

**Labour Relations Board
Saskatchewan**

**CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1975, Applicant v. UNIVERSITY OF
SASKATCHEWAN STUDENTS' UNION, Respondent**

LRB File No. 048-04, November 22, 2007

Chairperson, James Seibel; Members: Brenda Cuthbert and Bruce McDonald

For the Applicant: Don Moran and Sharleen Haarstad

For the Respondent: Melissa Brunsdon

**Certification – Amendment – Add-on to existing unit – Employees of
womens' centre have close community of interest with employees of
other centres who have historically been excluded from bargaining
unit – Based on all evidence no logical reason why womens' centre
should be treated differently than other centres – Board declines to
amend existing certification order to include employees of womens'
centre.**

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

REASONS FOR DECISION

Background:

[1] By Order of the Board dated May 1, 1999, in LRB File No. 273-98, Canadian Union of Public Employees, Local 1975 (the "Union") is designated as the certified bargaining agent to represent an all-employee bargaining unit of the University of Saskatchewan Students' Union (the "Employer" or "USSU"). The Union applied to amend the certification Order to add certain employees to the bargaining unit including the employees of "Browsers," a used bookstore and internet café, and of the Womens' Centre at the University of Saskatchewan. The application was filed within the appropriate "open period" pursuant to s. 5(k) of *The Trade Union Act*, R.S.S. 1978, c. T-17 ("the Act").

[2] Prior to the hearing the parties agreed that the employees of Browsers, with the exception of the Browsers site manager, should become members of the bargaining unit subject to evidence of majority support among the employees in the add-on unit. The parties further agreed that the Browsers site manager and the kitchen manager ought to be excluded from the bargaining unit and that the print shop site manager ought to be excluded as agreed by them in contract negotiations. The application for amendment was accompanied by evidence of

majority support for the application from the employees of Browsers and evidence of majority support from the employees of the Womens' Centre, according to the statement of employment filed on behalf of the Employer.

[3] However, the parties were not agreed on the inclusion in the bargaining unit of the employees of the Womens' Centre including the director. The existing certification Order presently excludes “. . . all employees who work for the centres designed for special needs students including, the Help Centre, the Lesbian, Gay, Bisexual, Transgender and Ally Centre and the Volunteer Centre.” The Employer takes the position that the employees of the Womens' Centre do not share a community of interest with the existing bargaining unit but do share a community of interest with the other centres designed for “special needs students” and, similarly, ought to be excluded from the bargaining unit. In the alternative, the Employer submits that, if the employees of the Womens' Centre are added to the bargaining unit, then the director of the Womens' Centre ought to be excluded pursuant to s. 2(f)(i)(A) of the *Act* as the incumbent exercises authority and performs functions that are of a managerial character. According to the statement of employment filed on behalf of the Employer the director is the only employee of the Womens' Centre.

[4] In the spring of 1998 the USSU assumed management control of Place Riel Society¹. At the time of amalgamation the approximately 100 employees of Place Riel were represented by the Union while the approximately 25 employees of the USSU were not unionized. The Union and the USSU could not agree on the description of the bargaining unit for the amalgamated organization. The Union applied to the Board (LRB File No. 273-98) for an order, *inter alia*, that the Employer was the successor employer to Place Riel Society. The Union and Employer eventually agreed on the description of the bargaining unit which essentially resulted in the former unionized employees of Place Riel Society continuing to be represented by the Union and the employees of the USSU who were not unionized being out of scope of the bargaining unit.

[5] The Help Centre provides peer support for students, including information and seminars regarding sexual assault awareness, self-harm awareness, suicide awareness and other free services provided by trained volunteers.

¹Place Riel Society was a joint undertaking of the University of Saskatchewan, the University of Saskatchewan Alumni Association

[6] The Lesbian, Gay, Bisexual, Transgender and Ally Centre (the "LGBT Centre") is staffed by volunteers trained in LGBT issues providing information, support and informal discussion groups.

[7] The Volunteer Centre coordinates volunteer opportunities both off and on campus, operates the "Safewalk" program, provides transcript services and operates a food centre for students in partnership with the Saskatoon Food Bank. Although it is staffed by student volunteers, they may earn money as members of the "Student Crew" by providing casual security, parking and other services at USSU events.

[8] The Womens' Centre had been a part of the USSU but became autonomous in the early 1990's prior to the amalgamation of the Place Riel Society and the USSU. In 2001, it again became a part of the Employer after the amalgamation. It is staffed by volunteers trained in womens' issues providing confidential support including pregnancy crisis intervention and referral services and operates informal discussion and support groups for aboriginal students, adoption support, survivors of abuse and body image issues.

