Labour Relations Board
Saskatchewan

HEALTH SCIENCES ASSOCIATION OF SASKATCHEWAN and FIVE HILLS REGIONAL HEALTH AUTHORITY, Applicants, and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 299 and CANADIAN UNION OF PUBLIC EMPLOYEES, Interested Parties

LRB File No. 029-04; October 6, 2005
Chairperson, James Seibel; Members: Donna Ottensen and Marshall Hamilton

For Health Sciences Association of Saskatchewan: Neil McLeod, Q.C.
For Five Hills Regional Health Authority: Melissa Brunsdon
For Service Employees International Union, Local 299: Maureen Fryett
For Canadian Union of Public Employees: Andrew Huculak

Health care – Placement of new position – Preponderance of duties performed by care aide/emergency medical technician position associated with duties performed by employees in health services provider bargaining unit – While position requires incumbent to be licensed as emergency medical technician, emergency medical technician duties incidental to position – Board places new position in health services provider bargaining unit.

***The Health Labour Relations Reorganization (Commissioner) Regulations*, ss. 2(g), 2(h), 4 and 5.**

REASONS FOR DECISION

Background and Agreed Facts:

[1] Health Sciences Association of Saskatchewan ("HSAS") and Five Hills Regional Health Authority (the "Employer") filed this application as a joint reference of dispute pursuant to s. 24 of *The Trade Union Act*, R.S.S. 1978, c. T-17. Service Employees International Union, Local 299 ("SEIU") and Canadian Union of Public Employees ("CUPE") were joined as interested parties.

[2] The parties agreed on the following facts:

1. Prior to November 1, 2003 the Employer operated two facilities in Central Butte, Saskatchewan – the Central Butte Union Hospital (the "Union Hospital") and Regency Manor, a long-term care facility (the "Regency

Manor facility"). The Regency Manor facility was extensively renovated and five hospital beds were added to the facility.

2. On November 1, 2003, the Union Hospital was permanently closed and the newly renovated Regency Manor facility commenced operation as Central Butte Regency Hospital (the "Regency Hospital").

3. At the Regency Hospital, the Employer presently employs casual, part-time and full-time employees in the classification of special care aide ("SCA"), who fall within the "health services provider" bargaining unit in the health region pursuant to ss. 2(g) and 5 of *The Health Labour Relations Reorganization (Commissioner) Regulations*, R.R.S., c. H-0.03, Reg. 1 (the "*Regulations*"). These employees are represented by SEIU.

4. At the Regency Hospital, the Employer also currently employs two persons full-time in the classification of emergency medical technician ("EMT"), who fall within the multi-employer "health support practitioner" bargaining unit (the "practitioner unit") pursuant to ss. 2(h) and 4 of the *Regulations*, represented by HSAS.

5. The Employer has proposed the creation of a new classification called care aide/emergency medical technician ("CA/EMT"). The parties filed the draft position description for the CA/EMT. Necessary qualifications for the position include completion of the EMT program and a valid Saskatchewan EMT license. The Employer plans to hire two persons into the position and abolish the full-time EMT classification.

6. The Employer proposes to fill the vacancies in the new CA/EMT classification by posting them as two full-time positions within the health services provider bargaining unit, represented by SEIU, based on the Employer's assertion that the incumbents in the new classification will spend a preponderance of their working time performing the duties associated with the SCA component of the job.

[3] In its reply to the application, SEIU asserted that it is not uncommon for employees occupying such "blended" positions to be in the health services provider bargaining unit. SEIU has entered into a letter of understanding with the former Pipestone Health District and Whitewood and District Health Centre, dated June 13, 2000, whereby it negotiated terms and conditions of employment for blended positions in which a substantial portion of the job duties involve work of the health services provider bargaining unit and also include the duties of an EMT or emergency medical responder ("EMR"). These former members of SEIU are now represented by CUPE as employees of the Regina Qu'Appelle Health Region.

[4] SEIU also submitted that, in a memorandum to SEIU dated December 10, 2003, the Heartland Health Region confirmed that there are nine blended positions in that health region including: EMT/unit clerk; SCA/EMT; maintenance/EMT; SCA/daycare/EMT; maintenance/housekeeping/EMT; maintenance/housekeeping/EMR; daycare/activities/EMT. The majority of these positions are paid the EMT rate only for those hours actually worked in the capacity of EMT.

