas More College (the "Employer" or the "College") at the University of Saskatchewan (the "University"), comprising, essentially, the Employer's academic staff described in the certification Order dated May 2, 1777 in LRB File No. 249-77as follows:

> *…all full-time and part-time academic persons … including: (a) all sessional lecturers, (b) all special lecturers, (c) all instructors and lecturers, (d) all assistant professors, associate professors and professors, (e) all librarians …*

[2] The collective agreement between the parties is effective July 1, 2002. The Union applied, during the open period mandated by s. 5 (k)(i) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"), to amend the scope of the bargaining unit to

include caretakers – an "accretion" application. Along with the application was filed ostensible evidence of majority support from the proposed add-on group.

[3] In its reply to the application, the Employer opposed the addition of the caretakers on the grounds that the proposed bargaining unit is not appropriate, in that the caretakers do not have a community of interest with the faculty members, and that the proposed addition would lead to undue fragmentation of the total complement of the Employer's non-academic support staff. Alternatively, the Employer asserted there were six caretakers in the add-on group on the date the application was filed with the Board – three full-time permanent caretakers and three non-permanent or part-time students working during the summer academic hiatus and irregularly throughout the academic year.

Evidence:

[4] Dr. Gerald Farthing has been employed at the College since 1985. He is presently associate professor of psychology and head of the psychology department. He is a past secretary, treasurer and president of the Union and has again been president for the past two years. He testified on behalf of the Union.

[5] The College is a liberal arts Catholic college federated with the University of Saskatchewan; that is, it is academically integrated with the University, but is financially independent, selecting, hiring and firing its own staff. Dr. Farthing described the College as being built on a model of Catholic education allowing a unique perspective on higher learning. This has the perceived advantage of allowing a Christian dialogue within an integration of faith and learning. Dr. Farthing testified that the staff at the College – union and non-union – is a close-knit community devoted to the objectives of the College in the education of its students.

[6] The Union currently represents between 55 and 60 academic employees at the College. This group comprises the only unionized employees of the College. Teaching faculty are also members of the University's Faculty of Arts and Science or the Faculty of the Department of Religious Studies. There is a current collective agreement. There are approximately 46 non-unionized support staff at the College, including the

caretakers, library assistants, cafeteria staff, deans' assistants and development office assistants.

[7] Dr. Farthing testified that the caretakers at the College approached the Union and requested that the Union represent them, expressing concerns about job security, terms and conditions of employment and the need for advocacy on their behalf. The non-union staff has no access to a grievance and arbitration process. In his view, the proposed bargaining unit is appropriate and viable: the bargaining strength of the caretakers will be enhanced and that of the academic staff will not be negatively affected. The Union has committed to providing representation for the caretakers in the event they are added to the bargaining unit.

[8] According to Dr. Farthing, the bargaining unit already includes a diverse group of employees, including full-time tenured, tenure-track and probationary professors, sessional lecturers, special lecturers and librarians. He said the Union has resolved to amend its constitution and to negotiate the necessary changes to the collective agreement to provide for representation of the caretakers. He described the community of interest of all employees of the College in working together to ensure that the mandate of the College is carried out in the best interests of the students, which includes the provision of support services and equipment, all within a Christian community. All employees of the College work at the same physical location and associate on a day-to-day basis.

[9] According to Dr. Farthing, there are three full-time permanent caretakers. Additional students are hired for unscheduled casual work to assist with special functions throughout the year, working up to eight to ten hours per week and for the summer months. He referred to the College's 2000-01 President's Report that acknowledged the work of three named caretakers.

[10] In cross-examination, Dr. Farthing agreed that some non-union support staff have inquired about representation by the Union at times over the past ten years. He also acknowledged that there are differences in the terms and conditions of work that are of concern to academic and non-academic staff, such as tenure for the former and scheduled hours of work for the latter. The College's caretakers are paid the equivalent

of the rates for caretakers in the collective agreement between the Canadian Union of Public Employees, Local 1975 ("CUPE, Local 1975") and the University. They and other College support employees treated similarly, are colloquially referred to as "CUPE equivalents."