[9] The director of the Womens' Centre at the time the present application was filed was Maria Alexopoulos. The director at the time of the hearing was Gina McKay.

Evidence:

[10] Jackie Swinnerton, the Employer's resource services manager, was called to testify on behalf of the Employer. The Union called three witnesses: Ms. Alexopoulos, former director of the Womens' Centre; Glenn Ross, the Union's local grievance chairperson and past president; and Don Moran, a national servicing representative for the Union.

[11] We have reviewed and considered all of the testimony presented and documentary evidence adduced at the hearing.

[12] Ms. Swinnerton testified that her duties as resource services manager include the supervision of some of the duties of the employees of the four student centres including the hiring

and performance evaluations of their respective directors. The director of each of the four centres must be an undergraduate student and is hired for a one-year term that may be extended for a further year.

[13] Ms. Swinnerton stated that each centre has a similar strategic plan. Although each centre has its own brochure, all are similar in format, and the four centres are also described together in a single brochure for student distribution at the start of the academic year as well as having a common recruitment poster. The centres' costs of advertising are shared.

[14] The position descriptions for each of the four centre directors is substantially similar. Each reports to Ms. Swinnerton as resource services manager. Each centre's director is required to work the same number of hours per day although the hours that a particular centre is open to clients may vary.

[15] While the Help, and LGBT Centres are staffed by the paid director and unpaid volunteers, the Volunteer Centre is staffed by the paid director and both unpaid volunteers and the 35 to 40 paid members of the "Student Crew" employed on a casual basis. The Womens' Centre is staffed by the paid director and unpaid volunteers but, as of May 2004, also had a paid victim advocate; although the latter position is an employee of the USSU, it is funded by Status of Women Canada. The Womens' Centre director supervises the victim advocate and sat in on the hiring interviews for the position.

[16] The four centres use the same volunteer application form. Each centre's director interviews the volunteer applicants and determines who is accepted. Each volunteer accepted at any centre receives a copy of the same "Volunteer Manual." The four centres hold a common orientation and training retreat where volunteers receive both general and centre-specific training. The volunteers are scheduled by each centre's director and they may help at events at any of the centres or fill in as relief for absences and illness. The centres hold a common awards banquet and Christmas-season party for all of the volunteers. The director does informal performance evaluations of each volunteer. The director of each of the centres may terminate that centre's volunteers.

[17] The directors of the four centres attend a monthly administration team meeting with the Employer's general manager, a representative of the USSU executive committee and the site

managers of Browsers, Louis's and the print shop, at which confidential information may be exchanged. Each director also has a monthly meeting with Ms. Swinnerton that may include the Employer's communications director, the vice-president of operations and finance or other officers of the Employer. The directors of the other centres sit on the interview committee to fill a director vacancy at any of the other centres.

Arguments:

[18] Ms. Brunsdon, counsel on behalf of the Employer, filed a brief of her argument which we have reviewed. She argued that all four centres are similar and functionally integrated but the director of the Womens' Centre does not share a community of interest with the employees in the existing bargaining unit. All of the centres are help centres for students. All of the centres are non-profit and are essentially staffed by volunteers. They have common recruiting and training and volunteers cross from one to another as necessary. The duties, responsibilities and qualifications are identical and interchangeable. They hold common administrative meetings. It would not make sense to include the Womens' Centre director in the bargaining unit when the directors of the other three centres are specifically excluded. In the alternative, the Womens' Centre director ought to be excluded as a managerial exclusion: the director performs hiring, performance evaluation and firing functions. In support of her arguments, counsel referred to the following decisions: *International Alliance of Theatrical Stage Employees and Moving Pictures 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; *Island Medical Laboratories Ltd.* (1993), BCLRB No. B308-93 (British Columbia Labour Relations Board); *Okanagan College Council* (1995), BCLRB No. B276-95 (British Columbia Labour Relations Board); *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; *St. Thomas More College Faculty Association v. St. Thomas More College*, [2003] Sask. L.R.B.R. 426, LRB File No. 105-02; *Service Employees' International Union, Local 333 v. Congregation of Sisters of Notre Dame de Sion*, [1998] Sask. L.R.B.R. 439, LRB File No. 288-97; *City of Regina v. Canadian Union of Public Employees, Local 21, et al.*, [1995] 3rd Quarter Sask. Labour Rep. 153, LRB File No. 268-94; *United Food and Commercial Workers, Local 1400 v. 610539 Saskatchewan Limited, o/a Heritage Inn, Saskatoon* [2002] Sask. L.R.B.R. 460, LRB File No. 161-02; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Canadian Linen & Uniform Service Company*, [1999] Sask. L.R.B.R. 173, LRB File No. 048-99.

