Labour Relations Board
Saskatchewan

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 336, Applicant v. BOARD OF EDUCATION OF THE CHINOOK SCHOOL DIVISION No. 211 Respondent, and CANADIAN UNION OF PUBLIC EMPLOYEES, Interested Party

LRB File Nos. 070-06, 095-06, 096-06, 097-06, 098-06 & 099-06; December 7, 2007
Vice-Chairperson, Angela Zborosky; Members: Gloria Cymbalisty and Marshall Hamilton

For the Applicant:	Drew Plaxton
For the Respondent:	Larry LeBlanc, Q.C.
For the Interested Party:	No one appearing

Certification – Appropriate bargaining unit – Board's task on application for certification to determine whether proposed unit appropriate unit not whether proposed unit most appropriate unit – Board uses principles set out in pre-Dorsey health care decisions to analyze proposed bargaining units in education sector – Board concludes that proposed bargaining units appropriate units.

Bargaining unit – Appropriate bargaining unit – Board policy – In determining whether under-inclusive units appropriate units in education sector, Board considers parties' wishes or agreements, community of interest, viability, employer's organizational structure, historical patterns of organizing and organizing difficulties – Board concludes that proposed bargaining units appropriate units.

Certification – Statement of employment – Teacher assistant works with students from multiple schools – Union seeks to include teacher assistant on statement of employment for one school – Board finds that teacher assistant has significant connection to one school such that she should be included on statement of employment.

***The Trade Union Act*, ss. 2(a), 5(a), 5(b), 5(c).**

REASONS FOR DECISION

Background:

[1] These Reasons for Decision deal with several applications for certification filed by Service Employees International Union, Local 336 (the "Union") in May and June of 2006 seeking to represent certain groups of employees employed by the Board of Education of the Chinook School Division, No. 211 (the "Employer" or "Chinook School

Division") at certain specified schools in that division. These are the first applications for certification for which the Board has been required to render a written decision following the general restructuring of boards of education and their school divisions by the provincial government. This restructuring, which became effective January 1, 2006, involved the amalgamation of 68 of 81 school divisions into 15 larger school divisions, resulting in the present 28 public and separate school divisions in the province.

[2] The Chinook School Division comprises the southwest portion of Saskatchewan and was created by the amalgamation of nine (9) smaller school divisions[1]: Eastend School Division; Herbert School Division; Leader School Division; Gull Lake School Division; Maple Creek School Division; and Prairie West School Division; Shaunavon School Division No. 71; Swift Current Comprehensive High School Division No. 130; and Swift Current School Division No. 94; (the "legacy school divisions" or "pre-amalgamation school divisions"). There are a total of 63 schools in the Chinook School Division with a total student enrolment for the 2006 school year of 6,232.

[3] There are several certified bargaining units of non-teacher (support staff) employees of the legacy school divisions. The Union is certified as the bargaining agent for a support staff unit in one legacy school division while the Canadian Union of Public Employees, Locals 4632, 4162, 2583 and 4754 (the "CUPE locals") are certified as the collective bargaining agents for support staff units of employees in four of the legacy school divisions. The Chinook School Division has recognized these units and acknowledges that it has "inherited" the collective agreements applicable to each unit. The units represented by these bargaining agents may be summarized as follows:

Union	**Legacy School Division**	**Number of employees**	**Bargaining unit description**
SEIU, Local 336	Swift Current #94 and Swift Current Comprehensive	28	Facilities and maintenance employees [2]
CUPE, Local 4632	Leader	29	Clerical, teacher assistants, library aides, caretaker contractors (bus drivers specifically excluded)
CUPE, Local 4162	Maple Creek	78	Clerical, teacher assistants, library aides, caretakers, bus drivers and mechanics[3]

[1] The Employer also referred to *eight* legacy school divisions, noting that Gull Lake School Division and Maple Creek School Division were to be considered one division.

[2] All the unionized employees work at the high school.

CUPE, Local 2583	Gull Lake	18	Bus drivers
CUPE, Local 4754	Herbert	24	Clerical, teacher assistants and library aides (bus drivers, maintenance personnel and noon-hour supervisors are specifically excluded)

[4] The Chinook School Division has approximately 626 support staff employees excluding approximately 23 noon-hour supervisors who are casual employees. The employees in the five bargaining units described in the above table total approximately 177. In the applications before us, the Union seeks orders pursuant to *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*") designating the Union as the bargaining agent for six (6) additional bargaining units comprising approximately 137 of the 449 remaining unorganized or non-union support staff employees in the Chinook School Division. The six bargaining units sought include certain support staff employees located at the following schools in the Chinook School Division: Val Marie School and Vanguard Community School, Shaunavon High School and Shaunavon Public School, Ashley Park Elementary School, Central Elementary School, Spring Lake School, Neville Elementary School and Bone Creek School.

[5] The Employer filed replies and statements of employment on each of the applications for certification. The Employer's position in relation to the applications for certification is that the bargaining units sought by the Union are inappropriate because the employees do not share a sufficient community of interest. The Employer also takes the position that, because employees in many of the same classifications are represented by CUPE locals at other schools, the Union's proposed bargaining units are fragmented and inappropriate for both harmonious collective bargaining and long-term stability. The statements of employment filed by the Employer in relation to each of the applications listing the names and occupational classifications of employees in each of the proposed bargaining units include a greater number of employees in those units than estimated by the Union.

[6] Canadian Union of Public Employees ("CUPE") also filed a reply in relation to each of the Union's applications. In those replies, CUPE takes the position that its

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[3] The certification order refers to "all employees . . . except : the Director of Education, the Secretary-Treasurer, the Secretary for the Administration Officers, the Accounting Clerk, the Speech-Language Pathologist and teachers employed and functioning as such…"

certification orders in relation to certain legacy school divisions within the Chinook School Division should not be a barrier to organizing by the Union in this division and that CUPE's certification orders do not make those units proposed by the Union inappropriate.

[7] On July 20, 2006, the parties jointly requested the appointment of a Board agent to attempt to assist the parties to resolve issues relating to the composition of the statements of employment filed in these applications. On the same date, the Board's Executive Officer made such an order and directed the Board agent to thereafter report to the parties and the Board as to the outcome of those efforts. On September 15, 2006, the Board agent reported to the parties and the Board which report included revised statements of employment for each of the Union's applications.

[8] The applications were heard by the Board on September 18 and 19 and October 23, 2006. At the outset of the hearing, the Union advised the Board that it wished to amend the bargaining unit description in its application in LRB File No. 095-06 to include four employees who perform mechanical/maintenance work in the service centre in Shaunavon. The Union also wished to add the names of these four employees on the statement of employment. The Board granted the amendment, it having gone unopposed by the Employer. Also at the outset of the hearing, the parties advised the Board that the only disputes in relation to the statements of employment were as follows:

> *a)* *LRB File No. 096-06 (Ashley Park and Central) – two casual employees employed as teacher assistants, Dyanna Paryeter and Reziena Struik (both of whom the Union seeks to have included in the bargaining unit); and*
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> b) *LRB File No. 096-06 (Ashley Park and Central) – two employees classified as "office managers" (whom the Union seeks to have excluded from the proposed bargaining unit).*

[9] In relation to LRB File No. 096-06, the Union sought to include the two casual employees on the basis that they have a sufficient connection with the proposed bargaining unit. The Employer sought to exclude them: Ms. Paryeter on the basis that it has no record she is an employee and Ms. Struik on the basis that she has little connection to the bargaining unit sought because she works as a teacher's aide for students going to more than one school. The parties agreed that the Board should decide the status of Ms. Struik based on agreed facts provided to the Board by the

parties. At the conclusion of the hearing, the Union agreed that Ms. Paryeter's name could be deleted from the statement of employment.

[10] Also in relation to LRB File No. 096-06, the Employer took the position that the "office managers" are "clerical" employees working in the schools and are not performing managerial functions. The Employer stated that it was inappropriate for the Union to exclude clerical employees from this proposed bargaining unit when it sought to include clerical employees in all of the other proposed bargaining units – "clerical" employees should be included when a union seeks an "all support-staff" unit. The Union took the position that the office managers should be excluded from this proposed bargaining unit because their title is "manager," they do not share a community of interest with others in the proposed unit and because the Union should be permitted to choose which classifications it wishes to include in a bargaining unit. The Union also took the position that, if the Board finds it appropriate to include the office managers in this bargaining unit, it should instead exclude clerical employees from all of the Union's proposed bargaining units.

[11] Based on the foregoing, the composition of the bargaining units for which the Union seeks certification orders may be summarized as follows:

LRB File No.	**Location/Geographical Description**	**Number of Employees**[4]	**Bargaining Unit Description**[5]
070-06	Val Marie School and Vanguard Community School	21	Teacher assistants, clerical, custodians, librarians, caretakers, noon hour supervisors, bus drivers and substitutes in the said classifications
095-06	Shaunavon High School, Shaunavon Public School and Shaunavon Service Centre	46	Teacher assistants, clerical, custodians, librarians, caretakers, noon hour supervisors, bus drivers and substitutes in the said classifications at the Shaunavon High School and the Shaunavon Public School *and mechanical and maintenance workers employed at the service centre in Shaunavon*

[4] The number of employees in the proposed bargaining unit as indicated are those agreed to by the parties in the course of discussions with the Board agent. Where there are positions in dispute on the application, it is so indicated in brackets following the total possible number of employees in the bargaining unit.

[5] The bargaining units sought by the Union were all in the following terms: " *All employees of Chinook School Division, No. 211 in the following classifications: [*classifications listed*] employed at the [*name school(s)*] excepting persons covered by other certification orders.*" All of the proposed bargaining unit descriptions include the same classifications, except where indicated or noted in italics.

096-06	Ashley Park Elementary School and Central Elementary School	49 (3 in dispute – 1 teacher assistant and 2 office managers)	Teacher assistants, custodians, librarians, caretakers, noon hour supervisors, bus drivers,and substitutes in the said classifications *Note: application does not include "clerical"*
097-06	Spring Lake School	3	Teacher assistants, clerical, custodians, librarians, caretakers, noon hour supervisors, bus drivers and substitutes in the said classifications
098-06	Neville Elementary School	15	Teacher assistants, clerical, custodians, librarians, caretakers, noon hour supervisors, bus drivers and substitutes in the said classifications
099-06	Bone Creek School	2	Teacher assistants, clerical, custodians, librarians, caretakers, noon hour supervisors, bus drivers and substitutes in the said classifications

Evidence:

[12] At the hearing, the parties agreed upon the following facts concerning the status of Ms. Struik's position to allow the Board to determine whether she should be on the statement of employment in relation to LRB File No. 096-06:

- *Ms. Struik works as a teacher assistant, providing assistance to students with special needs;*
- *As of June 2006, when this certification application was filed, Ms. Struik's primary duty was to ride a bus as a special needs' attendant;*
- *That bus took students with special needs to Swift Current Comprehensive School (seven students), Ashley Park School (two students) and Oman School (two students);*
- *In performing these duties, Ms. Struik worked 1½ hours in the morning and 1½ hours in the afternoon.*
- *As of September 2006 (at the time of the hearing), Ms. Struik had the care of one additional student who rode the bus to attend at Central School;*
- *Also as of September 2006, Ms. Struik worked as a noon-hour supervisor at Central School.*

[13] In addition to the oral testimony of the witnesses, the Union filed copies of several certification orders including those applicable to the current certified bargaining

units in the Chinook School Division, various Service Employees International Union and CUPE certification orders issued in relation to other schools/divisions in the province and CUPE certification orders currently the subject of other applications before the Board.

[14] The parties agreed that the Employer would present its evidence first. Kyle McIntrye, superintendent of human resources for the Chinook School Division, testified on behalf of the Employer. Following the Employer's evidence, Janice Platzke, president of the Union, and Barb Wotherspoon, business agent, testified on behalf of the Union.

Mr. McIntyre

[15] Mr. McIntyre testified that, in his capacity as superintendent of human resources for the Chinook School Division which position he has occupied since January 1, 2006, his duties and responsibilities include recruiting and hiring teachers and support staff, negotiating collective agreements and the overall supervision of employees including performance management, corrective discipline, etc.

[16] Mr. McIntyre testified that the Chinook School Division came into existence January 1, 2006 as a result of the province-wide amalgamation that saw eight legacy divisions in the southwest corner of the province amalgamated to become the Chinook School Division.[6] The Division has its head office in Swift Current with satellite offices/service centers in Shaunavon and Maple Creek. While most of the division staff and senior administrators work in the Swift Current office, because of the large geographical area of the Chinook School Division, there are certain employees, including an occupational therapist, information technologist, curriculum coordinator, student services coordinator, etc. who work at each of the three offices. Opening day enrollment in the Chinook School Division on August 24, 2006 was 6232 students. The staff complement was 1322 employees – 525 teachers and 626 support staff.

[17] Mr. McIntyre pointed out that the proposed geographical location in each of the Union's applications for certification was located in the following legacy divisions:

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[6] For a brief period of time before January 1, 2006, the nine legacy divisions, with the exclusion of Herbert, had been amalgamated into the "South West School Division."

- LRB File No. 070-06

Val Marie School – Shaunavon School Division

Vanguard School – Prairie West School Division

- LRB File No. 095-06

Shaunavon High School and Shaunavon Public School –

Shaunavon School Division

- LRB File No. 096-06

Ashley Park Elementary School – Swift Current School Division #94

Central Elementary School - Swift Current School Division #94

- LRB File No. 097-06

Spring Lake School – Prairie West School Division

- LRB File No. 098-06

Neville School – Prairie West School Division

- LRB File No. 099-06

Bone Creek – Shaunavon School Division

[18] Mr. McIntyre testified that the objectives of the 2006 amalgamation of school divisions were to provide equal opportunities to students in terms of the support and services available as well as equity in terms of taxation of residents in the school divisions. In the Report of the Education Equity Task Force to the Minister of Learning, November 2004, the task force stated that the restructuring initiative was intended to secure an effective and sustainable K-12 education system. It describes “effective” in terms of achieving equity for students (access to the same quality of education), achieving equity for taxpayers (so that there are not huge disparities in property taxes as a result of differences in the financial capacity and demographic/socioeconomic factors unique to a school division) and preserving the autonomy of school divisions. The new structure must be “sustainable” in the sense that the objectives of equity and autonomy work over the long term.

[19] With respect to maintenance staff, Mr. McIntyre testified that there is maintenance staff at each of the satellite offices although only those at Maple Creek are unionized. He stated that there is some intermingling between the staff at all offices and provided an example where a boiler blew up in a school and maintenance staff from all three service centers attended to fix it. Mr. McIntyre testified that the head of facilities and maintenance is located in Swift Current as are the managers who report to her and who supervise all of the maintenance employees.

[20] The manager of transportation is located in Shaunavon and is responsible for all routes and transportation services, dealing with parents of students and supervising all bus drivers.