[11] Sandy Dutkiwch has been employed as a full-time permanent caretaker at the College since January, 2000. His duties include caretaking, cleaning, maintenance and security, setting up for functions, audio-visual equipment set-up, carpentry, painting and other duties. At the date of the application there were three full-time permanent caretakers including himself, Monica Anderson and Dan Jiricka. On that date there was other casual caretaker/maintenance help, including Michelle Sarazin, David Plaskett and Torval Thronberg. The latter are not career employees or positions, but when the academic year starts they may work casually for special events.

[12] To the knowledge of Mr. Dutkiwch, the Employer has never negotiated terms and conditions of employment for the caretakers or other non-union staff at the College. He was not concerned about the ability of the Union to represent the caretakers or that the caretakers would be well-represented. He felt that the caretakers could benefit from the Union's experience and knowledge. Mr. Dutkiwch confirmed the nature of the close relationship among all staff and between staff and students at the College. While other non-union support staff at the College were canvassed for their opinion as to whether they wished to be represented by a Union and a majority declined, Mr. Dutkiwch said that they have been supportive of the caretakers' quest for union representation.

[13] In cross-examination, Mr. Dutkiwch agreed that, while the College tends to follow the CUPE-University collective agreement as far as caretaker wages are concerned, the College caretakers have not always received wage increases at the same time as the CUPE-represented caretakers. He confirmed that day-to-day association between the caretakers and academic staff is limited to equipment set-up and informal interaction.

[14] Wilfrid Denis has been employed at the College nearly continuously since 1974 and was a faculty member of from 1979 to 1998. He is presently Dean of the

College. While he reports to the College President, he, the President and the Controller comprise the College's administrative committee, which meets weekly and oversees the general operations of the College. Mr. Denis administers the academic programs at the College and negotiates and administers the collective agreement with the Union. The College's Board of Governors meets once a month to set policy and approve major decisions. While the College attempts to mirror the structure of the University, because of its smaller size, certain positions consolidate responsibilities. The College has approximately 1700 affiliated students, but actually provides some instruction to approximately 6000 students. It also operates a student residence. The College sets its own budget derived from tuition, government funding and private fundraising.

[15] Mr. Denis generally described the negotiations for the last collective agreement with the Union. Wages for academic staff are not a big problem in negotiations. Under the collective agreement, College faculty are to be paid not less than faculty at the University. As it is in the interests of the University that the College maintains appropriate academic standards, representatives of the University sit as voting members of the College's tenure and promotions committee.

[16] With respect to terms and conditions of employment for the College's CUPE-equivalent employees, the position description is reviewed by the University's human resources department for assessment as to where the position would fit into the University's structure. Wage rates are set by the College to match the equivalent University position within the purview of the bargaining unit represented by CUPE, Local 1975. A similar process applies to any College positions that are equivalent to those University employees represented by the Administrative and Supervisory Personnel Association ("ASPA") (referred to as "ASPA-equivalents.")

[17] According to Mr. Denis, on the date the present application was filed, there were 3 full-time permanent caretakers at the College and 3 student caretaking employees. The latter perform their duties under the supervision of the former. The additional help is required during the summer months for major cleaning, painting, renovations and upgrades to the physical plant. Casual help is required for major functions during the academic year. The students are paid at a "student academic

assistant rate" which is lower than the CUPE equivalent rate paid to the full-time permanent caretakers.

[18] Mr. Denis agreed that there is a lot of interaction between academic staff and caretaking staff in the sense of informal social interaction in the hallway, or to request something in the way of physical space requirements. While the caretakers have set schedules and hours of work, the faculty do not have set minimum hours of work, except for class times. He perceived the main problem of having the academic staff and the caretakers in the same bargaining unit as being that much of the content of the collective agreement applies only to the terms and conditions of employment of the former and much different provisions would have to be negotiated for the caretakers. While he emphasized that faculty were expected to research and publish, even within the existing bargaining unit, there are not the same expectations of sessional lecturers and librarians.