[5] SEIU further submitted that there is a blended EMT/activity worker position associated with the Watrous Ambulance Service and a maintenance/EMT position associated with the Cudworth Ambulance Service owned by the Saskatoon Health Region. The employees in these positions are members of SEIU, Local 333.

[6] In its reply to the application, CUPE submitted that the decision of the Board in *Health Labour Relations Reorganization (Commissioner) Regulations – Interpretive Ruling #4*, [1997] Sask. L.R.B.R. 377, LRB File No. 114-97 ("*Interpretive Ruling #4*"), is determinative of the issue and confirms the proposal by the Employer. CUPE also submits that it and Saskatchewan Government Employees' Union ("SGEU") and the Saskatchewan Association of Health Organizations ("SAHO"), the bargaining agent for the Employer, have acknowledged such blended positions in a memorandum of agreement dated October 3, 2003.

Evidence:

[7] Extensive evidence was led over two days of hearing regarding the nature of the duties and the amount of associated work time involved in the old and new classifications.

Joanne Wilm

[8] Joanne Wilm is the rural health manager for Central Butte and Craik within the Five Hills Health Region. She was called to testify on behalf of the Employer. Her duties comprise management of the nursing teams, emergency medical services, and the dietary, housekeeping, laundry and maintenance services. She spends four days per week in Central Butte and one day per week in Craik. The EMTs report to her.

[9] Ms. Wilm testified that, before the Union Hospital was closed and the Regency Manor facility was renovated as the integrated acute/long-term care Regency Hospital, the EMTs had an office in the Union Hospital, as did she, which provided her with the opportunity to observe the EMTs at work. The Union Hospital provided acute care and maintained the lab, x-ray, records and emergency services. One of the EMTs' duties was to provide transfer services between the two facilities. For example, the EMTs would transport patients from the Regency Manor facility to the Union Hospital for tests and x-rays or to see the doctors on duty, as well as the usual emergency transport services and elective (scheduled) transfers. Of course, following integration of the facilities on November 3, 2003, the inter-facility transfers are no longer necessary.

[10] Prior to the integration of the two facilities they had, between them, approximately 130 employees comprising two locals of the Saskatchewan Union of Nurses ("SUN") and one each of HSAS and SEIU. Following integration, there are approximately 80 employees at the Regency Hospital.

[11] Prior to integration, there were three emergency medical employees – one paramedic and two EMTs – working four 8-hour shifts (10 a.m. to 6 p.m.) followed by two shifts off. They were on-call for 16 hours for each 8 hours of work time. They were not required to remain at the hospital but were available by radio and through the 9-1-1 service. In addition to what Ms. Wilm termed "pure EMT work," which Ms. Wilm estimated as comprising approximately 20 per cent of their work time, the emergency

medical employees also assisted with maintaining general stores, assisting nurses with "difficult" patients, minor maintenance such as recharging medical equipment batteries and maintaining equipment service logs and conducting the Regency Manor facility's afternoon walking program. None of these additional duties are classified as care aide duties.

[12] Ms. Wilm testified that after the integration there was no need for two full-time EMT positions. Because of the decrease in transfer service workload as a direct result of the integration, there was a significant increase in the amount of "down time" for the EMTs. The Employer proposed creating a "blended" position combining EMT and care aide duties to make up a full-time position. When not required to attend to calls as EMTs the persons would work performing care aide duties. For example, the Employer usually has two SCAs scheduled on the morning shift; the bulk of the duties of a third blended CA/EMT position on the shift would be those performed by an SCA but the person would be available to attend on emergency calls as and when required.

[13] The SCA classification requires a special care aide certificate. However the certificate requirement is that of the Employer and not one required by law. A SCA can be trained entirely on the job and that is how the incumbents in the blended CA/EMT positions will be trained – the position does not require a special care aide certification.