[21] Mr. McIntyre stated that, upon the amalgamation of the eight legacy divisions, the Chinook School Division was faced with a situation where there was no consistency in the terms and conditions of employment of the employees in the amalgamated division. He stated that he received direction from the Chinook School Division to focus his attention on reaching consistent terms and conditions of employment for all of the support staff in the amalgamated division, including unrepresented employees as well as those represented by the Union and by CUPE. Although Mr. McIntyre stated that it was one of the goals of the re-structuring to achieve equity among the staff across the division by having similar terms and conditions of work, a process he believed was being carried out in other amalgamated divisions, he acknowledged in cross-examination that achieving equitable terms and conditions of employment was not specifically part of the government's mandate in relation to the restructuring. He also acknowledged that neither the Union nor CUPE had been consulted in the course of the government's review and plan for restructuring.

[22] Mr. McIntyre stated that within the "continuous improvement framework" required by Saskatchewan Learning, one of the Chinook School Division's goals was that: "The school division is a good place for students and staff to go to school and to go to work." One of the "actions" engaged in by the human resources department to meet that goal was the creation of a committee of support staff "to examine and recommend what should be done to provide equity with support staff salary and benefit levels" across

the Chinook School Division. Mr. McIntyre stated that in February 2006 the Support Staff Benefit Analysis and Recommendation Committee (the "committee") was struck consisting of 11-12 support staff with broad representation from the affected positions and various geographical areas. He stated that they also invited employees who were members of the Union and of CUPE. Marty Harder, a facility operator in Swift Current and member of the Union, was chosen by the Employer for the committee. The mandate of the committee was not to bargain or negotiate employees' benefits but rather "to make recommendations to the Board to achieve equitable pay, a similar benefit package, similar job descriptions and similar and equitable recognition for training and experience for all Chinook employees doing similar work no matter where they are located." [7]

[23] The committee met on five occasions during the period from March to May 2006. During the course of those meetings, the committee members reviewed and made recommendations regarding position descriptions, training and experience grids, salary principles and pay increments and principles pertaining to employee benefits. They also reviewed employees' rights and responsibilities under *The Labour Standards Act*. Mr. McIntyre felt that the employees of the "have not" legacy divisions had really been mistreated and that it was important to address these inequities quickly. Also, during the course of the committee's work, the committee members invited feedback and input from all affected employees. The committee filed reports dated May 30 and June 26, 2006 that contained its recommendations for change in the areas of salary, sick leave/pay, benefit packages, vacation entitlement, job posting procedures, hours of work and pay increments, professional development support and position descriptions (including required training levels). Mr. McIntyre described the document as the employees' "wish list." Mr. McIntyre advised that, at the time of the hearing, the issue of benefits remained to be dealt with – the unorganized employees had no benefit plans while the Union's members had fully paid benefits and CUPE members had partially paid benefits. An employee survey was sent out in August 2006 to determine what the employees wanted in terms of benefits.

[24] A significant amount of evidence was led concerning the work of the committee and its analysis of the discrepancies between the terms and conditions of work

[7] This statement is contained in a report of May 2006 directed to the board of the Chinook School Division and to Saskatchewan Learning from the human resources department in which it reports its compliance in

of employees in the legacy divisions. Given the issues and conclusion reached in this case, it is not necessary to detail that evidence here. Suffice it to say, the committee carried out its mandate to examine all employees' terms and conditions of work including those employees represented by the Union and CUPE and, while utilizing one of the Union's members on the committee, did not involve the Union in its work or give the Union a copy of its reports. It was apparent that the Union's members were the most highly paid custodians in the division and so they were "green-circled" or "red-circled,"[8] the committee having been focused on uniformity and benefiting employees with the lowest wages. For example, the principles that arose from the committee's recommendations were that there be no roll back or drop in salaries but that certain employees would be red-circled, with the premise being that they would "build from the 'bottom up'" addressing equity and the needs of the lowest paid employees first.

[25] Mr. McIntyre testified that the Employer's board approved of the recommendations of the committee in June 2006 and communicated to employees in their final June 2006 pay cheque that most employees would be receiving a raise in September 2006. The employees were again advised of the intended increases at an opening day ceremony on August 24, 2006 when the Employer discussed the work of the committee. Although it was the intention of the Employer to place all non-unionized employees on the new wage grid as of September 1, 2006, as of the time of the first set of hearing dates in September, 2006 not all members had been so placed because the Employer was still trying to determine their training levels and years of seniority.

[26] Mr. McIntyre testified that a memorandum of agreement was struck with all of the CUPE locals[9] dealing only with salaries. The new salary grid was effective September 1, 2006, although the memorandum was not signed until September 18, 2006, the first hearing date for this application. He noted that employees at the top did not experience a wage increase and those making more than indicated by the grid would be green-circled. In cross-examination he acknowledged that most CUPE members received an increase and many of them a substantial one. Also in cross-examination, Mr.

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meeting the goals set by the Chinook School Division.

[8] The parties use these terms interchangeably during the course of the hearing, meaning that certain employees' would be frozen at a certain level.

[9] The collective agreements with the four CUPE locals had different expiry dates varying between December 31, 2005 and December 31, 2006. The collective agreements were opened as necessary to provide for the changes to wages outlined in the memorandum of agreement of September 1, 2006.

[27] It was suggested to Mr. McIntyre in cross-examination that CUPE had a representative on the committee and that CUPE had a lot to gain from the Chinook School Division achieving equity, as CUPE's rates of pay were not very high. Mr. McIntyre denied this stating that the Employer was seeking equity across the division and stating that there were no CUPE representatives on the committee, although acknowledging that one of the participants happened to be the CUPE local president from Maple Creek. Mr. McIntyre stated that the Employer offered the terms of the memorandum of agreement to CUPE because CUPE had expressed its intention to amalgamate the CUPE locals and the Chinook School Division supported that.

[28] Mr. McIntyre acknowledged that the Employer did not negotiate wage increases with the Union at the same time that increases were given to the non-unionized employees and the members of CUPE, commenting that the 28 members of the Union were "doing significantly better than the 620 others" in the division. Mr. McIntyre stated that he considered them to be "green-circled" although he acknowledged that there has been no agreement with the Union to "green circle." The Union's current collective agreement has a duration from January 1, 2006 to December 31, 2006.

[29] It was suggested to Mr. McIntyre in cross-examination that, by not negotiating with the Union at the same time all other employees experienced wage increases including the members of CUPE, the Employer was demonstrating a preference for CUPE or "no union" at the time of the Union's organizing drive. Mr. McIntyre denied this and stated that the Employer would negotiate a renewal agreement with the Union when required. When questioned about the circumstances of the negotiation of the Union's current collective agreement, Mr. McIntyre stated that he advised the Union's representatives of the intended work of the committee and assured them that there would be no negative effects upon the Union. He stated that, because of

the impending amalgamation of the divisions, the Union agreed to a short contract with minor changes.

[30] Mr. McIntyre testified that he believes the bargaining units applied for by the Union are inappropriate and that it would be best for the Board to define for the parties the unit most appropriate to achieve the Chinook School Division's plans of managing programs and personnel to achieve equity across the division. It is not that he wishes the employees would be all non-unionized or that the Employer prefers CUPE but that, once the most appropriate unit is defined, the employees have a choice as to which union represents them. Mr. McIntyre stated that he believes that one all-inclusive unit would be most appropriate rather than the piecemeal certifications by school as that would be confusing and would limit employees' mobility. It would also result in decreased service to students because the Chinook School Division would be unable to put the best and most qualified employees with the right students. He saw this as a particular problem should schools close and should the Employer be constrained by seniority and bumping procedures. Mr. McIntyre agreed with counsel for the Union that such matters could be the subject of negotiations between the parties. He also agreed that there has been no commonality of bargaining unit compositions in the Chinook School Division or elsewhere in the province.

[31] Mr. McIntyre testified further concerning the difficulties he foresaw with allowing the Union's applications for certification. The Chinook School Division had consolidated its payroll system and stated that it would be difficult to manage several pay rates, make allowances for different union dues and have different pay periods, although he acknowledged in cross-examination that they have "made it work" so far.

[32] Mr. McIntyre also described certain potential problems with staffing. With respect to substitute/casual employees, previously each school had its own substitute list from which it called for replacements. The Chinook School Division has gone to a division-wide list for educational assistants and wishes to do so for other classifications, following an indication from the employees as to which schools they would go to. He stated that CUPE members have site-specific lists but because the CUPE units include schools that are geographically close, the problem of an employee working at a non-unionized location is rare. On the other hand, the units applied for by the Union do not

include all schools in a close geographical area so problems will arise where an employee has indicated his or her availability to work at more than one school in the area. As an example, he pointed to the unit applied for covering Ashley Park and Central Schools but not the five other schools in the area around Swift Current for which the substitute educational assistants have indicated their availability. He stated that similar issues present themselves in relation to hiring. While each collective agreement has a process for filling vacancies (by school) and there was no consistent process elsewhere in the Chinook School Division, the human resources committee has developed a division-wide hiring procedure whereby vacancies will be posted across the division. In essence, Mr. McIntyre believed that site-specific certifications would hinder the operation of that process.

[33] Mr. McIntyre also suggested that there will be intermingling of employees such that employees will be working at more than one school, including schools that are unionized by CUPE and non-unionized workplaces. He described the situation of educational assistants and custodians who may regularly work at more than one school (like a split-shift) and service centre employees who may be required to work at different schools. As an example, he described the situation where a Swift Current-based electrician who was a member of the Union, worked at several schools including one where employees were represented by CUPE, although he acknowledged in cross-examination that this occurred after amalgamation and that the parties and CUPE negotiated terms to deal with this situation. He also acknowledged that the collective agreements currently in place allow for employees to perform work at other sites that are unionized as long as work is not taken away from the bargaining unit.

[34] Mr. McIntyre also indicated that the Employer is in the process of developing a division-wide performance evaluation system. Human resources is also involved in any disciplinary measures taken whether against union or non-union employees even though the discipline generally takes place at the school level. Similar processes are followed across the division for administering discipline.

[35] With respect to the office manager position that is in dispute between the parties on LRB File No. 096-06, Mr. McIntyre noted that this is the only application in which the Union has not sought to include clerical and he believes this to be

inappropriate. Pointing out that the Union agreed to the inclusion of the "office manager/library support" in Neville (LRB File No. 098-06), he stated that the position of office manager is more in the nature of a secretary because that school has only 26 students. He also pointed to the situation in Shaunavon where the Union chose to include clerical employees within the proposed bargaining unit description and, while there are no such employees listed on the agreed-to statement of employment, there must be clerical employees at the school which would include an office manager. [10]

[36] Mr. McIntyre claimed that the office manager is not a managerial position that should be excluded from the bargaining unit. He described the differences between an office manager and a secretary or clerical person. A secretary primarily performs typing and receptionist duties. An office manager does regular secretarial work but also manages the school office by performing such tasks as collecting fees, making bank deposits, collecting time cards, handling purchases and invoices. The office manager does not generally supervise any employees except in Swift Current where the office manager supervises two clerical employees. He stated that whether there is an office manager, secretary or both will often depend on the size of the school and that, because Ashley Park and Central are fairly large (around 200 students each), the clerical person must perform the tasks associated with the "office manager" job description. When the committee was attempting to standardize job descriptions across the division, it found that the title of "office manager" was more palatable to those who performed the broader range of functions.

[37] With respect to the maintenance and service centre employees at the Shaunavon service centre, Mr. McIntyre stated that the four employees in that classification are the only support staff at the service centre.

[38] In cross-examination, Mr. McIntyre agreed that there is a high concentration of non-unionized labour in the Chinook School Division and that the student population is dispersed over a large geographical area. The Chinook School Division covers approximately 20,000 square miles and consists of 80 municipalities and a sparsely populated rural area. The Chinook School Division has 63 schools with a range

[10] It may be noted that on the agreed-to statement of employment on LRB File No. 095-06 (Shaunavon), the "classification" of some of the employees has been left blank.

of approximately 12 to 1000 students each and the number of support staff per school varies widely. Generally, there is very low turnover of staff (even for those on a 10-month contract), except for bus drivers who are generally part-time workers holding other jobs.

Ms. Platzke

[39] Janice Platzke is the president of the Union, a position she has held since the spring of 2003. She testified that the Union represents approximately 1100 to 1200 members in the southwest corner of the province, primarily in health care. The Union has an office in Swift Current and has in the past employed one full-time business agent (currently Barb Wotherspoon) and one part-time administrative assistant. Following the organizing drive, in August 2006, a temporary part-time business agent, Debra Fuhrman, was also hired. When Ms. Wotherspoon took a medical leave from January 2006 until July 2006, Ms. Platzke filled her position.

[40] Ms. Platzke testified concerning past efforts to organize in this area of the province as well as details of the organizing drive leading up to the filing of these certification applications. The Union first attempted to organize the teacher assistants in Swift Current in approximately May and June 2005, however, the attempt did not lead to the filing of an application as the local organizers found they needed the research and support of organizers from the Union's national office in order to conduct a successful campaign. The most recent organizing drive that resulted in these applications before the Board commenced in February 2006, initially through the efforts of only local union organizers. In approximately May 2006, the Union was aided in its efforts by organizers from its national office. This significantly increased the Union's ability to have support cards signed because the organizers (eight to ten over the course of the drive) could work on a full-time basis, seven days per week and they also had the necessary research and support from the national office. These organizing efforts resulted in the applications currently before the Board as well as one additional application that was withdrawn prior to the hearing. In cross-examination, it was noted that, when the national organizers became involved at the end of April/beginning of May 2006, it took them a very short time before the Union was in a position to file applications (throughout May and June 2006). In addition, through the production of literature from the Union's website, it was pointed out that the Union says it is the "largest and fastest growing union in North America" and has had as its focus organizing new employees, suggesting that the Union had substantial

resources to devote to this effort. Ms. Platzke agreed except to say that many of the Union's resources had recently been depleted.

[41] Ms. Platzke testified about the challenges to organizing this unique area and, while she was not directly involved in the campaign, she was generally aware of what occurred because she was in the Union's office that the organizers used. Despite her lack of direct involvement, some of her evidence, which we will detail here, is still reliable by reason of the unique attributes of the Chinook School Division as also testified to by other witnesses. The area is a sparsely populated one with most employees living in the rural areas. The Union's organizers preferred to meet personally with people rather than only contact them over the phone and this required organizers to spend a lot of time driving to the employees' homes. Locating the employees' homes was a difficult process – it involved an attempt to contact them by phone first if the organizers knew the appropriate area code or, if it was determined that the employees lived on a farm rather than in a town, it was necessary to use rural municipality maps to locate the farms on which the employees lived. Often, several attempts were made to meet the employee at his or her home. The Union also attempted to hold "town hall" meetings but this was difficult because the time period in which they were organizing was the season for seeding and the many employees who farmed were very busy. Ms. Platzke stated that the Union wished to have the certification applications filed by the end of June 2006 as a number of the support staff employees no longer worked in July and August and because the national organizers assisting with the drive had summer holidays coming. The last application filed by the Union was filed on June 25, 2006.