Arguments:

[19] Mr. Koskie, counsel on behalf of the Union, filed a comprehensive written brief that we have reviewed. Counsel first addressed the issue of alleged undue fragmentation of the workforce if the application is allowed. He argued that, because College non-academic staff as a whole are not represented by a bargaining agent and because the Employer has never negotiated with that group or part of that group respecting terms and conditions of employment, to include the caretakers in the bargaining unit represented by the Union does not disrupt or fragment an existing negotiation structure. The history of bargaining between the Union and the College is remarkably successful, no doubt due to the practice of piggybacking onto the University's collective agreement with its academic staff, requiring only adaptation of its provisions to reflect the unique structure and mandate of the College. Mr. Koskie opined that to include the caretakers in the bargaining unit would not create an industrial relations hardship given the College's use of the University's human resources department and similar adoption of CUPE equivalent wage rates.

[20] Mr. Koskie asserted that accomplishment of the mission and mandate of the College, being different than that of the University, has resulted in a close-knit staff community, with shared values and no countenance for hierarchical structure or elitism

as between academic and non-academic staff. The caretakers themselves approached the Union for representation. The Union consulted its membership and resolved to provide such representation. The existing Union is sensitive to the caretakers' need for assistance and ready, willing and able to bargain on their behalf.

[21] Mr. Koskie asserted that the proposed bargaining unit is viable. The present unit is presumed viable by the existence of the certification Order and the addition of the caretakers will not make it not viable or unstable. Referring to the decision of the Board in *University of Saskatchewan Faculty Association v. University of Saskatchewan*, [1995] 1st Quarter Sask. Labour Rep. 201, LRB File No. 127-94, counsel asserted that, in the circumstances of this case, representation should not be denied the caretakers just because they would be the only members of the presently unrepresented group to be included in the bargaining unit. That is, the Board's preference for more-inclusive bargaining units ought not to dictate the decision, because the existing unit is under-inclusive as it is.

[22] With respect to the issue of fragmentation of the workforce, referring to the decision of the Board in *International Alliance of Theatrical, Stage Employees and Moving Picture Machine Operators of the United States and Canada v. Saskatchewan Centre of the Arts*, [1992] 3rd Quarter Sask. Labour Rep. 143, LRB File No. 126-92, Mr. Koskie argued that the principle did not refer to the addition of a small group of employees to an existing bargaining unit unless it would result in the remainder of the unrepresented group being inappropriate as a separate unit. That is, fragmentation may only be an issue where the application would result in more than one bargaining unit in a workplace, or an unrepresented group that is inappropriate for organization by a trade union. In the present case, the former situation cannot be the result, and there is no evidence, nor did counsel for the Employer argue, that the latter situation would be the result.

[23] Referring to the *Saskatchewan Centre of the* Arts decision, *supra*, with respect to the concept of "community of interest," Mr. Koskie argued that the issue is not whether the add-on group has the same or similar skills, abilities, duties and working conditions, but whether the differences in those parameters would result in a serious conflict of interest between two groups of employees if they are placed in the same

bargaining unit. The fact that the academic employees might be described as "professional" while the caretakers are not is not determinative of the issue. Counsel asserted that the Board has generally refused to segregate professionals and other employees on that basis alone, citing the decisions of the Board in *Hanna v. Government of Saskatchewan and Saskatchewan Government Employees' Union*, [1985] Aug. Sask. Labour Rep. 31, LRB File No. 338-84, *Health Sciences Association of Saskatchewan v. Plains Health Centre and Canadian Union of Public Employees*, [1985] May Sask. Labour Rep. 38, LRB File Nos. 413-84 & 414-84 and *Health Sciences Association of Saskatchewan v. St. Paul's Hospital, Saskatoon and Service Employees' International Union, Local 333*, [1994] 1st Quarter 269, LRB File No. 292-91. The essence of the argument was that, in the present case, while the duties and responsibilities of the caretakers obviously differ from those of academic staff, they are not in conflict.