[14] In aid of the Employer's proposal, the EMTs have completed their training and orientation in care aide duties. In actual practice, Ms. Wilm estimated that they spend at least 80 per cent of their time performing care aide duties and 20 percent performing EMT duties (although she thought that the latter amount was probably generous), but submitted that the Employer views the emergency response duties as the most important part of the blended position. The incumbents are paid the higher EMT wage rate for all hours worked as per the Employer's proposal for the blended position and in accordance with the wage grid in the HSAS collective agreement. The two CA/EMTs are scheduled for four 8-hour shifts, commencing at 6:50 a.m. and 8 a.m. respectively, with two days off. They continue to be on-call for 16 hours following each 8-hour shift. While they are not expected to obtain special care aide certification, they possess certain other competencies that ordinary SCAs do not, for example, intravenous maintenance and the administration of certain drugs and oxygen in aid of the registered

nurses and licensed practical nurses and the ability to assist in triage on the acute care side.

[15] Ms. Wilm contended that, if the personnel cannot be employed as full-time CA/EMTs, the Employer would have to employ the EMTs as casual on-call employees. Under the Employer's proposal, the EMTs maintain full-time work. The Employer has maintained a full-time paramedic position under the HSAS collective agreement.

Ron Dufresne

[16] Ron Dufresne is the president and general manager of Moose Jaw and District EMS, a private ambulance company. He was called to testify on behalf of the Employer.

[17] Mr. Dufresne described the contractual relationship between his company and the Employer – the company managed the ambulance service at Central Butte from 2001 to 2004. He estimated that, prior to the integration of the facilities in Central Butte, approximately one-third of the 250 calls for the 2003 calendar year were for transfers between facilities. According to Mr. Dufresne, the average length of a call is 2.74 hours. A little over 100 of the calls were made during the time when the EMTs were on-call, or "standby" as he called it, rather then when on their actual scheduled shift. He estimated that the EMTs only spent approximately 13 per cent of their time on what he called "true ambulance calls" (dispatched calls as opposed to scheduled transfers) when on working shift. Allowing for incidental duties associated with the dispatched calls, Mr. Dufresne estimated that EMTs spent only 15 per cent of their time performing EMT duties. He contrasted this with the four-month period of January 1 to April 30, 2004, following integration, and stated that the cumulative number of calls in all hours – not just actual scheduled working hours – was 48 and estimated the total for 2004 would be about 150. He estimated that EMT duties would now only comprise approximately 10 percent of their time including the allowance for incidental associated duties.

[18] Mr. Dufresne confirmed that the emergency medical services duties of the personnel in the blended positions takes precedence over their care aide duties.

Tim Slattery

[19] Tim Slattery has been the executive director of HSAS for some 17 years and is its chief spokesperson in provincial bargaining. He testified on behalf of HSAS. He said that EMTs became part of the health support practitioner unit as a result of the report by the Health Labour Relations Reorganization Commission (the "Dorsey report")[1] and *The Health Labour Relations Reorganization Act*, S.S. 1996, c. H-0.03 ("the *HLLR Act*") and s. 2(h) and Table "C" of the *Regulations*.

[20] Mr. Slattery explained that, while HSAS represents paramedics and EMTs who must be licensed pursuant to statute, it does not represent so-called "emergency medical responders," who are represented by SEIU, CUPE and SGEU. HSAS was pitted against SGEU to represent the former group and, as a result of a vote taken in July 1997, obtained the right to represent them. HSAS has a province-wide collective agreement with all appropriate employers. It represents approximately 380 emergency medical personnel province-wide, comprising approximately 18 per cent of its membership.

[21] Mr. Slattery referred to letters of understanding 11 and 12 appended to the collective agreement between HSAS and SAHO regarding the assignment of work to emergency medical services personnel in addition to their traditional ambulance-based work. Letter of understanding 11 provides that such additional duties "will be associated with direct client care and will be within the skills reasonably associated with [the EMT] classification." This precludes their assignment to, for example, landscape maintenance. Mr. Slattery also pointed out that the agreement also provides that such additional work assignment "will not encroach on the work of other employees or other bargaining units, and will not result in any job loss of employees in other bargaining units."