[42] Ms. Platzke stated that the Union was careful during its organizing drive to stay away from any possible overlap with employees represented by CUPE in the Chinook School Division. The Union went so far as to avoid including all of the employees of a school that had even some employees represented by CUPE. Two of these were explored in cross-examination. For example, even though CUPE only held a certification for bus drivers at Gull Lake School, the Union avoided campaigning for any of the other 47 employees at Gull Lake School. Similarly, in Herbert, the Union did not file an application to represent the approximately 20 bus drivers working there because the other Herbert employees were represented by CUPE. Ms. Platzke testified that the Union and CUPE have in the past successfully represented different employees of the

same employer in the health care sector[11] and she indicated that the Union has participated with other unions at the same bargaining table with Saskatchewan Health Organization, the representative employers' organization in health care.

[43] Ms. Platzke testified concerning the difficulties the Union would encounter if it were required to organize a wall-to-wall certification of the Chinook School Division. She speculated that it would be very costly to do so and that the Union would be unable to have all of its cards signed within the required six-month window. In cross-examination, in an effort to show just how successful the campaign was over the short period of time the national organizers were involved, it was pointed out that, of the 449 non-union support staff employees in the Chinook School Division, the present applications before the Board account for 137 employees and with the Union staying away from the non-unionized staff of the CUPE-represented workplaces (accounting for 67 employees), that left only 145 non-unionized employees at other workplaces that the Union did not attempt to organize. Ms. Platzke acknowledged those facts and responded that she was aware that the organizers had worked long hours, were very tired and that the campaign had cost a lot of money.

[44] Ms. Platzke stated that the Union represents employees in the sectors of health care and education as well as employees in municipalities. She stated that there have been no decertification applications in relation to any of their education sector bargaining units. The Union has been successful in its negotiations in the education sector and in this regard points to the collective agreement in Swift Current where it provides for wages superior to other employees in the division and also contains a 100% employer-paid health plan. The Union plans to continue to organize employees in the Chinook School Division. Ms. Platzke speculated that, if successful with these certification applications, the Union might consolidate the bargaining units and attempt to negotiate one master agreement, just as it has done in the health care sector.

[45] Ms. Platzke also testified concerning the Union's knowledge of the committee formed by the Employer to examine and make recommendations for equitable terms and conditions of employment across the Chinook School Division. She first found

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[11] Based on cross-examination, it appeared that Ms. Platzke was referring to the state of events before Dorsey, having indicated that, currently, none of the health districts have a relationship with more than one

[46] Ms. Platzke was also not aware of the Chinook School Division's award of wage increases to the non-unionized employees of the division and the members of the CUPE locals until she heard the testimony of Mr. McIntyre at the hearing of these applications. She also was not previously aware of the memorandum of agreement signed by CUPE in September 2006. Referring to the meeting with Mr. McIntyre on September 5, 2006, she recalls that he only mentioned that the Chinook School Division was trying to equalize the employees' pay. There was no mention of the wage rates or the recommendations of the committee. Ms. Platzke stated that the Union has never been approached by the Employer with respect to "opening up" their collective agreement. She also denied that the Union has agreed to "green circle" the wages of its members and recalls that she objected to Mr. McIntyre's suggestion at the September 5, 2006 meeting that wage rates would be capped or "green-circled," either then or in future negotiations with the Union. Ms. Platzke opined that the conduct of the Employer in

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health provider union.

awarding these wage increases to all but the Union's members would cause employees to feel they would not have much to gain by joining the Union.

[47] In cross-examination, Ms. Platzke stated that she agreed with the principle of achieving equitable wages across the Chinook School Division. She denied that she "begrudged" CUPE's members or the non-union employees their wage increases and stated that she thought "it would have been more fair for them [CUPE] to bargain it like we did" and that she somewhat takes exception to the fact that CUPE members "got almost unheard of raises within a year." She felt that the non-union employees achieved salary increases by virtue of the Union's organizing campaign whereby the Union was trying to represent them. Ms. Platzke believed that the Employer was aware of the organizing campaign at the time it carried out its plans to increase wages.

[48] Ms. Platzke confirmed that neither the government nor the task force consulted the Union with respect to the restructuring of the school divisions.

[49] With respect to the issue of the inclusion of "office managers" within the Ashley Park/Central bargaining unit, Ms. Platzke stated that, based on her experiences in health care, if a position carries the title "manager," the Union does not include the position in the unit because that employee will be perceived as management or as aligned with management by the other staff. In cross-examination Ms. Platzke maintained that the office managers should be excluded because they are "managers" but she acknowledged that she was not relying on nor had she read the job description for "office manager" in coming to the conclusion that they should be excluded from the bargaining unit. In reviewing the job description set out below, Ms. Platzke acknowledged that the duties listed would not present a problem with the individual being included in the bargaining unit although she maintained that acting as "support" for the principal would mean they are "close to the boss" and that, on the basis of that perception, they should be excluded from the unit. Ms. Platzke stated that the following job description is just a "recommended" one by the committee and that she does not know the nature of the duties actually performed by these individuals. The recommended position description for "office manager" set out in the committee's report provides as follows:

> *<u>Office Manager</u> – is responsible for ensuring that the school office functions in an efficient and effective manner. This position requires the performance of accounting, clerical, secretarial. receptionist task and related office functions to provide support for the principal, school staff, students and public.*

<u>Ms. Wotherspoon</u>

[50] Ms. Wotherspoon was the business agent for the Union for approximately 3 ½ years until she was reassigned in August 2006. She indicated that she was on sick leave from February 6, 2006 to July 1, 2006 and that, when she came back to work, she did so on a gradual basis until her change of position on August 8, 2006.

[51] Ms. Wotherspoon testified that she met with Mr. McIntyre in October 2005 concerning an employee with workplace problems and that at this meeting they discussed the up-coming amalgamation of school divisions. As there were a number of non-unionized employees as well as employees represented by the Union and by CUPE, she expressed her wish that the Labour Relations Board would order a vote similar to what it had done in health care following Dorsey. She stated that she and Mr. McIntyre also briefly discussed that they should meet with CUPE representatives to have further discussions about the amalgamation. In cross-examination she acknowledged that Mr. McIntyre stated that the inequities in terms and conditions of employment would need to be addressed. She stated that she had insisted that, if that occurred, it not be at the expense of the Union's members but rather the other employees' benefits would have to increase to the levels of the Union's member's benefits. She also stated, however, that the bus drivers would move up to the Union's rates but that this would only apply to non-union employees and not to CUPE members – they would have to negotiate their own rates.

[52] Ms. Wotherspoon testified that she had been involved in the negotiations for the 2006 collective agreement and stated that the Union had proposed a 3-year agreement but agreed to one year at the request of the Employer because of the impending amalgamation. She stated that the parties had not really "bargained back and forth" but rather had only one meeting which took place on January 27, 2006. She stated that the Union had presented a proposal that increased wages and made some changes to benefits and Mr. McIntyre accepted it but only for a duration of one year.

[53] Also at the meeting on January 27, 2006 the parties discussed that the Union, CUPE and management should get together to have a discussion about amalgamation and that there would have to be "catch-up." They discussed the formation of a union-management committee. In cross-examination, she acknowledged that Mr. McIntyre expressed the concern of huge inequities across the division and that the Union's members probably would not lose anything when changes were made.

[54] Ms. Wotherspoon denied being informed about the committee of support staff that the Employer had struck to look at employees' terms and conditions of work. She did not receive a copy of the Employer's memo of February 3, 2006 sent to all support staff calling for their participation on the committee, noting that it was not addressed nor copied to the Union. She stated that the Union's member who was on the committee is not personally known to her and denied that the individual has ever held a position in the Union.

[55] Although there was some confusion as to the dates of certain meetings to which Ms. Wotherspoon testified, on the whole of the evidence presented it appears that Ms. Wotherspoon was contacted by Ms. Fuhrman shortly after a union staff meeting on August 8, 2006 and advised that the Employer had formed the committee in question. She stated that this was the first time she became aware that the Employer had struck a committee to look at this issue of equitable terms and conditions of employment. She also became aware around that same time period that a survey had been sent out concerning employee benefits.

[56] Ms. Wotherspoon stated that on September 4 or 5, 2006 she attended a meeting with Mr. McIntyre, accompanied by Ms. Platzke and Ms. Fuhrman in order to introduce Ms. Fuhrman who had taken over for her as business agent. She stated that this was the first time she heard from Mr. McIntyre about "green-circling" the Union's members' wages and says she "couldn't believe it." She asked how the members of the committee were chosen and Mr. McIntyre explained that the Employer sought volunteers when it sent out its February 3, 2006 memo. Mr. McIntyre advised her of the name of the individual on the committee who was a member of the Union and she responded by telling him that, if changes to the collective agreement are being bargained, the Employer

cannot call for volunteers, that the bargaining has to be carried out with the Union's representatives. Ms. Wotherspoon denied having previously seen the committee's May and June 2006 reports until the hearing. Ms. Wotherspoon stated that Mr. McIntyre indicated that the committee's recommendations were binding. She had suggested that Mr. McIntyre knew the members of the Union's bargaining committee and that the individual selected for the committee was not one of them. In cross-examination, Ms. Wotherspoon acknowledged that the February 3, 2006 memo to employees asking for volunteers for the committee states that the recommendations would not be binding. When asked whether she understood that the recommendations did not affect the Union, she questioned why the Employer would then have a member of the Union on the committee.

[57] In cross-examination, Ms. Wotherspoon acknowledged that any discussion related to green-circling would be in relation to discussions for a renewal collective agreement when the current agreement, effective to December 31, 2006, expired. She also acknowledged that none of the Union's members had terms and conditions changed as a result of the work of the committee.

Statutory Provisions:

[58] Relevant provisions of the *Act* include the following:

> *2 In this Act:*
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> *(a) "appropriate unit" means a unit of employees appropriate for the purpose of bargaining collectively;*
>
> *. . .*
>
> *3. Employees have the right to organize in and to form, join or assist trade unions and to bargain collectively through a trade union of their own choosing; and the trade union designated or selected for the purpose of bargaining collectively by the majority of the employees in a unit appropriate for that purpose shall be the exclusive representative of all employees in that unit for the purpose of bargaining collectively.*
>
> *. . .*

5 The board may make orders:

(a) determining whether the appropriate unit of employees for the purpose of bargaining collectively shall be an employer unit, craft unit, plant unit or a subdivision thereof or some other unit;

(b) determining what trade union, if any, represents a majority of employees in an appropriate unit of employees, but no order under this clause shall be made in respect of an application made within a period of six months from the date of the dismissal of an application for certification by the same trade union in respect of the same or a substantially similar unit of employees, unless the board, on the application of that trade union, considers it advisable to abridge that period;

(c) requiring an employer or a trade union representing the majority of employees in an appropriate unit to bargain collectively;

. . .

6(1) In determining what trade union, if any, represents a majority of employees in an appropriate unit of employees, in addition to the exercise of any powers conferred upon it by section 18, the board may, in its discretion, subject to subsection (2), direct a vote to be taken by secret ballot of all employees eligible to vote to determine the question.

. . .

18. The board has, for any matter before it, the power:

. . .

(v) to order, at any time before the proceedings has been finally disposed of by the board, that:

(i) a vote or an additional vote be taken among employees affected by the proceeding if the board considers that the taking of such a vote would assist the board to decide any question that has arisen or is likelt to arise in the proceeding, whether or not such a vote is provided for elsewhere; and

(ii) the ballots cast in any vote ordered by the board pursuant to subclause (i) be sealed in ballot boxes and not counted except as directed by the board;

Arguments:

The Employer

[59] Mr. LeBlanc, counsel on behalf of the Employer, filed a brief of argument that we have reviewed.

[60] The Employer took the position that the bargaining units sought by the Union are not appropriate. The Employer pointed to the Board's long standing general policy to favour larger, more inclusive bargaining units over smaller, specialized units, noting that the public policy objectives considered in determining whether a bargaining unit is appropriate are: (i) whether the employees share a sufficient community of interest to constitute a cohesive group that will be able to bargain collectively, and (ii) whether the proposed unit is sufficiently broad in the context of the employer's workplace to avoid excessive fragmentation of the collective bargaining framework. The Employer relied on *Canadian Union of Public Employees, Local 1902-08 v. Young Women's Christian Association*, [1992] 4th Quarter Sask. Labour Rep. 71, LRB File No. 123-92 as support for the proposition that a proliferation of bargaining units is not normally conducive to collective bargaining.

[61] The Employer argued that the following factors have been considered by the Board (see, for example, *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. O.K. Economy Stores (a division of the Westfair Foods Ltd.),* [1990] Fall Sask. Labour Rep. 64, LRB File No. 264-89 and *Health Sciences Association of Saskatchewan v. Board of Governors of the South Saskatchewan Hospital Centre (The Plains Health Centre)*, [1987] April Sask. Labour Rep. 48, LRB File Nos. 421 & 422-85) in assessing the appropriateness of a bargaining unit:

- *whether the proposed unit of employees will be able to carry on a viable collective bargaining relationship;*
- *size and viability of proposed unit;*
- *community of interest shared by employees in the proposed unit;*
- *interchangeability of personnel;*
- *organizational difficulties in particular industries;*

- *promotion of industrial stability;*
- *the wishes or agreement of parties/expressed views of employees, union and employer;*
- *organizational structure of employer;*
- *nature of employer's operations;*
- *effect proposed unit will have on employer's operations; and*
- *historical patterns of organization in the industry.*

[62] The Employer are also argued, on the basis of the decision of the Board in *Saskatoon Civic Middle Management Association v. City of Saskatoon and Canadian Union of Public Employees, Local 59*, [1998] Sask. L.R.B.R. 341, LRB File Nos. 354-97 & 010-98, that it is the general policy of the Board to select a bargaining unit which is most likely to foster a long-term collective bargaining relationship or, in other words, ensures viable collective bargaining and avoids industrial instability.

[63] The Employer submitted that the proposed units are inappropriate because the employees of particular schools do not share a specific community of interest such that it would be appropriate to exclude employees from a larger bargaining unit. The Employer argued that the proposed bargaining units would result in undue fragmentation of the workforce, are too small to create viable collective bargaining structures, would create artificial differences in wages and benefits and would impede lateral mobility of employees. To allow these applications would lead to piece-meal certification in this and other school divisions and would threaten the objective of school division amalgamations which was to equitably allocate resources and learning opportunities.

[64] In support of these arguments and the Board's refusal to certify under-inclusive units, the Employer relied on *United Food and Commercial Workers, Local 1400 v. Argus Guard and Patrol Ltd.*, [1998] Sask. L.R.B.R. 113, LRB File No. 292-97 (where the Board dismissed a union's application to certify only security guards working at a certain hospital) and *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 (where the Board dismissed a union's application to certify only employees in four of seven departments in circumstances where only an arbitrary line could be drawn around the unit and there was employee crossover between departments).

[65] The Employer also referred to recent cases of the Board involving the issue of bargaining structures in the context of school division amalgamations. In *Board of Education of the Saskatchewan Rivers School Division No. 119 v. Canadian Union of Public Employees, Local 4195*, [1998] Sask. L.R.B.R. 478, LRB File Nos. 303-97 & 364-97, involving an employer's successorship application seeking to amalgamate several bargaining units, the Board stated its preference for "large 'all-employee' bargaining units." The Board stated that the history of certification orders and collective agreements affecting employees of that employer demonstrated "the need for a more rational approach to collective bargaining in the school divisions." The Employer also referred to *Board of Education of the Souris Moose Mountain School Division No. 122 v. Canadian Union of Public Employees*, [2002] Sask. L.R.B.R. 373, LRB File No. 046-02, where, upon application by the employer to amalgamate three CUPE bargaining units in face of opposition by the union to the inclusion of one of those units, the Board stated that it accepted the direction in the *Saskatchewan Rivers* case and found that there was an evolution of the employer's bargaining structure which amounted to a material change such that the proposed unit was a more appropriate than that which the union wished to retain.