[24] With respect to the issue of the number of caretakers for the purposes of determining whether there is majority support among the add-on group, referring to the student caretakers as "seasonal" or "casual" workers, Mr. Koskie argued that they did not have a sufficiently tangible employment relationship to include them in the group. Referring to the decision of the Board in *Service Employees International Union, Local 299 v. Vision Security and Investigation Inc.*, [2000] Sask. L.R.B.R. 147, LRB File No. 228-99, counsel argued that, if the casual caretakers are included, the permanent full-time employees could have their legitimate aspirations for collective bargaining thwarted by persons with little real connection to the Employer. In the present case, the casual student caretakers are not on a career path in the job.

[25] Mr. Gabrielson, counsel for the Employer, argued that the existing certification Order is clearly limited to an academic bargaining unit and the Union had not, at the time of the application, amended its constitution to provide for representation of non-academic employees. The Union has the onus to show that it can effectively represent the caretakers.

[26] Referring to the decision of the Board in *Saskatchewan Joint Board Retail, Wholesale and Department Store Union v. Regina Exhibition Association Limited*,

[1992] 4th Quarter Sask. Labour Rep. 75, LRB File No. 182-92, at 77[1], Mr. Gabrielson asserted that the proposed amended bargaining unit is not an appropriate unit, taking into account the range of factors ordinarily considered by the Board on such applications, viz., whether there is sufficient community of interest among the employees concerned; whether recognition of a unit will result in undue fragmentation of the total complement of employees; whether there is a history of successful collective bargaining between an employer and a union; and whether other groups of employees may be disadvantaged in some way by the description of a unit.

[27] Mr. Gabrielson argued that the proposed bargaining unit is also not appropriate because it would bring a tiny non-academic group into a large academic unit based solely on the shape of the Union's support among the larger unrepresented group of employees. Counsel referred to the decision of the Newfoundland Labour Relations Board in *Re Memorial University*, [1995] Nfld. L.R.B.D. No. 4, where the Memorial University of Newfoundland Faculty Association sought to add a group of laboratory instructors (who had some limited teaching duties) to its bargaining unit hitherto comprising only academic staff[2]. The Newfoundland Board, at paragraphs 32 through 35, based its decision to dismiss the application, at least in part, upon differences in certain fundamental working conditions between the two groups and the effect thereof on the nature and degree of their community of interest. One main difference was that, while academic appointments were made by the university's board of regents following nomination by the president of the university, the lab instructors were hired by the university's human resources department. Other significant differences included salary scales and academic qualifications. Similarly, in the present case, all members of the Union, as it is presently constituted, are appointed by the College's Board of Governors, which body also grants or denies tenure; caretakers are hired directly by the College.

[28] Mr. Gabrielson asserted that many of the issues that are of great importance to academic staff, including the tenure process, sabbatical leave, research funding and academic freedom, are foreign or of no interest to the caretakers. In contrast, potentially, the caretakers would have a difficult time having their concerns,

[1] As cited in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Saskatchewan Centre of the Arts*, [1995] 4th Quarter Sask. Labour Rep. 52, LRB File No. 175-95, at 55.

[2] The application was actually a carve out, as the laboratory instructors had been, and were then presently, represented for some 15 years by Canadian Union of Public Employees as part of a large (800 employee) non-academic bargaining unit.

regarding their schedules, hours of work and other working conditions, heard and considered by the greatly overwhelming number of academic members of the Union.

[29] With respect to the issue of fragmentation, counsel for the Employer referred to the decision of the Board in *Canadian Union of Public Employees, Local 1975-04 v. University of Saskatchewan*, [1992] 2nd Quarter Sask. Labour Rep. 83, LRB File No. 311-91. The Board dismissed an application to add lifeguards/instructors, then part of an unrepresented group of University student employees called Academic Student Assistants, to the existing large bargaining unit represented by the union of all University employees that were not members of other bargaining units, excepting the Assistants group. The Board held that to allow the accretion would "ensure fragmentation within the unit of Academic Student Assistants and consequent bargaining and workplace disharmony."

Analysis and Decision:

[30] The Board must determine whether the proposed bargaining unit is appropriate for collective bargaining. In making this determination, the Board must assess the application according to the same criteria used in deciding an application for certification: *University of Saskatchewan v. Canadian Union of Public Employees, Local 1975*, [1978] 2 S.C.R. 834 (S.C.C.). Subsumed in this determination is consideration of the issues of community of interest and fragmentation of the residual unrepresented group of employees.