[22] In cross-examination, counsel on behalf of the Employer suggested to Mr. Slattery that it was common ground between HSAS and the Employer that letter of understanding 11 did not apply where the "bulk" of the duties performed by someone with EMT accreditation were not EMT duties, but were care aide duties. Mr. Slattery responded to the effect that EMTs perform many of the duties in the back of an

[1] "Reorganization of Saskatchewan's Health Labour Relations", the Report of the Health Labour Relations Reorganization Commission, January 15, 1997.

ambulance that SCAs perform in a hospital and are associated with direct client care – that is, the thrust of their duties is patient care, but in a vehicle rather than in a hospital. Mr. Slattery asserted that it was the intention of the Dorsey report that there be an emergency medical service and that the paramedics and EMTs be in the same bargaining unit under a single collective agreement without geographic limits. Mr. Slattery acknowledged that, while attending on a number of emergency medical calls that could be characterized as "incidental" to one's main occupation might justify placement in the bargaining unit for that main occupation, the numbers in the present case could not be termed as such, particularly if one considers the great number of hours spent on standby as an EMT only. He asserted that this was consonant with the Board's decision in *Interpretive Ruling #4*, *supra*.

Muriel Morhart

[23] Muriel Morhart has been a staff rep for SEIU since 1987, with responsibility including collective bargaining and day-to-day collective agreement administration. She testified on behalf of SEIU.

[24] Ms. Morhart testified that SEIU represented employees at the Union Hospital and Regency Manor facility for some 30 years. When the Employer began planning for the integration of acute care and long-term care and new construction at the Regency Manor facility, it started discussions with SEIU regarding the impact on staffing and service delivery. It resulted in the layoff of a number of SEIU bargaining unit members. The reduction in the number of care aides was approximately ten FTE's. The Employer and SEIU negotiated a voluntary severance package which was offered to employees at both facilities. Layoff notices were issued to eight care aides resulting in a bumping process.

[25] The Employer anticipated an immediate drop in the ambulance call volume following integration, but identified the continuing need for such emergency medical services and planned to retain the full-time paramedic and create the two blended positions in issue. The care aide duties identified in the job description for the blended position are precisely those performed routinely by full-time SCA's. Ms. Morhart stated that the Union's understanding was that such duties were integral to the position and would comprise the bulk of the position's duties. However, concerned that creation

of the positions would affect SCA staffing levels, SEIU secured the Employer's confirmation that it would not. Ms. Morhart did acknowledge, however, that it is a difficult issue because there is no entrenched baseline for staffing. SEIU has agreed to recognize the incumbents' accrued seniority and allow continued accumulation up to a cap of regular full-time hours and the Employer agreed to maintain the EMT rate of pay.

[26] Ms. Morhart confirmed that Moose Jaw and District EMS has the emergency medical services contract with the Employer and that SEIU represents the paramedics, EMTs and emergency medical dispatchers employed by that private company. However, she acknowledged that there is no EMT classification in the collective agreement between SEIU and the Employer or any other health region employer.

Arguments:

[27] Written arguments were filed on behalf of each of HSAS, the Employer and SEIU, which we have reviewed in detail. Following is a brief summary of those arguments.

<u>HSAS</u>

[28] Mr. McLeod, counsel on behalf of HSAS, submitted that the CA/EMT position ought to be included in the health support practitioner bargaining unit. The evidence pointed to the conclusion that the new position was not a true "blended" position and was only new in terms of the two-part job title; that is, the position is a variation of the former EMT job description preserving its essential job duties and adding some associated with the SCA job description. Counsel stated that the Board ought to be cognizant of the framework of the *HLLR Act* and *Regulations* in its consideration of the matter – EMTs are a listed occupation in Table "C" of the *Regulations.*

[29] Counsel submitted that the present case was not dealt with by either the Dorsey process or *Interpretive Ruling #4*, *supra*. The Board ought not to simply apply a "preponderance of duties" test based on a time-spent analysis of the job functions. *Interpretive Ruling #4* may be distinguished on its facts in that it dealt with then existing full-time positions where EMT qualifications were a requirement, but where emergency

medical services calls were "relatively rare," "as infrequently as ten or a dozen times per year" (See, *Interpretive Ruling #4*, *supra*, at 384). That is, the ruling dealt with an existing full-time position already within the health services provider unit with attached incidental EMT duties – it is simply a different model than in the present case.