[66] The Employer urged the Board to follow the approach used by the Alberta Labour Relations Board in *Alberta Union of Public Employees v. Battle River Regional Division No. 31*, [2003] Alta. L.R.B.R. 253, when assessing appropriateness of bargaining units in school division amalgamations. In that case, a number of years after amalgamation, the union brought an application to represent approximately 20% of the non-teaching staff by reference to all such employees in a certain "ward" (a certain geographical area, used only for electoral purposes) and in circumstances where two other small units existed since before the amalgamation. The Alberta Labour Relations Board dismissed the application on the basis that there existed a presumption against multiple bargaining units and because the historical context supported a division-wide and not a ward-based bargaining unit. The historical context to which the Alberta Labour

Relations Board referred was that the employer's operations had been highly integrated for a number of years and the employees had shared common terms and conditions of employment for the last few years. The Alberta Labour Relations Board sought to avoid any further fragmentation of the workforce and noted that the employees in the unit sought by the union did not share a distinct community of interest as a result of their geographical separation from other employees.

[67] The Employer also referred to the Manitoba Labour Relations Board's decision in *Border Land School Division v. Service Employees International Union, Local 308* (2004), 102 C.L.R.B.R. 273, where the need to rationalize existing bargaining units was recognized in the context of school division amalgamation.

[68] The Employer argued that the education sector is not a "difficult to organize" industry such that the Board might certify a less than all-inclusive bargaining unit. The Employer pointed out that, in relation to the current organizational drive, the Union's national organization spent only two months on organizing yet was able to sign up almost 1/3 of unorganized support staff. The Employer also argued that little credence should be given to Ms. Platzke's evidence on this issue given her lack of direct knowledge of the organizing drive and her inexperience with a rural organizing drive of the kind carried out here. The evidence concerning the Union's focus on organizing and its success belies Ms. Platzke's view that a division-wide organizing effort is beyond the organizational capability and financial ability of the Union. The Employer also argued that the Union, by bringing the six applications covering 1/3 of the non-union support staff, has demonstrated an ability to build on its existing certification order. The Employer urged the Board to require the Union to expand its position in the amalgamated division only by seeking to amend or replace the existing certification order so as to create a division-wide (or near division-wide) bargaining structure.

[69] The Employer argued that to certify these units would result in 11 non-viable (or minimally viable) bargaining units in the school division and the multiplicity of bargaining units would frustrate labour relations and industrial stability. There remains a large number of unorganized support staff and to permit this type of piecemeal certification could lead to an even further multiplicity of bargaining units represented by this or other unions, resulting in labour relations chaos. To dismiss the application does

not deprive employees of access to collective bargaining but rather encourages the Union to seek stronger and more viable units. The Employer believes that, at some point, the five current bargaining units should be amalgamated into one.

[70] With regard to the exclusion of the office manager position on the Ashley Park application, the Employer argued that it only makes sense to include all clerical employees, including office managers, in an "all-inclusive" support staff unit where such units should be as broad as possible. The Employer pointed out that the evidence demonstrated that the "office manager" (the clerical position in this unit), is a non-management position.

[71] With regard to Ms. Struik, the Employer argued that she should be deleted from the statement of employment in relation to the Ashley Park application, because she has an insufficient connection to Ashley Park School given that, at the time of the application, only two of the twelve students for whom Ms. Struik is responsible for on the special needs bus attended Ashley Park School.

The Union

[72] The Union argued that the units sought in its six applications for certification are appropriate for the purpose of collective bargaining. The Union argued that the employees in each proposed bargaining unit appear to share a sufficient community of interest in the school in which they work. The Union stated that it is not necessary to establish that it has applied for the *most appropriate* unit but rather only that a proposed unit is *an appropriate* one.

[73] The Union also argued that the new units are appropriate when considering the historical context of organizing in the education sector. The Union pointed out that there already exists in Saskatchewan a multitude of certification orders comprising different combinations of employee classifications, at one or a combination of locations (schools), and represented by different unions. The Union stated that, while this may create some challenges for some employers, it has worked effectively for many years. This Union has, since 1955, represented a group of 30 employees in Swift Current - the Union suggests that the Employer's concern with this group is not that they are too

weak but rather they are too strong and the Union has put the Employer in a position of having to play "catch-up" with the non-unionized staff and the CUPE's members. In any event, the Union argued that its current unit is evidence of the viability of this type of unit and asked that the Board accept the proposed units (which are not dissimilar from historical units in the education sector) unless and until they prove unviable.

[74] The Union argued that a requirement of division-wide certifications would halt all organizing in the province. The Union argued that it would be particularly impossible to do so in this division because it is very large but sparsely populated and has many schools that vary greatly in size. The Union suggested that it would be appropriate to consider the principles the Board applies in circumstances of "difficult to organize" industries. In the current circumstances and where more than one union already has representation rights, it is appropriate to certify under-inclusive units. In the Union's view, while the Employer suggested that a division-wide certification is most appropriate, it appears it would prefer no certification orders at all. In this regard, the Union pointed to the action taken by the Employer in not only increasing the wages and benefits of non-union staff but also opening up CUPE's collective bargaining agreements to provide the same wage increases to CUPE's members all of which makes being a CUPE member or remaining non-union appear more attractive than joining the Union. The Employer's changing of wage rates and benefits at the time of the Union's organizing campaign, to the specific exclusion of the Union's members, speaks less of the universality of terms and conditions and more of favouring one union or no union at all over another union. In the Union's view, the best way to achieve equitable terms and conditions of employment is by collective bargaining through a union of the employees' own choosing and not through the Employer dictating those terms or making special deals with one union to the exclusion of another.

[75] The Union noted that the objectives of the task force responsible for drawing the boundaries of the newly amalgamated school divisions did not specifically include the goal of achieving consistent salary and benefits but that was only an objective of the Chinook School Division. The primary objective of the amalgamations was to achieve equitable access to quality education. The Union also pointed out that the task force did not consult it or other unions in its extensive consultations with many interest groups. The Union suggested that, had the government thought it necessary or desirable

to address any union or employee matters resulting from the amalgamations, it would have done so legislatively in a manner similar to the approach used in health care with the Dorsey Commission. Alternatively, any "rationalization" or "normalization" of bargaining structures in this or other school divisions can only occur only after hearing from all stakeholders.

[76] The Union urged the Board to use caution when considering the case law of labour relations boards outside of Saskatchewan because "industrial stability" which is a purpose of the legislation in some other jurisdictions in Canada is not a purpose of the *Act*. The Union argued that following certification if a problem develops with the administration of the bargaining units, the Employer or the Union can apply for amalgamation but that this consideration should not altogether prevent certification.

[77] The Union argued that lateral mobility should not be a significant concern with respect to appropriateness of the bargaining unit because there was no evidence presented that any employee's mobility has been affected by being part of a bargaining unit. Furthermore, any issues with respect to an employee who works in more than one school or requires a transfer can easily be accommodated through rules negotiated with the Union.

[78] The Union relied on the following cases in relation to the issue of what is an appropriate unit: *International Woodworkers of America v. Beaver Lumber Company Limited*, [1977] May Sask. Labour Rep 30, LRB File No. 112-77; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Brown Industries (1976) Ltd., Pro-More Industries Ltd. and Lo Rider Industries Inc.*, [1995] 2nd Quarter Sask. Labour Rep. 71, LRB File Nos. 010-95 & 012-95; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Canadian Pioneer Management Group and Canadian Pioneer Employees' Union*, [1978] May Sask. Labour Rep. 37, LRB File No. 661-77; *Hotel Employees and Restaurant Employees Union, Local 767 v. Courtyards Inns Ltd.*, [1988] Winter Sask. Labour Rep. 51, LRB File No. 116-88; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Custom Built Ag. Industries Ltd. (Trail Tech)*, [1998] Sask. L.R.B.R. 662, LRB File No. 112-98; *Communication, Energy and Paperworkers Union v. Hollinger Canadian Newspapers LP o/a The Saskatoon Star*

Phoenix Newspaper, [2000] Sask. L.R.B.R. 760, LRB File No. 276-99; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Prairie Micro-Tech Inc.*, [1994] 3rd Quarter Sask. Labour Rep. 87, LRB File No. 088-94; *Hotel Employees and Restaurant Employees Union, Local 767 v. Regina Exhibition Association Ltd.*, [1986] Oct. Sask. Labour Rep. 43, LRB File No. 015-86; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Regina Exhibition Association Ltd.*, [1992] 4th Quarter Sask. Labour Rep. 75, LRB File No. 182-92; *Graphic Communications International Union, Local 75M v. Sterling Newspapers Group, a Division of Hollinger Inc.*, [1998] Sask. L.R.B.R. 770, LRB File No. 174-98; *The Newspaper Guild Canada/Communication Workers of America v. Sterling Newspapers Group, a Division of Hollinger Inc.*, [1999] Sask. L.R.B.R. 5, LRB File No. 187-98; and *University of Regina*, [unreported] April 18, 1978, LRB File No. 030-78.

[79] The Union argued that recent decisions of the Board in relation to the education sector support its position that it is acceptable for more than one union to represent employees in the same school division. The Board has allowed incremental organizing in the education sector and will certify something less than an ideal unit if it is *an* appropriate unit. In addition, the Board has determined that there are no standard bargaining units in this sector and that under-inclusive units have been found to be appropriate even though they contain only one classification. This is particularly so where the union representing an existing unit does not wish to represent the group of employees in question. The Union relied on the following cases concerning the principles unique to organizing in the education sector: *Canadian Union of Public Employees v. The Board of Education of the Northern Lakes School Division No. 64*, [1996] Sask. L.R.B.R. 115, LRB File No. 322-95; *Canadian Union of Public Employees, Local 3926 v. Board of Education of Deer Park School Division #26*, [2000] Sask. L.R.B.R. 349, LRB File No. 292-99; *Canadian Union of Public Employees, Local 4612 v. Board of Education of the Estevan Comprehensive School Board of Saskatchewan and Service Employees International Union, Local 299*, [2003] Sask. L.R.B.R. 417, LRB File No. 092-03; *Saskatchewan Rivers, supra*; and *Souris Moose Mountain, supra*.

[80] With respect to Ms. Struik, the Union argued that she must be included if she has any connection with the unit proposed by the Union and that it matters not that she may have some connection with other schools as well. The Union pointed out that

[81] With respect to the "office manager" classification, the Union argued it should be excluded from its Ashley Park application because the title implies the position is part of management and will be perceived that way by other employees. The Union argued that there are no standard bargaining unit descriptions in the education sector and therefore it is not necessary that its proposed bargaining units include clerical employees. In the alternative, if the Board finds that it is necessary to have uniformity among all of the six proposed bargaining units, the Union asked that clerical employees be excluded from all of the bargaining units.

[82] The Union argued that the Board should follow its usual policy of ordering a secret ballot vote where there is no evidence of majority support for the application but at least 25% of the employees in the proposed bargaining unit support the Union's application.

The Employer in Reply

[83] With respect to the objectives of the task force, the Employer suggested that providing equitable access to educational opportunities and resources necessarily involves the fair and equitable compensation of employees but agreed that was not a specified objective of the task force. The Employer denied any wrongdoing on its part in relation to its actions to achieve more equitable wages and benefits for all of the employees, including the members of CUPE. There were huge disparities among the staff of the new division and these were identified at the end of 2005 before the Union began its organizing drive. It was apparent that the legacy divisions where CUPE held certifications placed a lower priority on support staff than did other legacy divisions. It was necessary to open the CUPE collective agreements in September 2006 in order to implement pay equity. The Employer suggested that it was likely that very few of the employees in Swift Current (which include but are not limited to those employees represented by the Union) required a pay adjustment in order to achieve equity in the Chinook School Division.

[84] While the Employer agrees with the Union that there are no standard bargaining unit descriptions in the education sector, the sampling of certification orders before us still suggests that most of the units were quite broad and it must be remembered that the employers named in those orders were much smaller than now exist.

[85] With respect to the *Estevan Comprehensive* decision cited by the Union, the Employer pointed out that the Board noted in its decision that it involved a unique situation. The Employer suggested that the *Souris Moose Mountain* decision involving the merger of three bargaining units following an amalgamation was most similar to the situation before us and there the Board clearly expressed a preference for larger, more inclusive units.

[86] The Employer argued that legislation is not required in order to achieve some rationalization of bargaining units. Taking the Employer as it finds it and applying the jurisprudence should lead the Board to conclude that the units applied for are inappropriate.

Analysis and Decision:

[87] There are six applications for certification before us in the present case. While there are some subsidiary issues in relation to the composition of the statements of employment in some of those applications, the Board is first required to address the issue of whether the bargaining units sought are appropriate ones. This issue is particularly complex in light of the January 1, 2006 restructuring of school divisions in the province. It is also made more complex by reason that there currently exist five certified bargaining units represented by two different bargaining agents – CUPE and the Union. The applications before us do not permit us to consider whether the current bargaining structures inherited by the amalgamated school division are inappropriate or no longer appropriate but rather they require us to determine only whether each of the six applications for certification before us constitute appropriate units for the purpose of collective bargaining.

[88] It is trite to say that the Board prefers larger, more inclusive bargaining units to smaller, less inclusive ones. That preference, however, does not lead us to the

automatic conclusion that the units sought by the Union are inappropriate in the circumstances of this case. While a true "all employee" bargaining unit is simply not possible in the education sector because teachers are required to belong to the Saskatchewan Teachers Federation, something less than that, possibly an all support staff unit, is a possibility.

[89] While the Employer did not specifically adopt the opinion of its witness, Mr. McIntyre, that the Board should determine what the *most* appropriate unit is, it did, in arguing that the current units sought by the Union were inappropriate, suggest that the Board should consider whether there was some unit *more* appropriate than those sought by the Union. While it is likely beyond dispute that the most inclusive and therefore *most appropriate unit* would be a division-wide unit of non-teaching/support staff that is simply not the test on an application for certification. The Board is not to choose the most ideal or more appropriate unit, but rather determine whether the unit applied for is *an* appropriate one. In *Northern Lakes, supra*, involving a union's application for the amendment[12] of its certification order to include bus drivers in its support staff bargaining unit, the Board stated at 116-117:

> *The basic question which arises for determination in this context is, in our view, the issue of whether an appropriate bargaining unit would be created if the application of the Union were to be granted. As we have often pointed out, this issue must be distinguished from the question of what would be the most appropriate bargaining unit.*
>
> *The Board has always been reluctant to deny groups of employees access to collective bargaining on the grounds that there are bargaining units which might be created, other than the one which is proposed, which would be more ideal from the point of view of collective bargaining policy. The Board has generally been more interested in assessing whether the bargaining unit which is proposed stands a good chance of forming a sound basis for a collective bargaining relationship than in speculating about what might be an ideal configuration.*

[12] The Board's consideration of an appropriate bargaining unit on amendment applications is similar to the Board's consideration of that issue on an application for certification (see: *University of Saskatchewan v. Canadian Union of Public Employees, Local 1975, et al.*, [1978] 2 S.C.R. 834 (S.C.C.); (1977), 22 N.R. 314 (Sask. C.A.)).