[31] The Board described the competing interests and hard choice that lie behind most disputes over the appropriateness of a bargaining unit in *Saskatchewan Centre of the Arts*, *supra*, at 144:

> *The Board has frequently observed that at the root of most disputes over the appropriateness of a unit is a choice caused by a conflict between the employees' right to organize into trade unions of their choice and the larger or overriding public interest in effective and efficient collective bargaining structures. The statutory basis of this conflict lies in the interplay between Sections 3 and 5(a) of the Act. Section 3 states that employees have the right to organize, join and bargain collectively through a trade union of their own choosing.*

> *Section 5(a) of the Act imposes a duty on the Board to determine whether the proposed bargaining unit is appropriate. The Board is fully aware that judgment either way will carry a cost. Either the most rational long-term bargaining structure, or the employees' right to commence collective bargaining will be sacrificed (see: Co-operative Health Centre (1987) April, Sask. Labour Report, p. 45).*

[32] The Board has often stated that there is no single test for determining whether a proposed bargaining unit will be appropriate for collective bargaining, and the various factors which are considered and the relative weight they are accorded, may vary depending on the circumstances of the case. In *University of Saskatchewan Faculty Association v. University of Saskatchewan*, *supra*, at 206, the Board stated, "There are a range of factors which must be considered, and these rise and fall in importance from case to case." This observation was made even more pointedly a few years later in a case between the same parties at [2001] Sask. L.R.B.R. 573, LRB File No. 127-99, at 591, as follows:

> *A range of factors must be considered in determining whether a bargaining unit is appropriate for the purposes of collective bargaining and the relative weight of individual criteria vary from case to case based more on pragmatic considerations as to whether the purposes and objects of the Act in the promotion of access to collective bargaining will be well-served.*

[33] The Board's general approach to the determination was summarized in *St. Paul's Hospital, supra*, at 270-71, as follows:

> *This Board has, from its earliest days, been mindful both of the importance of its responsibility to define appropriate bargaining units, and of the complexity of this question. A range of more or less common factors may be considered in cases where the bargaining unit is to be determined, but these factors may have a different resonance or weight in different circumstances. The primary obligation of the Board is not to devise a set of principles or a formula to which it will adhere in a dogmatic way, but to make a pragmatic assessment of each case which is brought before it, and to determine what definition will best serve the overall objectives of promoting collective bargaining and allowing employees access to such bargaining.*
>
> *The Board has long held the belief that collective bargaining is most effective if the participants are defined on the basis of the most inclusive possible bargaining unit, and has favoured larger bargaining units as the model which represents the appropriate*

> *bargaining unit. As we have often pointed out, however, the Board does not adhere to this preference with such obstinacy as to blind us to the fact that we should be ready to allow employees the benefits of collective bargaining if it can be conducted in a bargaining unit which is viable, and therefore appropriate, even if it is not comprehensive enough to match an ideal.*

[34] Some of the factors which may be considered were described in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. O.K. Economy Stores (A Division of Westfair Foods Ltd.),* [1990] Fall Sask. Labour Rep. 64, LRB File No. 264-89, as follows, at 66:

> *...Whenever the appropriateness of a unit is in issue, whether large or small, the Board must examine a number of factors, assigning weight to each as circumstances require. There is no single test that can be applied. Those factors include among others: whether the proposed unit of employees will be able to carry on a viable collective bargaining relationship with the employer; the community of interest shared by the employees in the proposed unit; organizational difficulties in particular industries; the promotion of industrial stability; the wishes or agreement of the parties; the organizational structure of the employer and the effect that the proposed unit will have upon the employer's operations; and the historical patterns of organization in the industry.*

and in *Regina Exhibition Association*, *supra*, at 77, as follows:

> *a history of successful collective bargaining between an employer and a union or unions, and whether other groups of employees may be disadvantaged in some way by the description of a unit. It must be kept in mind, however, that the articulation of these factors is not meant to provide an exhaustive list of necessary conditions for a finding that a unit is appropriate. The list of items results rather from attempts by labour relations boards, after examining specific employment situations, to identify the aspects of those relationships which suggest that certain definitions of bargaining units will better satisfy the policy objectives which are being pursued.*