[19] Ms. Haarstad argued that, while there are certain commonalities among the centres, they do not have the same community of interest. With respect to the assertion that the Womens' Centre director should be excluded as managerial, Ms. Haarstad asserted that the director's duties include most of the duties of other in-scope employees represented by the Union, for example, budget preparation. In support of her arguments, Ms. Haarstad referred to the following decisions: *Canadian Union of Public Employees, Local 3926 v. Board of Education of Deer Park School Division of Saskatchewan and Deer Park Employees Association*, [2000] Sask. L.R.B.R. 349, LRB File No. 292-99; *Re Horton CBI Ltd.* (1992), 4 L.A.C. (3d) 97 (Adell); *Saskatchewan Centre of the Arts, supra*; *Canadian Union of Public Employees, Local 4612 v. Board of Education of the Estevan Comprehensive High School and Service Employees' International Union, Local 299*, [2003] Sask. L.R.B.R. 417, LRB File No. 092-03; *Canadian Union of Bank Employees v. Bank of Nova Scotia*, [1977] 2 Can. L.R.B.R. 126 (CLRB); *Grain Services Union (ILWU Canadian Area) v. AgPro Grain Inc.*, [1995] 1st Quarter Sask. Labour Rep. 243, LRB File No. 257-94; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Saskatchewan Institute on Community Living Inc.* [1996] Sask. L.R.B.R. 705, LRB File No. 157-96.

Analysis and Decision:

[20] In *Saskatchewan Centre of the Arts, supra*, the Board described the concept of "community of interest" in the context of the appropriateness of a bargaining unit as follows at 130:

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. . . .

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. . . . Moreover, these differences do not usually materialize into the kind or degree of conflict that prevents common certification. If the mere existence of these differences was 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. . . .

[21] A list of factors used to define community of interest as enumerated by the British Columbia Labour Relations Board in *Island Medical Laboratories, supra*, is often referred to in this regard, as follows:

- Nature of the work performed
- Conditions of employment
- Skills of employees
- Administration
- Geographic circumstances
- Functional coherence and interdependence

[22] In *Island Medical Laboratories, supra*, the British Columbia Labour Relations Board also stated that there are two other factors to consider when the certification is not an initial certification, stating as follows at 37:

At the second or additional stage of certification (i. e., where there is already at least one collective bargaining regime in place), the community of interest factors are expanded to include the following two [factors]:

- (a) the practice and history of the current collective bargaining scheme*
- (b) the practice and history of collective bargaining in the industry or sector*

Industrial stability is the most important principle in determining appropriateness at the second or additional stage of certification.

[23] In *St. Thomas More College, supra*, the Board cited the following reference to the importance of “bargaining history”, at 439:

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. 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.

[24] In *Okanagan College Council, supra*, the British Columbia Board made the following observation regarding the employer's structure and the functional integration of employees as those factors bear on the issue at 17:

. . . the structure of the employer physically, administratively and operationally is really the evidentiary basis upon which the appropriateness of the bargaining unit is determined. Functional integration of employees focuses on the interchange and the integration of job duties.

[25] However, the Board has often observed 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 on the circumstances of the case. The Board stated as follows in *St Thomas More College, supra*, at 435:

. . . 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.

[26] Community of interest is not necessarily an overriding consideration in making the determination regarding the appropriateness of a bargaining unit. The Board stated as follows in *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, 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.

[27] In the present case, we are of the opinion that, based on all the evidence, there is a high degree of similarity in the structure and operations of all four centres. The employees of the Womens' Centre have a close community of interest with the employees of the other centres, which is a different community of interest than the employees in the bargaining unit as it presently exists. Historically, the employees of the centres (with the exception of the Womens' Centre, which was not part of the USSU at the time) have been excluded from the bargaining unit of employees represented by the Union. This was agreed to by the Union when the centres came under the aegis of the USSU. There is no logical reason, based on all of the evidence, why the Womens' Centre should be treated any differently than the other centres. Had we determined differently we would have, in any event, excluded the director of the Womens' Centre on the basis of managerial exclusion.

[28] Accordingly that portion of the application as concerns the Womens' Centre is dismissed.

[29] The parties are in agreement that the employees of Browsers be included in the bargaining unit, given evidence of majority support for the application. The parties are also in agreement as to the listed exclusions of the Browsers site manager, kitchen manager and print shop site supervisor and the certification Order shall be amended to reflect same.

DATED at Regina, Saskatchewan, this **22nd** day of **November, 2007**.

LABOUR RELATIONS BOARD

James Seibel,
Chairperson