[90] The circumstances in which the Board might properly determine which of two or more units is the more/most appropriate unit are on an application for consolidation of bargaining units, a "carve-out" application or a successorship application, none of which are before us. In these types of cases, the Board is most concerned with industrial stability. An example of the Board's consideration of this issue on an application to "carve-out" a group of employees from an "all employee" unit is contained in *Young Women's Christian Association*, *supra*, where the Board stated at 73:

> *Where the choice is available, the Board will attempt to decide which is the more appropriate, if not most appropriate, bargaining unit. A case cited by counsel for the applicant Union, the South Saskatchewan Hospital Centre decision, supra, suggested that where such a choice is presented, the Board will choose the unit "most appropriate for the promotion of long-term stability."*

[91] Similarly, in *Souris Moose Mountain*, *supra*, relied upon here by the Employer, the Board was required to consider an employer's application to merge (or consolidate) three bargaining units previously certified by the Board (designating different locals of the same union as the bargaining agents) following the amalgamation of two school divisions. Although the parties were in agreement on the consolidation of two of the units, the Board determined that consolidation of all three units was necessary and appropriate in the circumstances of that case, having found that the third unit was no longer appropriate and the proposed consolidated unit more appropriate. At 377, the Board concluded:

> *The Board finds that the above-mentioned evolution amounts to a material change so that the bargaining unit assigned to the bus drivers local is no longer appropriate and that the proposed amalgamated unit is more appropriate. . .*

[92] A more recent decision of the Board dealing with an application for consolidation following the January 1, 2006 provincial restructuring of the school divisions, *Canadian Union of Public Employees, Local 4799 v. Board of Education of Horizon School Division No. 205,* [2007] Sask. L.R.B.R. ---, LRB File No. 053-06 (not yet reported), confirms this principle. In that case, the union brought two applications before the Board: (i) pursuant to s. 39 of the *Act*, to recognize the transfer of rights and obligations from the union's locals representing the bargaining units in the pre-

amalgamation legacy school divisions to one local of the union; and (ii) pursuant to s. 37 of the *Act*, to deal with the successorship of the Horizon School Division following the statutory amalgamation of six legacy school divisions as at January 1, 2006.

[93] In the *Horizon* case, *supra*, the employer acknowledged that it was the successor employer to the boards of education of the six pre-amalgamation legacy school divisions and that, pursuant to s. 37(1) of the *Act*, it was bound by the existing certification orders and collective bargaining agreements between those former school divisions and the respective CUPE locals. The primary issue before the Board in *Horizon* was whether the union could be also declared as the bargaining agent for a bargaining unit comprising all of the employees it currently represented as well as the employer's other unrepresented support staff employees without filing any evidence of their support. In determining that issue, the Board was required to decide whether the support staff employees constituted one or more units appropriate for collective bargaining which initially involved the consolidation of the existing several bargaining units into a single unit. The Board examined the approach taken in *Saskatchewan Rivers, supra*, concerning the determination of an appropriate bargaining unit in the context of amalgamation/consolidation and stated at paragraph 75:

> *[75]* ***It is long-established policy that the Board generally prefers larger more-inclusive bargaining units to smaller less-inclusive units.*** *In Board of Education of the Saskatchewan Rivers School Division No. 119 v. Canadian Union of Public Employees, Local 4195, [1998] Sask. L.R.B.R. 478, LRB File Nos. 303-97 & 364-97 four school divisions were amalgamated. Three of the school divisions had non-teaching staff in bargaining units represented by seven different locals of the same union, while the non-teaching staff of the fourth school division were not unionized. The new larger school division admitted that it was the successor employer and applied pursuant to s. 37 to create a single bargaining unit. The Union did not oppose the application generally, but sought to include positions in the new consolidated unit that had been excluded in the original separate certification orders. The Union also applied to represent the previously unrepresented employees in the fourth legacy school division and filed evidence of majority support from the employees in that group. The Board granted the Union's certification application for the fourth school division and then consolidated all of the bargaining units. The Board stated as follows at 487:*

> ***The Board's policy has been to prefer large "all employee" bargaining units. The history of the certification Orders and collective agreements affecting the employees with this new Employer demonstrates the need for a more rational approach to collective bargaining in the school divisions.***

(**emphasis added**).

[94] In *Horizon*, *supra*, the Board went on to say that the primary consideration with respect to bargaining unit amalgamation in successorship cases is the maintenance of bargaining rights of employees and concluded that a single larger unit composed of the employees of the existing bargaining units (with the exception of those employees represented by the Deer Park Employees' Association) constituted an appropriate unit. At paragraph 113, the Board stated:

> *[113] In any event, we have determined that it is appropriate to consolidate the existing bargaining units in the interests of streamlining collective bargaining, reducing fragmentation and promoting the stability of industrial relations between the parties as far as possible without sweeping in employees in the absence of evidence of their wishes. Such a consolidated unit is an appropriate unit if not the most appropriate unit.*

[95] Although the Board in *Horizon* denied the union's application in so far as it attempted to add in the previously unrepresented employees without evidence of their support, it did say that a consolidated unit of all support staff (which is what the union had requested) would be more stable than the present configuration from the viewpoint of industrial relations and administration. After outlining the manner in which evidence of employee choice could be demonstrated by the union (should the union wish to pursue the inclusion of the unrepresented employees), the Board asked for the parties' submissions on the desirability of a vote and its constituency. It must be noted that, while the Board opened the door to add on the group of employees not represented by a union (with evidence of majority support) and stated that that would be a "more appropriate" unit, it did consolidate the current CUPE units thereby leaving the division with two bargaining units (one represented by CUPE and one by the Deer Park Employees' Association) and a group of unrepresented support staff employees. We note that there was no suggestion that those employees represented by the Deer Park Employees

Association would be affected by such a decision to include all the other unrepresented employees in the “most appropriate unit.”

[96] We are therefore charged with the task of determining whether each of the six bargaining units sought by the Union is an appropriate unit in circumstances where the units sought are under-inclusive and there presently exists five under-inclusive bargaining units of one employer as a result of the amalgamation of the legacy school divisions. Before examining the factors relevant to a determination of whether the bargaining units sought are appropriate, it is helpful to understand what we mean by an “under-inclusive” unit. In *Sterling Newspapers* (LRB File No. 174-98), *supra*, the Board defined the term as follows at 782:

> *We would add that we use the term "under-inclusive" as a method of describing a bargaining unit that includes only a portion of the employees of an employer in order to distinguish it from an "all employee" bargaining unit. The term is not intended to reflect on the appropriateness of the bargaining unit, but only to describe such units.*

[97] In *O.K. Economy Stores, supra*, the Board summarized the test for determining the appropriateness of a bargaining unit in the following terms, at 66:

> *This does not mean that large is synonymous with appropriate. 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.*
>
> *The Board recognizes that there may be a number of different units of employees which are appropriate for collective bargaining in any particular industry. As a result, on initial certification applications a bargaining unit containing only one store may be found appropriate. That finding does not rule out the existence of other appropriate units and, accordingly, on a consolidation application, a larger unit may be found appropriate. There is no inconsistency between the*

> *initial determination of a single store unit with a municipal geographic boundary and a subsequent determination that a larger unit is appropriate.*

[98] The difficulty with assessing the appropriateness of under-inclusive units lies in the conflict of two competing interests: employees' right to organize and join unions of their choosing vs. the desire to have stable bargaining structures. This conflict was aptly described by the Board in the *Sterling Newspapers* (LRB File No. 174-98) decision, *supra*, in the context of an application for certification of employees in the press room at a newspaper company, at 776:

> *The Board is faced in this instance with choosing between the rights of employees to organize and the need for stable collective bargaining structures that will endure the test of time. It is clear from the decisions in other jurisdictions that the "most" appropriate bargaining units in this industry consist either of wall-to-wall units or two bargaining units, one consisting of the front end employees, including office, administration and editorial, and one consisting of the production workers, including pressmen. Such a configuration would likely result in stable and effective labour relations, in the sense that the Union would have a significant constituency within the workplace to bargain effectively with the Employer. The ultimate viability of smaller, less inclusive, bargaining units is, in our experience, and certainly in the past experience with this Employer, more tenuous over the long run. The proposed unit can be described in this sense as an under-inclusive unit.*
>
> *The Board faced a similar dilemma in Hotel Employees & Restaurant Employees Union Local 767 v. Regina Exhibition Association Ltd., [1986] Oct. Sask. Labour Rep. 43, LRB File No. 015-86, where the applicant, which had previously unsuccessfully applied to represent all employees in the food services department of the employer, applied a second time to represent only the concessions department of the food services department. On the second application, the Board held as follows, at 45:*
>
> > *The fundamental purpose of The Trade Union Act is to recognize and protect the right of employees to bargain collectively through a trade union of their choice, and an unbending policy in favour of larger units may not always be appropriate in industries where trade union representation is struggling to establish itself. It would make little sense for the Board to require optimum long term bargaining structures if the immediate effect is to completely prevent the organization of employees. In effect, the Board is compelled to choose between two*

> *competing policy objectives; the policy of facilitating collective bargaining, and the policy of nurturing industrial stability by avoiding a multiplicity of bargaining units. Where the Board is of the view that an all employee unit is beyond the organizational reach of the employees it is willing to relax its preference for all employee units and to approve a smaller unit.*
>
> *This does not mean, however, that the Board will certify proposed bargaining units based merely on the extent of organizing. Every unit must be viable for collective bargaining purposes and be one around which a rational and defensible boundary can be drawn.*

[99] In *Sterling Newspapers, supra*, the Board went on to examine the situations in which the Board would not certify under-inclusive bargaining units, at 780-781:

> *From this review of cases, it would appear to the Board that under-inclusive bargaining units will not be considered to be appropriate in the following circumstances: (1) there is no discrete skill or other boundary surrounding the unit that easily separates it from other employees; (2) there is intermingling between the proposed unit and other employees; (3) there is a lack of bargaining strength in the proposed unit; (4) there is a realistic ability on the part of the Union to organize a more inclusive unit; or (5) there exists a more inclusive choice of bargaining units.*

[100] The Board in *Sterling Newspapers* concluded that, although the unit applied for was not the *most* appropriate unit, it was *an* appropriate one because the employees of the press room were a skilled and discrete craft group, the employees were not interchanged with employees of other departments, the unit would have sufficient bargaining power, there had been a history of difficulty organizing these employees and this industry and because there was no suitable existing bargaining unit for these employees. The Board made further comment regarding its emphasis on the protection of employee choice at 781:

> *This finding does signal that the Board is placing more emphasis in this instance on the rights of the employees in the press room to be represented by a union of their own choosing than we are with the long-term stability of the bargaining relationship. There is no doubt that the history of organizing in this industry throughout Canada has produced a fragmented maze of craft and industrial units resulting in*

> *jurisdictional disputes and prolonged labour disputes. The Employer's concern for the long term consequences of fragmented bargaining is justified in the overall context of what has occurred in the industry in other provinces.*
>
> *In Saskatchewan, however, the industry has not been plagued by any problems related to multiple bargaining units because it has remained, by and large, unorganized. At this stage, we believe we are justified in permitting GCIU to certify on an under-inclusive basis in order to ensure that the right of employees to organize is given the primacy it is entitled to under s. 3 of the Act. At some point in the future, it may be necessary for the Board to rationalize bargaining units in this sector; however, as stated in The Regina Exhibition Ltd. case, supra at 45, "it would make little sense for the Board to require optimum long term bargaining structures if the immediate effect is to completely prevent the organization of employees."*

[101] The Employer, in arguing that the units sought by the Union are inappropriate because the employees in each do not share a distinct community of interest, implies that the only appropriate bargaining unit is a division-wide unit. If we were to accept such an argument, we would be required to dismiss the present applications for certification. However, many more questions are raised as a result of accepting this conclusion. Such a conclusion would appear to imply that the current bargaining units are inappropriate, yet there is no application before the Board to deal with appropriateness of those units and their status would be uncertain if no further proceedings were taken before the Board to deal with their appropriateness. Even if the Employer or CUPE were to bring an application for consolidation or successorship and the Board was required to determine the more appropriate unit, it does not seem that the Board would find a scattering of employees across the division as more appropriate than units based on geographical location. In our view, the Board's recent decision in *Horizon*, *supra*, would suggest that any union, including CUPE, would not necessarily be chosen to represent all the units without establishing majority support for employees in that unit. In addition, when the Board in *Horizon* determined that the CUPE units should be consolidated and that a more appropriate unit would include the unorganized employees in that consolidated unit (with evidence of support), it did not suggest that the employees represented by the Deer Park Employees' Association would be affected in any way. In other words, the Board, in seeking to preserve bargaining rights and protect employees' rights to belong to a trade union of their choosing, deliberately allowed room for more than one union to represent employees in an amalgamated school division and

indicated that something less than a division-wide unit was appropriate. Therefore, even upon application for consolidation or successorship, it is not likely the Board would take away the right of employees in Swift Current to be represented by the Union. But the question remains whether new applications for certification of something less than an all-inclusive unit should be permitted in a division already fragmented by existing units.

[102] In making its argument that a division-wide certification is most appropriate, the Employer relied on the Board's decision in *Souris Moose Mountain, supra*. In essence, the Board is being asked to interject itself into the parties' relationships in this division (and in others in the education sector) in an attempt to rationalize the bargaining units. It asks us to "fix" the employee/union side of the equation as a result of the provincial restructuring of education which, in effect, changed only the "employer-side" of the equation. Based on the reasons that follow, we are not prepared to do this.