[35] Therefore, as the parties quite rightly recognized at the hearing before the Board, one of the factors that we must consider is the nature and degree of the community of interest that the members of the Union share with the group of caretakers sought to be added to the bargaining unit. But it must be recognized that community of interest has no superior status among the factors considered in determining the

appropriateness of a bargaining unit. As the Board stated in *St Paul's Hospital*, *supra*, at 272:

> *The considerations taken into account under the rubric of "community of interest" have, however, no absolute or overriding value when the determination of the appropriateness of a bargaining unit is being made.*

[36] In *Saskatchewan Centre of the Arts*, *supra*, the Board described the import of the phrase "community of interest" as follows, at 146:

> *The Board will also have regard to a number of factors generally grouped under the heading community of interest. Essentially, this requires the Board to examine the employees' skills, duties, working conditions and interests in order to ensure that two groups of employees with a serious conflict of interest are not placed in the same bargaining unit. In this case, the employer identified a number of differences in hours of work and other terms and conditions of employment between members of the stage crew and the engineering classifications. On this basis, the employer submitted that it would be inappropriate to include the engineering classifications in the same unit as the stage crew.*
>
> *The existence of these differences are not determinative. Differences in skills, work functions and terms and conditions of employment exist wherever there is more than one classification of employee. For example, many of these same differences would exist if the engineering classifications were compared with many of the classifications in the unorganized unit where the employer says they should stay. Moreover, these differences do not usually materialize into the kind or degree of conflict that prevents common certification. <u>If the mere existence of these differences were sufficient to make common certification inappropriate, the result would be that all-employee or multiple classification units would almost always be inappropriate and that would not correspond with experience or policy. In the final analysis, the question is whether the interests of the existing members and the employees the union proposes to add are so significantly at odds that they cannot be represented by the same union.</u> In the Board's opinion, there is nothing in the evidence that would support such a conclusion.*
>
> (<u>Emphasis added</u>)

[37] Accordingly, the crux of the determination in considering the factor of community of interest is whether the differences between the two groups are significant enough that their representation cannot be appropriately accommodated in the same bargaining unit.

[38] In the present case, it may be said that there is a certain kind and degree of community of interest between the caretakers and the academic staff given the general mission of the College to provide education to its students in the special atmosphere it seeks to foster and also as a result of being present in the same physical area – as, for example, meeting and chatting in the hallways or cafeteria (there is little such interaction associated with actual job duties apart from the set-up of equipment for teaching purposes). But, the community of interest of all employees in an organization to achieve the organization's broad goals exists in nearly any workplace. For example, all persons employed in a hospital are engaged in providing, or supporting the provision of, quality health care to consumers, but that hardly negates the deep differences in collective bargaining interests between accepted groupings of health care industry workers for labour relations purposes. And, what could be called "casual social interaction" between workers from the executive suite to the mailroom is common to most workplaces housed under a single roof, but it too does not negate the differences in their working conditions and the goals to which they aspire for change of those conditions, which would almost certainly be in serious conflict. It is commendable that such interaction is enhanced in the setting of the College by the apparent courteous and thoughtful consideration on the part of all employees towards one another regardless of job function.

[39] In our opinion, in the present case, the differences in working conditions, terms and conditions of employment and aspirations for the results of collective bargaining between the academic staff and the caretakers are manifold. Not the least of these is the hiring process for academic staff, which is detailed in the collective agreement.[3] It is a complex procedure that is entirely different from that for the caretakers, running from a departmental search committee to an approval process, from an appointments committee to the College President, to the University President and on to the Board of Governors for actual appointment. Initial appointment as a full-time lecturer or assistant professor is probationary for two years and may be extended to four years, before consideration for tenure.

[3] See, collective agreement, Article 5.