[30] Counsel submitted that the primary and core duties of the position are EMT job functions and the new position was created simply to provide the EMTs with full-time employment. That is, despite the fact that more time is spent performing care aide duties, they are nonetheless incidental to the EMT duties. The care aide duties of the position are to be performed as assigned, but are always subject to being relinquished in order to attend to emergency response. HSAS and SAHO have bargained a method, contained in letter of understanding 11, by which EMT personnel will retain membership in the health support practitioner bargaining unit while performing additional work. In the Dorsey Report, *supra*, at 66, the Commission stated as follows:

> *Employees in the listed occupations [in Table C re: the health support practitioners bargaining unit] are included in the unit if they are employed and function in one of the listed occupations. They are also included if they are employed in another position, regardless of its title, for which the employer requires, as a minimum, registration pursuant to an Act giving the exclusive right to use a title or description of a listed occupation. This will not encompass all of the listed occupations. Some of them do not have protection of title under a statute. It does not encompass any occupation that may have statutory protection of title if it is not a listed occupation.*

[31] Letter of understanding 11 did not exist when *Interpretive Ruling #4*, *supra*, was rendered. It provides as follows:

> *The parties recognize the value of assigning work in addition to the ambulance-based work traditionally done by EMS personnel. In a case where an employer may wish to make such assignments, the following principles will apply:*
>
> *1. Any tasks assigned will be associated with direct client care and will be within the skills reasonably associated with the employee's classification.*
>
> *2. Such assignments will be contemplated where they are logistically appropriate to the continued provision of EMS*

> *response to the public as well as the operations of the Regional Health Authority in general.*
>
> *3. Such assignment will be made with a view to enhancing the opportunity for EMS personnel to practice their professional skills.*
>
> *4. Any work so done will be on a supernumerary basis. It will not encroach on the work of other employees or other bargaining units, and will not result in any job loss of employees in other bargaining units.*

[32] Counsel submitted that, in effect, the Employer has maintained an EMT position with ancillary care aide functions. The change in the relative proportion of the allocated duties does not justify the transfer of EMTs from their appropriate statutory "home bargaining unit" into a different bargaining unit covered by a different collective agreement. Indeed, according to counsel, the principle has even more force today given the continuing evolution of the EMT profession with a particular skill set, standards of practice and career path expectations. In the present case, there is no evidence that SEIU has negotiated any particular terms and conditions of employment to represent the interests of EMTs.

[33] Counsel submitted that if the "preponderance of duties" criterion is given validity then weight should be given to the fact that the duties of the new position require that incumbents be on "standby" to perform only emergency medical services duties for 16 hours following each 8-hour shift as a CA/EMT.

The Employer

[34] Ms. Brunsdon, counsel on behalf of the Employer, argued that the evidence disclosed that, after integration of the Union Hospital and the Regency Manor facility there was insufficient work to employ two full-time EMTs on a regularly scheduled shift – the transfer work was eliminated and the number of dispatched calls fell by one-third. The creation of the CA/EMT position enabled the Employer to continue to employ the EMTs on a full-time basis. Although the Employer has maintained a neutral stance, it is of the opinion that, given that the incumbents spend the majority of their working time performing duties directly associated with the SCA classification, the positions ought to be included in the health services provider bargaining unit represented by SEIU.

[35] The Employer's position is that *Interpretive Ruling #4*, *supra*, definitively deals with the issue. In that decision, the Board noted that the focus of the language in the definition of "health support practitioner" in s. 2(h) of the *Regulations* is on occupational groupings and the functions within those occupations. Section 2(h) provides as follows:

> *"health support practitioner" means an employee of a health sector employer who:*
>
> *(i) is functioning in one of the occupations listed in Table C; or*
>
> *(ii) is in a position that requires, as a minimum, registration pursuant to an Act giving the exclusive right to use a title or description of an occupation listed in Table C …*

[36] In considering three of the positions at issue in that case – assessor/coordinator, health educator and infection control officer – and whether they should be included in the HSAS health support practitioner bargaining unit or the bargaining unit represented by SUN, the Board noted that the test involved determining the employee's "primary functions" and whether the employee is "primarily performing functions" of the position in question or were they primarily functioning as a nurse. SUN's view was that if the requirements for the position included nursing qualifications, then the position should be in its bargaining unit. Counsel referred to the following statements by the Board at 381-83, with respect to the positions:

> *In this context, we have concluded that drawing the dividing line for this classification according to the educational requirements*

> *specified would defeat the objective of establishing province-wide terms and conditions of employment for this classification of employees. Whether or not an employer regards education in nursing as the qualification most relevant to the performance of the functions associated with the position of assessor/co-ordinator, the person whose primary obligation is to perform those duties is, in our opinion, "functioning in the occupation" of assessor/co-ordinator, and not "employed and functioning" as a nurse.*
>
> *…It would be those who function exclusively or primarily as assessor/co-ordinators who would be included in the unit. Those who are primarily involved in the provision of hands-on nursing care, and who perform some incidental assessment or co-ordinating role, would still be included within the scope of a bargaining unit represented by SUN.*
>
> ….
>
> *In our view, the comments which were made about the assessor/co-ordinator positions apply to the classification of health educator as well. The line which distinguishes those in the health practitioner unit from others whose duties may include what may be roughly described as "health education" must be drawn where health educator functions cease to be the primary focus of the position. Where a nurse or other employee performs these functions incidentally, it is not necessary to place that employee in this unit. Where, however, the duties performed by the incumbent are primarily those of a health educator, regardless of whether their training is in nursing, adult education, physical therapy or other disciplines, the employee will be included in the health support practitioner unit.*
>
> ….
>
> *…Though most of [the infection control officers] have a nursing background, they also have additional training in infection control. It is again our view that, whatever the educational qualifications they possess, even if those have been required for appointment to the position, this group as a whole should be included in the health support practitioner unit. It is likely, though it was not pressed as strongly by SUN in connection with these employees, that there are some nurses who perform infection control duties as a peripheral aspect of the nursing care they provide, and these employees will continue to be included in SUN bargaining units.*

[37] In *Interpretative Ruling #4*, *supra*, the Board also dealt with the EMT classification. Counsel submitted that it was the exact situation that is before the Board in this case – a full-time position that blends duties from the EMT classification, that

would be in the health support practitioner bargaining unit, with those of the SCA classification, which would be in the health services provider unit. While it was accepted that full-time, part-time and casual EMTs (i.e., not working in a blended position) would be in the practitioner bargaining unit, issue was joined, however, over where to place persons with EMT qualifications who are recruited into positions that would typically be in the provider unit with the expectation that they would respond to emergency medical services calls as required. The Board cast the question as follows, at 383:

> *The problem arises in those special cases, of which there are a number in rural areas, where a person with qualifications as an EMT is recruited to a position, typically one which would now be included in a health services provider bargaining unit, with an expectation that this employee will also respond to emergency calls as needed. The representatives of SAHO described this as a scenario which represents an effort to make it possible to retain qualified EMTs in rural areas by assuring them of full-time employment.*

[38] In that case the Board was dealing with the situation where the person in the position was required to respond to emergency calls as infrequently as 10 or 12 times per year; while the position required someone with EMT qualifications, they performed duties indistinguishable from others in the provider unit for 80 or 90 per cent of their time.

[39] The Board concluded that the best way of dealing with the terms and conditions of the employee was to include the employee in the health services provider bargaining unit. Counsel asserted that the Board’s decision rested upon the fact that “the preponderance of duties” performed by the employee were those of employees in the provider unit. Counsel referred to the following statements of the Board at 384-85:

> *In these circumstances, it is exceedingly difficult to split the position occupied by the employee into two constituent parts on any rational basis. As we see it, this difficulty goes beyond issues which might be described as contract administration. The determination of the terms and conditions of employment for such an employee must be dealt with as a whole, in our opinion, as the several aspects of the position are entangled with each other. For this reason, we have concluded that the inclusion of these employees in the health services provider units represents the most viable and holistic way of dealing with their terms and conditions of employment.*

> *As several of those who made submissions at the hearing pointed out, one of the factors which speaks against the allocation of employees to bargaining units on the basis of the preponderance of their duties is that the proportions of functions associated with their positions may change over time. We acknowledge that this is a possibility, and accept that the line we have drawn may give rise to some differences of opinion in the future over the status of particular employees.*