[103] With respect, we believe that the Board in *Souris Moose Mountain* misread the decision in *Saskatchewan Rivers, supra*, in concluding that a direction had been set by the Board in the latter case with respect to the determination of appropriate bargaining units upon the amalgamation of school divisions. The Board in *Souris Moose Mountain* stated as follows at 376 and 377:

> *[17] The Board agrees with counsel for the Applicant; that the Board favours the creation of larger, more inclusive bargaining units. Where possible, the Board's policy has been to establish all employee units. In the decision Board of Education of the Rivers School Division No. 119 of Saskatchewan v. Canadian Union of Public Employees, Local 4195, [1998] Sask. L.R.B.R 478, LRB File Nos. 303-97 & 364-97, the Board states at page 7:*
>
> > *Before dealing with the main issue raised on this application, the Board wishes to congratulate both parties for the efforts made in successfully merging the various certification Orders and collective agreements affecting the employees in question. The Board's policy has been to prefer large " all employee" bargaining units. The history of the certification Orders and collective agreements affecting the employees with this new Employer demonstrates the need for a more rational approach to collective bargaining in the school divisions. Hopefully, the bargaining unit rationalization will*

> *accompany future amalgamation of school divisions. The Board is aware of the enormous efforts that have been made by the Union, its members and the Employer in attempting to bring the many bargaining units and collective agreements into one comprehensive structure. The parties are to be commended for their efforts.*
>
> *[18] This Board accepts the direction set out by the Board in Saskatchewan Rivers School Division, supra, and finds that there has been an evolution of the bargaining structure with this Employer. For example, the evidence confirms that the two school divisions were amalgamated in 1997. Thereafter, in 2001, a bargaining unit was formed which, for the first time, contained members from both old school divisions. Now, in 2002, the Employer has requested the formation of one CUPE local to deal with all unionized employees, with the new local created in 2001 and one of the old locals agreeing to this merger into one local. This evolution is precisely what was contemplated by the Board in Saskatchewan Rivers School Division, supra.*
>
> *[19] It is agreed that in the case at hand, the Applicant is not proposing a true all employee unit, as the bus drivers and caretakers from the old Arcola School Division are not included in the new proposed bargaining unit. However the result of the evolution will be the creation of one local with a vast majority of the employees comprising that unit. The Board finds that the above mentioned evolution amounts to material change so that the bargaining unit assigned to the bus drivers local is no longer appropriate and that the proposed amalgamated unit is more appropriate (see: Canadian Union of Public Employees, Local 4532 v. FirstBus Canada Ltd., [2002] Sask. L.R.B.R. 261, LRB File No. 067-02).*

[104] It is important to understand the context in which the Board in *Saskatchewan Rivers* made the comment quoted in *Souris Moose Mountain*. *Saskatchewan Rivers* involved an application by CUPE to consolidate several of its units into one large unit. The Board made the comment quoted above as an opening one to congratulate the parties on their efforts to resolve a number of the issues resulting from the amalgamation of certain school divisions and to reduce the issues necessary for the Board to address. In fact, the Board in the *Saskatchewan Rivers* case was only required to determine whether the exclusions under an old certification order should still apply. In our view, it is clear that the comment by the Board in *Saskatchewan Rivers* that the history of certification orders and collective agreements "demonstrates the need for a

more rational approach to collective bargaining in the school divisions" and that "[h]opefully, the bargaining unit rationalization will accompany future amalgamation of school divisions" does not mean that the Board set a direction or contemplated an evolution such that the Board would take it upon itself to rationalize the bargaining units upon future school division amalgamations. In our view, the Board expressed its hope that either the parties themselves would negotiate rationalization (as the Board noticed they had done in *Saskatchewan Rivers*) or, alternatively, that the legislature would legislate a plan for rationalization, perhaps in much the same way as it had in health care.

[105] Support for this view is found in the Board's comments in *Horizon*, where the Board concluded that it would not implement a Dorsey-style approach to attempt to rationalize bargaining unit structures in the education sector but rather would follow the Board's usual rules for the delineation of bargaining units, leaving the parties to bargain these complex issues on their own and leaving bargaining unit "rationalization" for the Legislature. To state it another way, we are not prepared to "Dorsey-ize" the education sector without a mandate from government to do so. In *Horizon,* at paragraph 109, the Board stated:

> *[109] In the present case, where it is sought to add a significant number of employees to existing bargaining units or a consolidated unit, we are of the opinion that in the absence of evidence of their wishes, it is not appropriate to sweep them in. This is in accordance with the Board's long-standing historical position and what we consider to be the interpretation of s. 37 (2) in light of s. 3 of the Act and the overarching principle of employee choice.* ***Had the legislature, in consolidating the many school divisions as at January 1, 2006, seen fit to establish a "Dorsey-style" solution to the bargaining unit configurations and labour relations complexities resulting therefrom it could easily have done so. But it did not and so we have determined to essentially follow the same path taken by the Board when health care was reorganized prior to the Dorsey Report and to allow the parties to sort out the problems themselves through the collective bargaining process with such guidance as they may seek from the Board from time to time.***
>
> (**emphasis added**).

[106] As part of a determination whether a unit is viable and whether certifying the units applied for would lead to stable bargaining structures, it is necessary to look at historical patterns of organizing as well as the principles applied by the Board in the

education sector. In *Estevan Comprehensive*, *supra*, a local of CUPE applied to certify a group of teacher assistants employed by the school board in circumstances where a local of SEIU had long represented caretakers, cleaners, janitors, maintenance men, firemen and engineers. At the hearing, SEIU took the position that it supported CUPE and that the proposed unit was an appropriate one. The parties led evidence concerning the history of union organization and representation in the education sector and the Board concluded that, while the vast majority of unionized staff in various school divisions were represented by CUPE, SEIU held a number of certification orders and there were a couple of other unions that held bargaining rights as well. In the present case, the evidence led by the parties leads to the same conclusion although in the intervening years SEIU has established a stronger presence. In *Estevan Comprehensive*, at 419 and 421, the Board made the following comments on the pattern of organization, which are also supported by the evidence before the Board in the present case, except that there do now exist several school divisions where there is more than one bargaining unit, represented by different unions:

> *[8] **Of the approximately 56 school divisions where CUPE has a presence, there is no standard bargaining unit which has been described by the Board. Rather, the Board has allowed incremental organizing in the school division sector.** Exhibit U-1 prepared by CUPE illustrates the vast number of combinations of bargaining units the Board has certified for CUPE in the school division sector. The Board has certified bus driver units, caretaker units, caretaker/maintenance units and all employee units. At present, a certified bargaining unit does not exist which is made up solely of teacher assistants. Rather, teacher assistants are included in bargaining units composed of various combinations of clerical staff, library staff, cafeteria staff, security staff, caretaker and maintenance staff. In approximately 35 of the CUPE bargaining units, clerical staff and/or school secretaries are included with teacher assistants in a unit. In at least four of those bargaining units, cafeteria staff are included. As an example of this situation, CUPE, Local 2520's bargaining unit includes the classifications of caretaker, maintenance, teacher assistants, cafeteria, security, clerical and library technician at Yorkton Regional High School.*
>
> *. . .*
>
> *[13] The case before the Board is certainly unique in that, in the school division sector, there are no cases where the Board has certified both CUPE and SEIU in the same school division. In addition, there exists no CUPE or SEIU bargaining unit composed solely of teacher assistants. To further complicate the matter,*

> *SEIU's position is that a separate unit of teacher assistants does constitute an appropriate bargaining unit.*

[107] In *Estevan Comprehensive*, the Board considered the *Sterling Newspapers* (LRB File No. 174-98) decision, *supra*, and, while acknowledging the Board's preference for all employees units, stated that it was not inappropriate for SEIU and CUPE to each have separate bargaining units within the same school division (if other conditions warranted it) on the basis that: (i) the Board had not followed the principle that the first union to organize in a workplace was to be the preferred agent for all employees;[13] and (ii) SEIU was not interested in representing teacher assistants (i.e. SEIU had not expanded its bargaining unit over the years to include teacher assistants and it now supported CUPE's application by taking the position that the unit sought by CUPE was appropriate). In these circumstances, the Board gave preference to the employees' wishes to have CUPE represent them noting that CUPE had experience representing employees in the education sector and teacher assistants in particular and concluding that CUPE would have the ability to properly represent the teacher assistants. In so concluding, the Board commented at 423:

> *[22] Therefore, the Board is left in a quandary as to what course of action to take.* ***While the Board has no desire to deviate from larger, all employee units, as stated earlier, the Board has allowed incremental organizing in the school division sector.***
>
> (**emphasis added**).

[108] In reaching its decision in *Estevan Comprehensive, supra*, the Board placed much reliance on its decision in *Deer Park School Division, supra*. In that case, a local of CUPE applied to certify all support staff employees except bus drivers in circumstances where the Deer Park Employees Association held an all employee support staff unit but was not opposed to the "carve out" of clerical and other support staff. It supported CUPE's representation of these employees because it had not been able to effectively represent them in bargaining. The Board reviewed its long standing policy against the fragmentation of existing bargaining units and accepted that the two major goals of determining an appropriate unit are to ensure employees' access to collective

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[13] From *Sterling Newspapers Group, supra*, where the Board stated at 781: "*These cases, however, do not establish the principle that the first union to organize in a workplace is the preferred agent for all other employees. If an under-inclusive bargaining unit is sought, such as in the present case, there is no presumption that other bargaining agents will be prevented from organizing the remaining employees."*

bargaining and to provide a foundation for stable industrial relations.[14] The Board pointed to its decision in *Wascana Rehabilitation Centre, supra*, where it stated that one factor which may justify the carving off of a group of employees from an existing bargaining unit would be the capacity of the existing bargaining unit's agent to adequately represent the employees sought to be carved out. The Board concluded at 354:

> *[13] In this very unusual situation, where the incumbent bargaining agent acknowledges its inability to effectively represent a group of employees and consents to their inclusion in a different bargaining unit, the Board will stray from its policy of preferring "all employee" bargaining units and will allow the creation of a second bargaining unit. In school divisions, the existence of a separate bargaining unit for bus drivers is not unusual and the configuration of employees which results from the creation of the new bargaining unit will not create an unnatural or unknown bargaining structure. We do acknowledge that the creation of the new bargaining unit will impose additional burdens on the Employer. However, we are hopeful that the parties can adapt the existing voluntary multi-employer structure to facilitate collective bargaining for the new bargaining unit.*

[109] It is apparent that in the *Deer Park* decision, the Board considered the education sector as somewhat unique and, while not stating that the industry was "difficult to organize," recognized the many configurations of bargaining units that existed in the sector. On this basis, it concluded that an additional unit carved out from an all employee unit was appropriate. Therefore, where a union representing an existing bargaining unit is unable to adequately represent a group of employees in that unit (*Deer Park, supra*) or a union does not wish to represent a certain group of employees of the employer (*Estevan Comprehensive, supra*), whether the existing bargaining unit is under-inclusive or not, bargaining rights for another viable under-inclusive unit may be granted. Such a principle achieves both the goals of ensuring employees' access to collective bargaining and providing a foundation for stable industrial relations.

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[14] As stated in *Island Medical Laboratories Ltd. v. Health Sciences Association of British Columbia* (1993), 19 C.L.R.B.R. (2d) 161, a decision of the British Columbia Labour Relations Board, cited in the Board's decision in *Health Sciences Association of Saskatchewan v. Wascana Rehabilitation Centre and Saskatchewan Government Employees' Union*, [1994] 4th Quarter Sask. Labour Rep. 100, LRB File No. 265-93 at 109, where the British Columbia Board also stated that on a second or additional stage of certification, industrial stability was the most important factor in its set of four criteria of "administrative efficiency and convenience, lateral mobility, common framework of employment conditions and industrial stability."

[110] In *Horizon*, *supra*, as previously stated, the primary issue before the Board was whether the unrepresented support staff of the legacy school divisions ought to be added into the consolidated CUPE bargaining unit without evidence of support with CUPE making the argument that it could add these employees pursuant to the provisions of s. 37 of the *Act*. The Board, in deciding not to force a rationalization of bargaining structures on the parties and answering the question posed in that case, drew an analogy between the situation that exists in the education sector and that which existed in the health sector a number of years ago. At paragraph 91, the Board stated:

> *[91]* ***The situation facing the Union and the Employer in the present situation has much in common with early restructuring in health care some 15 years ago*** *with the enactment of The Health Districts Act, S.S.1993, c. H-0.01 (since repealed) that brought separate health care institutions under the aegis of district health boards, prior to the 1997 report of the Health Labour Relations Reorganization Commission entitled Reorganization of Saskatchewan's Health Labour Relations (the "Dorsey Commission Report") which led to the rationalization of labour relations in that sector pursuant to regulations under The Health Labour Relations Reorganization Act, S.S. 1996, c. H-0.03.* ***The effect of the earlier reform was that while the employer side of labour relations was consolidated into one entity, there was no corresponding consolidation of unions' bargaining rights.*** *Conflicts arose between unions representing similar groups of employees in the consolidated health districts or unionized employees performing the same job were working alongside those who were not unionized. It is instructive to review some of the cases that arose as a result of that earlier restructuring in the health care sector and the approach taken by the Board.*
>
> (**emphasis added**).

[111] The 1993 reforms in health care primarily involved a change from employment relationships by facility to the establishment of health districts, each run by a health board. Prior to reform, collective bargaining relationships were delineated by individual facilities or services whereas, following reform, the health board for each district became the employer of the employees at all of the facilities amalgamated within that health district. As a result, services were centrally administered through each health board.

[112] The Board in *Horizon* went on to examine, in detail, some of the decisions rendered by the Board in relation to health care bargaining structures "pre-Dorsey" and the rationalization of bargaining units. At paragraphs 92 and 93, the Board stated:

> *[92] In Saskatchewan Union of Nurses v. Saskatoon City Hospital, [1995] 2nd Quarter Sask. Labour Rep. 196, LRB File No. 050-93, the existing certification order was tied to the particular facility but as a result of health care restructuring the employees all became employees of the Saskatoon District Health Board. The union applied to amend the bargaining unit description to include all nurse employees in the health district so that the employer could not get around the facilities based scope of the existing orders by hiring people into positions not connected with any particular facility. Before outlining the reasons for decision in the case, the Board made the following general observation about its role in the reorganization of health care at 198 and 199:*
>
> > *The reorganization of health services in Saskatchewan has presented many challenges to trade unions and employers in the health care sector. Among these challenges has been that of redefining the boundaries of collective bargaining relationships to reflect accurately the administrative structures which have now been instituted.*
> >
> > *Throughout the process of restructuring and redefinition which has been taking place, this Board has been at pains to state our view that **our role is to consider and comment on the incremental changes as they take place, not to preside over the implementation of some entirely new configuration of bargaining.***
> >
> > *. . . .*
> >
> > ***The basic principle adopted by the Board - that changes in the configuration of collective bargaining in the health care system should be made as modifications of the existing network of bargaining relationships and obligations - can be stated fairly simply, but this does not mean that it is always easy to see where the process of change may lead in specific factual situations, which can present issues of great complexity**. Though we have been impressed with the degree to which the parties have been able to identify and manage a multitude of puzzling issues, by collective bargaining and by multi-party discussions of questions which have implications beyond a particular relationship, it is*

> *not surprising that a number of riddles remain.* ***These can be particularly complicated in a context where this Board must consider not just the rights and obligations of one trade union and an employer, but the possible claims of other trade unions and the position of groups of employees who are not currently represented by a trade union.***

[93] The Board concluded that the application should not be granted because it was speculative as to what might occur in the future regarding the hiring of nurses in the health district. The Board opined that any such changes must take into account the considerations that had historically been examined. This included the requirements for the demonstration of support, although the Board was less than clear about how that requirement would be viewed. The Board stated as follows at 201 and 202:

> *It may be, on the other hand, that it is possible for a trade union to agree with the Employer to extend the scope of a current Order through collective bargaining; or it may be that it is necessary for one trade union or another to organize the employees into a new bargaining unit. It is in our view necessary, however, to wait until the situation is more than completely speculative before determining how to assess the competing claims of trade unions, or to decide what a particular trade union must demonstrate in the way of support among a group of employees not within the scope of an existing certification Order.*
>
> ***In this sense, the approach we have taken in the reformed health care system does not differ from the approach we have always taken to considering the scope of bargaining units. The primary goal of this approach has been to ensure that trade unions may retain and rely upon the bargaining rights they obtained when the pattern of health care administration was different. This does not mean that trade unions can extend those bargaining rights without satisfying the criteria which have historically applied.***