[40] The tenure process is of fundamental importance to academic staff. A significant portion of the collective agreement between the Union and the College is devoted to prescribing the tenure and promotions process and appeals thereof.[4] Again, it is a complicated procedure commencing with an individual candidate's tenure committee that includes the head of the College department, the head of the corresponding University department, all tenured members of the College department, a tenured member from another department and may even include a non-voting student consultant. The candidate's dossier is prepared by the committee which forwards its recommendation to the College President, in turn to the University President and on to the Board of Governors. Criteria for tenure include academic credentials, teaching ability and performance, research and scholarly work, knowledge of the specialized field, satisfactory professional conduct, contributions to the administrative and extension responsibilities of the department and College and service to the College's organizations and outside organizations. The collective agreement details the methods of evaluating the criteria. The promotions process is similarly complex, and there is an appeal process for tenure and promotions decisions.[5]

[41] Some other significant differences in the terms and conditions of work between the two groups include: caretakers have regular scheduled hours of work, while teaching faculty do not; the difference in salary or wages is significant; academic staff is engaged directly in teaching, research and publication, or the direct support of same (e.g., the librarians), while the caretakers ensure that the physical area and equipment to perform such work are clean and in order; one issue of fundamental importance to any of the non-academic employees in terms of their aspirations for collective bargaining would be that of seniority, a concept that is not mentioned in the current collective agreement and which would be as entirely foreign to academic staff as tenure, promotion and academic freedom are to non-academic staff.

[42] Other factors to be considered in the present case are bargaining history, the customary shape of trade union representation in the secondary education sector, and the nature of the Employer's organization. These topics are addressed in G.W.

[4] See, collective agreement, Article 7.
[5] See, collective agreement, Articles 8 and 9.

Adams, *Canadian Labour Law*, 2nd ed. (Aurora: Canada Law Book Inc., 2003) at paragraph 7.100, as follows:

> *A significant factor in bargaining unit determinations is the history, if any, of collective bargaining. History may be seen as that of the industry, that of the geographical area or that of the particular employer. Bargaining history may demonstrate the viability of a particular collective bargaining structure and may suggest that any deviation from history could promote industrial instability.*

and at paragraph 7.120:

> *Much in the same vein, labour relations boards frequently consider the traditional methods of organization or collective bargaining in an industry as an important factor of bargaining unit determination.*

and at paragraph 7.150:

> *A community of interest may parallel a company's internal organization. If there is a centralized uniform personnel policy, there may well be a high degree of similarity in wages, hours and working conditions and in the timing and method of alteration of these items. Employers can be expected to prefer units drawn along the same lines as their organizational structures and collective bargaining over the longer run may best be structured along these lines. However, such a unit will be efficient only if a trade union is interested and capable of organizing and bargaining for such a group of employees. Very often this is not the case.*

[43] The evidence in the present case is that the administrative structure and procedures at the College attempt to mirror those of the University, with certain differences necessitated by the smaller size and Catholic educational mandate of the College. The history of bargaining between the Union and the College demonstrates that it is successful. Of course, the significant degree of "piggybacking" on the negotiations between the University and the University of Saskatchewan Faculty Association has helped to streamline the negotiations between the College and the Union, particularly as concerns salary and benefits. The University negotiates separately with ASPA, representing its technical, administrative and supervisory staff and with CUPE, Local 1975 with respect to support and clerical staff.[6] The College

[6] There are separate negotiations with some other groups that are not relevant to this case.

generally applies the wage and salary provisions of the ASPA and CUPE, Local 1975 collective agreements to its non-union employees in corresponding classifications. But, the point is that the negotiations are separate from those for the University's academic faculty. While there are no doubt historical reasons for the separation of representation between these groups of employees at the University to which we are not here privy, such separation appears to be the custom or the norm in institutions of higher learning. At the University of Regina, there are similar separate bargaining units for faculty, administrative and supervisory personnel and other employees. The University of Regina Faculty Association represents separate bargaining units of faculty and administrative and supervisory personnel. It also represents separate academic bargaining units at each of Luther College, Campion College and Saskatchewan Indian Federated College (all federated with the University of Regina) and an administrative personnel unit at the latter. Canadian Union of Public Employees represents clerical, administrative support and cleaning staff at the University of Regina and the federated colleges.[7] Saskatchewan Government and General Employees' Union holds separate certification orders and negotiates separate collective agreements for academic staff and administrative staff at Saskatchewan Institute of Applied Science and Technology.[8]