[40] Counsel submitted that the "preponderance of duties" criterion is appropriate, because if it did not matter how infrequently a person performed EMT duties it could potentially lead to easy manipulation of bargaining units by employers

[41] Finally, counsel argued that letter of understanding 11 did not apply to the situation at hand in that requirements 1 and 3 thereof are not satisfied. Firstly, care aide duties are not within the skills associated with the EMT classification, involving attending to the personal care needs of patient residents such as hygiene, dressing, feeding, etc. – normally one would not expect an EMT to be working in a hospital or care home. Secondly, the SCA classification is lower paid than that of EMT and does not provide an opportunity for an EMT to practice his or her professional skills. In any event, the letter is not determinative of the issue – the Board has the jurisdiction to determine the issue.

<u>SEIU</u>

[42] The argument submitted by Ms. Fryett, counsel on behalf SEIU, essentially argued that the issue in this case is determined by *Interpretive Ruling #4*, *supra*. It is not necessary to outline those arguments again as most of them have been covered in the summary of the argument mounted by the Employer.

[43] One point counsel did press, however, is that the Board recognized in *Interpretive Ruling #4*, *supra*, that the proportions of functions associated with positions may change over time leading to changes in the bargaining unit status of employees. In the present case, because of a change in circumstances, i.e., integration of facilities, the Employer's need for full-time EMT employees changed. The incumbents in the new CA/EMT position are not "primarily engaged" in the EMT occupational functions

[44] Counsel also pointed out that SEIU represents many EMT employees employed by private ambulance services as well as those in blended EMT positions in other parts of the province.

Analysis and Decision:

[45] While we agree that, in that part of *Interpretive Ruling #4*, *supra*, dealing with a blended EMT position, the facts before the Board were not exactly similar to those before this panel, the decision provides a valuable framework from which to work through the present issue.

[46] In that case, the evidence was that the persons working in the subject position might respond to emergency calls perhaps a dozen times per year. In the present case, the incumbents might respond to 150 calls in a year (see the evidence of Mr. Dufresne). However, that incidence is still very small and represents an average of less than one call every two days. Given that the call might occur at any time during the 24-hour period when the employee is working an 8-hour shift as a CA/EMT or during the following 16-hour standby period – not to mention on the employee's days off – it could be expected that there is very roughly something less than a one-third chance that the call would occur while the employee is on a scheduled CA/EMT shift. Again, that is roughly something less than once every six shifts.

[47] Of course while emergency calls do not necessarily follow such rigid statistical patterns, given that the average length of a call is 2.74 hours, if the employee responds to one call in every four CA/EMT shifts (i.e. once in 32 work hours), it supports the suggestion in the evidence of Ms. Wilm and Mr. Dufresne that the incumbents spend only 10 to 15 per cent of their time doing EMT work, which is not significantly different and may in fact be less, than was considered by the Board in *Interpretive Ruling #4*, where it observed, at 384, that, "For 80% or 90% of the time, the employee performs duties which are indistinguishable from other members of the health services provider bargaining unit."

[48] Accordingly, we find no reason to depart from the approach adopted by the Board in *Interpretive Ruling #4* with respect to assignment of the CA/EMT position to the health services provider bargaining unit represented by SEIU. The preponderance

of duties performed in the position is associated with those performed by other employees in that unit. While it is a requirement for recruitment into the position that one be licensed as an EMT, the EMT duties are incidental to the position. It is not an answer to say that because the employee must always drop care aide duties to respond to an emergency call, it is the care aide duties that are incidental to the EMT function. It would be surprising indeed if the persons in the position considered by the Board in *Interpretive Ruling #4* were not similarly required to drop what they were otherwise doing to respond to an emergency call.

[49] However, there is a distinct lack of data on which to determine whether the estimates of the proportion of work will be as anticipated. Accordingly, an order will issue that the position is provisionally within the health services provider bargaining unit represented by SEIU.

DATED at Regina, Saskatchewan, this **6th** day of **October**, 2005.

LABOUR RELATIONS BOARD

James Seibel
Chairperson