[113] The Board in *Horizon* also considered the Board's decision in *Saskatchewan Union of Nurses v. Prince Albert District Health Board*, [1996] Sask. Labour Rep. 368, LRB File 304-95. That case involved a joint reference under s. 24 of

the *Act* to determine whether the union continued to hold bargaining rights for a group of nurses of a hospital that was combined with a special care home to create a "health center." The approach used by the Board to make that determination was described as a "pragmatic and functional one" where the Board "tried to accommodate the changes by building on the bargaining relationships which existed prior to the reforms, which were largely based on individual facilities or services*."* In the Board's view, the key to resolving such an issue lay "in the acknowledgement of existing obligations and the application of the provisions of existing or modified collective agreements*."*

[114] In *Health Sciences Association of Saskatchewan v. Regina District Health Board*, [1995] 3rd Quarter Sask. Labour Rep. 131, LRB File Nos. 025-95 & 118-95, the union had applied for certification of two bargaining units – one for the employees of the Regina District Health Board at Wascana Home Care and one at the Client Assessment Unit. The Board was required to decide whether the combination of bargaining units in these two applications would be an appropriate unit. In finding the amalgamated unit appropriate, the Board considered the principles typically applied to determine whether a proposed unit is appropriate, but did so in a manner that took into account the peculiarities of the health sector, at 135 through 137:

> *In making our ruling at the hearing, the Board attempted to summarize the basic principles which have governed the recognition of bargaining rights in the health care sector. The current series of reforms in the administrative structure of health care delivery, which provide the context in which these applications have arisen, have led the Board to reexamine these principles on a number of occasions.*
>
> *. . .*
>
> ***A review of the jurisprudence of this Board will reveal, however, that we have not seen this as leading to the conclusion that we should never issue a certification Order on the basis of anything other than the ideally inclusive bargaining unit.*** *It is true that in decisions like that in the Wascana Rehabilitation Centre case, supra, we have rejected applications on behalf of specialized groups asking to be carved out of more inclusive bargaining units. We have pointed out, however, that* ***it may be appropriate to grant bargaining rights on the basis of a bargaining unit, which, while falling short of the ideal in terms of its comprehensiveness, may nonetheless constitute a viable basis for collective bargaining.*** *In Health Sciences Association of Saskatchewan v. St. Paul's Hospital, LRB File No. 292-91, the Board made the following comment:*

> *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****.*
>
> . . .
>
> *There is nothing, in our view, which distinguishes this case from any ordinary application for certification. The Union has come forward asking to be granted representational rights on the basis of a bargaining unit which, in our view, represents a viable basis for the development of a collective bargaining relationship with the Employer.*
>
> (**emphasis added**).

[115] In *Health Sciences Association of Saskatchewan v. Saskatoon City Hospital*, [1994] 4th Quarter Sask. Labour Rep. 56, LRB File No. 266-93, which also considered the *St. Paul's Hospital* decision, the Board considered an application to amend a bargaining unit description by adding certain job classifications. The Board stated at 57 and 58:

The Board went on, however, to point to a number of generalizations which may be made about the current approach to the delineation of bargaining units in the health care sector. For the present purposes, the situation may be summarized by the following points:

. . .

4. The Board has, from the outset, made it clear that the evolution of bargaining units based on trade union "craft" jurisdictions would not be a desirable development for labour relations in the health care sector. The Board has also, to date, resisted the argument that standard bargaining units should be defined for health care services. In Health Sciences Association of Saskatchewan v. Board of Governors of South Saskatchewan Hospital Centre (Plains Health Centre), LRB File NoS. 421-85 and 422-85, the Board made the following statements:

> *The parties will no doubt recognize that the unusual delay between the filing of this application and the issuing of this decision arose because of the Board's desire to receive input on an informal basis from other interested participants in the health care field. The Board issued invitations to deal with the larger issue of appropriate bargaining units in all health care institutions, and received many informative, well-reasoned and helpful briefs. It intends to respond to them in a separate statement and will not attempt to use this decision as its vehicle for doing so. I would, however, make two comments at this time.*
>
> ***The first is that the Board intends to continue to deal with the question of appropriate bargaining units in hospitals and other health care institutions on a case-by-case basis. It does not intend to develop rigid, standardized bargaining units. It will continue to adhere to the long established principle that it is not required to determine the only or the most appropriate unit, but only an appropriate unit, and any determination, whenever made, of an appropriate unit will not preclude a subsequent determination that another unit, whether larger or smaller, is appropriate.***

(**emphasis added**).

[116] The Board heard the application in *Saskatoon City Hospital* at the same time as LRB File Nos. 272-93 (*Service Employees' International Union, Local 333UH v. Royal University Hospital and Health Sciences Association of Saskatchewan*), [1994] 4th Quarter Sask. Labour Rep. 63) and 015-94 (*Service Employees' International Union, Local 333 v. Saskatoon District Health Board*, [1994] 4th Quarter Sask. Labour Rep. 69). In all three applications, the employer argued that the restructuring and reform in health care had produced a new industrial relations configuration and which justified the Board making an effort to define bargaining units on a more rational basis as well as to consider standard bargaining unit descriptions. The employer argued that change in administrative structures from individual facilities to boards had made labour relations difficult "by the continued existence of bargaining units which no longer have significance under the new system." The Board responded to that argument at 59 through 61:

> *We do not wish to minimize the magnitude and significance of the administrative changes which are taking place in the health care field, or to imply that these changes do not have important implications for labour relations.* ***We do not think, however, that these changes necessitate a wholesale restructuring of existing bargaining units, and the possible disruption of established relationships which this would entail.***
>
> *The bargaining units which are currently in place in this sector are based on individual facilities, or, in some cases, individual services. In evidence before the Board, Mr. John Malcom, the President and Chief Executive Officer of the Saskatoon District Health Board, described the new administrative structure in a way which made it clear that, as the basis for carrying on day-to-day labour relations and supervision of employees, individual facilities will continue to be of some significance.*
>
> *. . .*
>
> *It may prove to be the case, of course, that there are aspects of the altered labour relations environment for which it is appropriate to invoke the assistance of this Board.* ***We are not persuaded, however, that there are grounds on which we should upset the collective bargaining rights and relationships which have grown up between trade unions and health care employers in order to pursue the goal of standardization of health care bargaining units.***
>
> (**emphasis added**).

[117] In *Saskatoon District Health Board*, *supra*, the union sought to represent a unit of employees of the Saskatoon District Health Board at Parkridge Centre. The Board stated at 70 and 71:

> *The Employer objects to the granting of this application on the grounds that the bargaining unit would not be appropriate. In part, this objection is based on grounds which were the subject of discussion in Reasons for Decision issued in connection with Health Sciences Association of Saskatchewan v. Saskatoon City Hospital, LRB File No. 266-93, an application which was heard at the same time as this one. Counsel for the Employer pointed out that, following recent changes in the administrative structure of the health care system, the Saskatoon District Health Board has become the single employer of employees in a number of health care facilities and services which previously operated as separate employers. He urged the Board to reconsider its current approach to the definition of bargaining units, and to consider delineating standard bargaining units.*
>
> ***In the City Hospital case, we outlined our reasons for continuing to adhere to our practice of defining bargaining units as they have been in the past, based on groups of employees working at particular locations or facilities. We stated our view that continuing to define bargaining units in this way would provide for the continuation of existing obligations, and provide the trade unions and employers in the health care sector with the soundest basis for making whatever adaptations are necessary to accommodate those features of the new structures which have an impact on collective bargaining relationships.***
>
> *A particular feature of this application which was drawn to our attention by counsel for the Employer was the fact that a number of employees whose names were included in the Statement of Employment provided when the application was filed in January were subsequently transferred to Saskatoon City Hospital as part of the rationalization and transfer of various departments and services under the new structure. From the evidence given by employees at the hearing of this application, it is clear that this is a source of some confusion.*
>
> ***As we stated in the City Hospital decision, supra, it must be acknowledged that the changes which are going on in the delivery of health care will have an inevitable impact on the terms and conditions of employment of employees within the new health districts. Whether accrued seniority may be transferred from one facility to another, who will have access to particular vacancies, what criteria will govern bumping***

> ***rights - all of these are serious and significant questions for employees. Our point is that the answers to these questions must be found in the provisions of collective agreements, or in other arrangements which are made between the parties to collective bargaining relationships; they cannot, we think, be satisfactorily addressed by a wholesale redefinition of bargaining units on the part of the Board.*** *Thus, if employees have moved from the Parkridge Centre to the Saskatoon City Hospital, they will have moved from one bargaining unit to another. The effect of this move on their seniority or bumping rights may be addressed by the provisions of the relevant collective agreements; in the alternative, it may have to be addressed in discussions between several trade unions and the Employer, as the evidence suggested there is presently no "merger-transfer" agreement of the type which has been concluded in the Regina Health District. If a social worker, for example, were to move from the Parkridge Centre to Saskatoon City Hospital, that employee would move from a Service Employees' International Union unit into a bargaining unit represented by the Health Sciences Association of Saskatchewan, and would be subject to the provisions of the collective agreement concluded with the latter trade union.*
>
> *. . .*
>
> ***We are thus persuaded that this is an appropriate bargaining unit. We should not be taken as having abandoned our preference for inclusive bargaining units, and it would perhaps be desirable if these bargaining units were ultimately consolidated.*** *The application was filed, however, in January, and, in the ordinary course of events, the Union would not have been able to apply for an amendment to its existing Order for nearly a year. Though certain arguments raised in connection with this application have brought us to September already, this could not have been foreseen when the application was filed.*
>
> ***As counsel for the Employer rightly points out, there are many changes going on which have clear implications for the terms and conditions of employment of these employees. Under these unusual circumstances, we are particularly sympathetic to the request of a group of employees who wish to be represented at this time by a trade union, even if the configuration of bargaining they are applying for is not the ideal one.***
>
> (**emphasis added**).

[118] We agree with the Board in *Horizon* that the issues faced by the parties before us have much in common with the parties in health care in that period following

the 1993 reforms and that the Board's decisions on those issues in health care are instructive in the context of the recent education restructuring. The bargaining structures as they exist in education bear much resemblance to those that existed in health care at the time of the 1993 reforms. In addition, the effect of the change from independent employers (of facilities or services) to health districts governed by boards has much in common with the 2006 restructuring of education delivery. As such, it is appropriate to consider and apply the principles in the health care decisions during that time period in our analysis of the appropriate bargaining units sought by the Union in the current circumstances before us. Those principles may be summarized as follows:

1. *It is not the Board's role to preside over the implementation of some entirely new configuration of bargaining;*

2. *The Board should use a pragmatic and functional approach to consider the incremental changes as they take place;*

3. *The Board should build on the existing network of bargaining relationships and obligations (which were largely based on facilities and services) so as not to cause disruption;*

4. *The primary goal is to ensure that unions may retain and rely on bargaining rights previously obtained;*

5. *The Board should consider the rights and obligations of one union and employer, the possible claims of other unions, and the unrepresented employees;*

6. *A less than ideal unit may be appropriate, if viable;*

7. *While reform may have an impact on terms and conditions of employment (i.e. ability to transfer, seniority, bumping rights, access to vacancies, etc.), the key to resolving those difficulties lies in acknowledging existing obligations and the application of collective agreements and other arrangements made between the parties;*

8. *The Board should utilize common factors, historically applied, although possibly with different weight for different circumstances;*

9. *Representation is not on a craft basis;*

10. *There are no standard bargaining unit descriptions; and*

11. *In light of reform, the Board will be sympathetic to employees' requests to be represented, even if the proposed unit is not ideal.*

[119] Having found that the above principles, as applied in the health care sector, are equally applicable to the education sector, we have considered the factors listed in *O.K. Economy Stores, supra*, in determining that the proposed bargaining units sought by the Union in each of its six applications are appropriate. We will outline our reasons for these determinations under each of the headings below and, in so doing, will also consider the particular considerations applying to under-inclusive bargaining units as set out in *Sterling Newspapers Group, supra*.

Parties' wishes or agreements

[120] The evidence of support filed in relation to each of the applications for certification represents the wishes of certain employees to belong to the Union and the level of that support will be considered in determining whether each application has a majority or the 25% support necessary for entitlement to a vote. While this is obviously a necessary determination in our decision whether to certify the proposed units, it is also a relevant factor in our determination that the units sought are appropriate ones. This conclusion is in line with the principle stated above that the Board will be sympathetic to the desires of groups of employees for union representation and the protection it brings in a time of change.

[121] In addition, we have taken into account the position of CUPE, as an interested party, in addressing this factor. In accordance with the Board's decisions in *Deer Park* and *Estevan Comprehensive*, both *supra*, CUPE's indication that it supports these applications suggests that it has no intention of seeking to represent these employees. As such, the proposed units, although under-inclusive, are appropriate.

Community of interest

[122] The Employer also suggested that the individual units lacked a distinct community of interest in part because the employees share common terms and conditions of employment. However, it must be noted that this has occurred as a result of the Employer's recent initiative to implement equitable terms and conditions of employment for all employees across the Chinook School Division including those who are members of CUPE. The Union suggested that the Employer undertook this course of action with a view to discouraging the unorganized employees from unionizing, pointing

out that not only were these employees, including those within CUPE, brought up to the levels enjoyed by the Union's members, but that the Union was excluded from the process. While it is not necessary for us to draw any conclusions on that assertion, in our view, the Employer's recent actions to attempt to achieve equitable terms and conditions of employment across the Chinook School Division (and position that shared terms and conditions make it impossible for these employees to enjoy a community of interest distinct from other employees) cannot effectively operate as a bar to the rights of employees to organize in and join a trade union of their choosing. While it is laudable that the Employer set this goal and viewed it as an immediate priority upon amalgamation of the legacy school divisions, this is not a situation where the employees have had shared terms and conditions for many years and, in fact, at the time of the hearing, the Employer had not yet completed the process. While it is not open to us to speculate on the reasons why these employees expressed a wish to join the Union, there could be many reasons to do so, including that the employees could be seeking more or different types of benefits or working conditions that are negotiated by the Union and not imposed upon them by the Employer.

[123] In the circumstances of this case, the sharing of similar terms and conditions of employment is not sufficient to lead us to the conclusion that these groups of employees lack a community of interest necessary to be appropriate bargaining units. In our view, the employees form a distinct group based on geography, which is an appropriate basis upon which to define a unit. A distinct boundary can be drawn around each unit on the basis of the school or schools at which the employees of each proposed unit work. Employees in the same geographical location or locations would be likely to develop a community of interest based on who they are working with, the local conditions concerning the type and amount of work available (based on student constituency), as well as the nature of supervision and other workplace rules.