[44] *Re Memorial University*, *supra*, (which case it is recognized is of limited application in the present situation, being a carve out and a raid), does make it clear that the issues of community of interest and university structure were significant factors in the rejection of the application to add laboratory instructors to the academic bargaining unit at the university. The Newfoundland Board stated, at paragraphs 33 and 34:

> *For faculty members who teach academic subjects, that teaching is the fundamental purpose of their employment at the University. Historically, this differentiation has been recognized within the University's own structures. Faculty have been employed pursuant to the Terms and Conditions for Teachers. The faculty of the University are normally appointed to their positions by the Board of Regents, following nomination for the position by the President of the University. Laboratory Instructors are not subject to such appointments and are employed through the University's Department of Human Resources.*

---

[7] Source: Board files. And see, *Saskatchewan Indian Federated College Inc. v. University of Regina Faculty Association*, [2001] Sask. L.R.B.R. 634, LRB File No. 046-01.

[8] See, *Saskatchewan Institute of Applied Science and Technology v. Saskatchewan Government and General Employees' Union*, [2001] Sask. L.R.B.R. 197, LRB File No. 289-99.

> *While the Board cannot conclude, based on the evidence, that Laboratory Instructors share identical working conditions as members of the teaching faculty at the University, neither can the Board conclude that these conditions are totally dissimilar. Certainly the salary scales do not compare, nor does the evidence as to the academic qualifications of the Laboratory Instructors compare for the most part with teachers who are members of faculty. And yet both work in a university environment with students who are completing a required program of studies for the purpose of being admitted to a specific degree.*

[45] In the present case, we find the differences in qualifications, working conditions and aspirations for collective bargaining outcomes as these factors relate to community of interest between the College academic employees and the caretakers to be broad and deep. The matters that are most important to each group in terms of hiring, tenure, promotion, sabbatical leave and seniority, to name a few, are so entirely foreign to the other group that it is likely that bargaining could not be conducted coherently and in the interests of the promotion of industrial stability. This is not to say that the Union is insincere in its avowed intention to treat the caretakers as equals and to ensure that their interests are not placed second to those of the academic members. However, it would be to deny that labour relations is most often a more pragmatic rather than idealistic exercise to voice no concern that the small number of caretakers may find themselves swimming in a sea of fellow union members with very different primary concerns for bargaining and it is not likely that the caretakers could obtain an effective voice on the Union executive through the political means that are usual to union constitutions.

[46] A review of the existing collective agreement between the Union and the College discloses that it would not merely be a matter of simple amendment through bargaining to adapt it to effectively apply to the caretakers, but that it would require the negotiation of almost another complete agreement to accommodate the basic interests of employees in such a classification.

[47] Of further great importance in this respect is that, to include the caretakers in the academic bargaining unit, would run contrary to the administrative structures of the University and the College, the shape of union organization at the University and other post-secondary institutions in the Province and the history of

bargaining at the College that follows upon that at the University. For example, the evidence is that the Union and the College generally follow the negotiated agreement between the University and its Faculty Association and that the College generally applies the negotiated wage and salary rates in the University's agreement with CUPE, 1975 to the College's unrepresented employees. While we cannot assume either that the University does or does not bargain with its Faculty Association at the same time or even in the same years as it does with CUPE, Local 1975, if it does not, and, for example, bargains first with the Faculty Association, it is difficult to see how the Union could conduct coherent negotiations with the College on behalf of its academic members and the caretakers at the same time given the "me too" nature of the negotiations in following the University. The historical bargaining structures in post-secondary educational institutions have been efficient and effective.

[48] For the reasons outlined above, we find that the proposed bargaining unit that would include the caretakers is not appropriate for the purposes of collective bargaining. The application is denied. Accordingly, it is not necessary for us to determine who is a caretaker for the purposes of evaluating support for the application.

DATED at Regina, Saskatchewan this **26th** day of **September, 2003**.

LABOUR RELATIONS BOARD

James Seibel,
Acting Chairperson