[124] In further support of our conclusion, we note that there are no existing, more inclusive, bargaining units to which these proposed groups of employees could belong. The Union did not propose an alternative, more inclusive unit for any of the proposed groups. Neither did the Employer propose some other combinations of employees (or schools), relying only on the argument that only a division-wide unit was appropriate. For the reasons stated above, we have rejected the notion that a division-

wide unit is the only appropriate unit. Such a finding would be contrary to our goals to allow unions to rely upon and retain established bargaining rights and to not preside over a completely new configuration of bargaining. In these circumstances, we find that the employees in the proposed under-inclusive units share a sufficient community of interest and that there exist no more inclusive bargaining units.

Viability

[125] While it is near impossible for us to determine whether the proposed bargaining units are viable in the long-term, under the new education structure, it is apparent that such units, designated by school or groups of schools, have proven viable in the past, even where they have contained only one classification. SEIU has a history of representing employees in the education sector, including in the Chinook School Division, where the Union has represented maintenance personnel at one school in Swift Current for many years and, in so doing, has demonstrated its bargaining strength. In these circumstances, we find that such units will continue to have a viable basis upon which to bargain with the Employer.

[126] While we have some concerns over the size of the units at Spring Lake School and Bone Creek School, any questions as to their viability are of less concern than following our overall approach of allowing unionization by school, in order to build on the existing network of bargaining relationships. To set a particular threshold in terms of the number of employees that must be included a proposed unit in order for it to be determined an appropriate unit would be arbitrary. In addition, it would raise questions about the viability of the unit in the future should the number of employees drop below the threshold level.

[127] We express the same hope that was expressed by the Board in a number of the health care decisions referred to in these Reasons for Decision, that at some point the parties will consider the consolidation of the bargaining units. In the meantime, however, given the changes to the education structure as well as anticipated future changes, we are particularly sympathetic to the rights of the employees to be represented by a union.

Employer's organizational structure

[128] As previously stated, the Employer's organizational structure has changed as a result of the provincial restructuring of education boundaries such that a number of legacy schools divisions have amalgamated into one. The Employer raised the issue that, because employees in the new amalgamated division are or will be intermingled, the units sought by the Union are not appropriate ones.

[129] While the issue of intermingling is examined when determining whether an under-inclusive unit is appropriate, the issue has most often been examined by the Board in the context of successorship cases where the Board is required to determine the most appropriate bargaining unit. For example, in *Saskatchewan Health-Care Association (representing Wolf Willow Lodge) v. Service Employees' Union, Local 336 and Canadian Union of Public Employees, Local 2297*, [1992] 3rd Quarter Sask. Labour Rep. 93, LRB File Nos. 091-92, 099-92 & 155-92, the successor employer took over the operation of two health care facilities, each of which had employees represented by a different union. The Board granted the employer's request to order a vote to determine which of the two unions would represent employees in the new facility and, in so doing, considered the issue of intermingling. The Board described the concept of intermingling and the test to be used as follows at 97 and 99:

> *There have been numerous cases, in this jurisdiction and elsewhere, dealing with the issue of successorship. In this case, the employer does not resist the allegation that it is the successor employer with respect to the employees represented by the applicant; rather,* ***the question is whether the employer is correct in concluding*** *that it is also the successor employer to employees represented by the Canadian Union of Public Employees, and* ***that the employees included in the two bargaining units will be so entangled that collective bargaining will not be viable unless there is only one bargaining representative for both of these units****.*
> *. . .*
>
> *Where one institution or enterprise takes over or merges with another, the question of how to deal with the representational interests of employees who have become "intermingled' may arise. There are, of course, cases where putting two sets of employees under one roof does not mean that the two bargaining units cannot be continued independent of one another; there are also cases where a successor acquires a business which remains geographically separate, and may be treated as an independent unit (see, for example, Daynes Health Care Ltd., [1985] OLRB Rep.*

> *March p. 387).* ***The test suggested by the British Columbia Labour Relations Board in <u>The Glenshield House</u>, BCLRB No. 45/84, was "whether the day-to-day operation of the transferor's previous business will be altered to complement the successor's operation in such a way as to <u>necessitate</u> a change in the composition of the bargaining unit."***
>
> (**emphasis added**).

[130] In *Wolf Willow Lodge*, *supra*, the Board found that the altered operation of the business did necessitate such a change to the composition of the bargaining unit and that it was "unrealistic to suppose that the employer could continue to treat the two units separately." It was therefore the change in the operations that led to intermingling and the necessity for the Board to examine whether a different bargaining structure was more appropriate.

[131] In some respects, the Employer's argument is premature. It argued that, upon the closure of a school, employees may be transferred elsewhere and that that could create problems with a mix of employees from two different unions. However, school closure is not an issue before the Board. When, and if, that does occur, it is open to an employer to make an application to the Board, if appropriate and necessary, to determine which of two different unions is entitled to represent the employees. It is also possible for the parties to negotiate terms in their collective agreements to deal with such situations.

[132] With regard to the issue of intermingling, in our view, the units proposed by the Union are not so entangled with each other, with existing units or with those employees who would remain unorganized, that it would be unrealistic to suppose the Employer could treat the units as separate ones. The Employer provided only two examples of such situations in the nine months between amalgamation and this hearing: (i) the use of maintenance employees from all three service centers responding to a crisis at a certain school; and (ii) a Swift Current electrician (represented by the Union) worked at a number of schools including one where the employees were represented by CUPE, although the parties negotiated terms to deal with this occurrence.

[133] For the most part, the situation before us falls into one of the exceptions mentioned in *Wolf Willow Lodge, supra*, that is, while the business has amalgamated, parts of its business remain geographically separate. The employees work at or are based in one location or school. For those who regularly work at more than one school (the situation of two teacher assistants was the only example given), the situation is more akin to a part-time employee who holds more than one job (this issue will be discussed later in these Reasons for Decision when we consider the position of Ms. Struik). While the Employer also speculated that there would be intermingling with substitute or casual employees who indicate an availability to and are called to work at more than one school, one of which is unionized and one which is not, this is not the type of intermingling to which the principles in *Wolf Willow Lodge* would apply. Again, such a situation is most similar to one where an employee has more than one part-time job, with some different terms and conditions of employment for each. While this may cause some inconvenience to the Employer should it choose to call a substitute employee to both unionized and non-unionized schools, that is the choice of the Employer. If such a scenario presents problems, it is also open to the Employer and the Union to negotiate rules around such an arrangement, if necessary and/or desirable. The evidence indicated that the parties have negotiated such solutions – one in the case of the Swift Current electrician noted above and another by reason that all current collective agreements allow for employees to work at other sites that are unionized as long as work is not taken away from the bargaining unit.

[134] In line with the principles established in the health care decisions noted above, the key to resolving the difficulties that arise with regard to matters such as seniority, transfers, bumping and vacancies, lies in the application of the parties' collective agreements and any other arrangements made between them. The answer does not lie in the redefining of all the bargaining units in the education sector.

[135] We appreciate that the creation of six additional bargaining units in the Chinook School Division may create some inconvenience for the Employer in terms of its duty to bargain collectively with the employees' chosen representatives. The board of the Chinook School Division is currently required to negotiate with the representatives of the teachers' bargaining unit as well as two other unions in relation to five bargaining units covering support staff employees. Although the certification of six additional units

essentially doubles the number of units in the Chinook School Division, we do not see it as overly burdensome to the Employer in the particular circumstances of this case. The Union is one of the unions the Employer is currently required to bargain collectively with and there is therefore an established relationship for the parties to build upon. We have considered the Board's decision in *Estevan Comprehensive, supra*, in reaching this conclusion. In that case, the Board commented on the potential hardship to the employer in certifying an additional under-inclusive unit represented by another union (CUPE), at 422 and 423:

> *[19] The Board is comforted by the fact that CUPE is the union that has the predominant presence in the school division sector in Saskatchewan. In addition, in Saskatchewan, CUPE negotiates on behalf of numerous bargaining units that include the classification of teacher assistant. Likewise,* ***the Employer negotiates with multiple bargaining units or entities within this school division and having another union to negotiate with, instead of directly negotiating with non-union employees, will not result in any degree of hardship for the Employer.***
>
> *[20] The case before the Board is similar in some aspects with the case Canadian Union of Public Employees, Local No. 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. In Board of Education of Deer Park School Division, supra, the Board states at 354:*
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> > *[13] In this very unusual situation, where the incumbent bargaining agent acknowledges its inability to effectively represent a group of employees and consents to their inclusion in a different bargaining unit, the Board will stray from its policy of preferring "all employee" bargaining units and will allow the creation of a second bargaining unit. In school divisions, the existence of a separate bargaining unit for bus drivers is not unusual and the configuration of employees which results from the creation of the new bargaining unit will not create an unnatural or unknown bargaining structure.* ***We do acknowledge that the creation of the new bargaining unit will impose additional burdens on the Employer. However, we are hopeful that the parties can adapt the existing voluntary multi-employer structure to facilitate collective bargaining for the new bargaining unit.***

> *[21] As in the Board of Education of Deer Park School Division decision, supra, where the Deer Park Employees Association acknowledged its inability to effectively represent a group of employees and consented to their inclusion in a different bargaining unit, SEIU is consenting to the creation of a new bargaining unit by supporting CUPE's application. While there was no evidence that SEIU could not effectively represent the teacher assistants, the Board concludes from both the facts and SEIU's position before the Board that SEIU does not want to represent the teacher assistants.*
>
> *. . .*
>
> *[24] Given these unique circumstances, the Board will grant the certification Order requested by CUPE. CUPE has the predominant presence in the school division sector and will have the ability to properly represent the teacher assistants. Much as in the Board of Education of Deer Park School Division decision, supra, where the Board strayed from its policy of preferring all employee bargaining units,* ***the Board recognizes that additional burdens may be placed on the Employer. However, given SEIU's position and the current number of entities which the Employer negotiates with, any additional burdens should be minimal.***
>
> (**emphasis added**).

[136] In further support of this conclusion, we point to the evidence led at the hearing that the Employer had in place administrative structures to deal with the existence of several bargaining units. For example, although the Employer was in the process of consolidating its payroll system, allowances had been made to accommodate the different dues' structures of the two unions. In addition, any concerns of the Employer over the requirement to negotiate six additional collective agreements can be dealt with through the agreement of the parties to structure their collective bargaining in a more efficient manner, a course of action we encourage the parties to take. It is apparent that the Employer and the CUPE locals agreed to one memorandum of agreement in September 2006 covering all CUPE members in the Chinook School Division. We also heard evidence at the hearing that it was CUPE's intention to consolidate its bargaining units and that there was an expressed desire by the Union to do the same. While the issuance of these certification orders is not predicated on these plans for consolidation coming to fruition, we believe that the parties can, through negotiation, address these

issues and, if they cannot, it is open to any or all of them to make application to the Board for assistance.

Historical patterns of organizing

[137] A review of the certification orders issued by the Board over the last several years reveals no distinct pattern of organization in the education sector. Both SEIU and CUPE have a strong presence in the education sector although it appears that CUPE represents a greater number of units of employees at schools or in the legacy school divisions across the province. There is no standard bargaining unit description in the education sector and the units range from a single classification to "all support staff employee" units. A number of certification orders were issued for the pre-amalgamation school divisions although there are many that were issued for the previous "school districts" and appear not to have been updated through the years as changes were made to the structure of education delivery in the province. While it is not always possible to tell how many schools there are in each certified district/division, it is apparent that at least some certification orders were issued by school/facility. For example, a local of CUPE is certified to represent caretakers and maintenance employees of the Gravelbourg Elementary and High School in the Golden Plains School Division No. 124 and, in a separate certification order, represents all other employees of the Golden Plains School Division No. 124. Another example is the certification orders issued for employees of the Estevan Roman Catholic Separate School Division No. 27 – one covers teacher assistants, clerical, librarians, caretakers and noon-hour supervisors at certain named schools in the division while another certification order covers all bus drivers and the maintenance supervisor in all locations in the division.

[138] The historical patterns of organizing in the education sector point in favour of the proposed bargaining units being appropriate. As stated in the case law, the Board has permitted incremental organizing in this sector. In many instances, it was the parties themselves who agreed to the delineation of the bargaining units that exist in the province by reason that many of the applications for certification went unopposed by the employers. In these circumstances, we will continue to allow the incremental organizing of employees in this sector and will not attempt to establish a new configuration of bargaining consistent across the school divisions in the province.

Organizing difficulties

[139] The certification of an under-inclusive unit is often permitted in "difficult to organize" industries or employers (see, for example, *Sterling Newspaper Group, supra*). The Union argued that this is one such example where it would be difficult to organize all of the support staff in the Chinook School Division. The Union had made a previous attempt to organize a school division on a broader basis than by school but was unable to garner sufficient support to file an application for certification. It found that local organizers had inadequate time to devote to the task. The Union also argued that, in the Chinook School Division in particular, it would be impossible to organize on a division-wide basis given the large geographical area that it covers. Because it is a predominantly rural area, it is difficult to locate employees and attempt to meet with them. It was necessary for the Union to call in national organizers who could commit 100% of their time in order to gather the support that it did. The Employer pointed out that the Union's evidence that it could not organize division-wide was inadequate. It pointed to the fact that the Union was able to file these applications some two months after the national organizers came in to assist, thereby establishing that, with sufficient effort by national organizers, six months (the time for which support cards are valid) is a sufficient time period to attempt to gather division-wide support. The Union countered with the position that such an endeavor would be too costly and that the Union lacks the manpower and resources necessary to undertake such an initiative.

[140] While we agree with the Union that it would appear that the task of carrying out an organizing drive on a division-wide basis would be extremely difficult, the evidence presented to us on this point by Ms. Platzke was not entirely adequate. Ms. Platzke did not possess sufficient first-hand knowledge of the organizing drive carried out by local or national members such that we could find that getting a sufficient number of cards signed in a six month time period would be impossible. However, there is more to the issue of organizing difficulties than the Union's ability to gather support cards from the non-union employees. The Employer suggested the Union could organize a more inclusive unit, a division-wide unit. However, given the five certified bargaining units in place in the present case, it was not possible for the Union to have organized on a division-wide basis without raiding the CUPE bargaining units. Encouraging such an approach in this and other school divisions is bound to lead to industrial instability. Although we did not understand the Employer as suggesting that a division-wide unit of

the remaining non-union employees was the unit it thought appropriate, we also find that approach unacceptable. It is contrary to the historical pattern of organizing and it ignores the possible claims of other unions (CUPE, in particular) and the wishes of employees.

Statement of Employment Issues

Office Managers

[141] The Employer argued that the Union must include clerical employees (which includes office managers) in the unit proposed in relation to LRB File No. 096-06, just as it has in its five other applications for certification. The Employer also denies that office managers perform managerial duties. The Union argued that it should not be required to include clerical employees in the unit and that, in any event, office managers should be out of scope because their title implies that they are managers. Alternatively, the Union argued that, should the Board find that it must have the same classifications included in all of the proposed bargaining units, the "clerical" employees should be removed from the bargaining unit descriptions of all of the units applied for.

[142] In our view, the office managers, while performing a broader range of functions than secretaries due primarily to the size of the school at which they are working, are not managerial employees and should not be excluded from the unit on that basis. While there is some desirability to having the most inclusive support staff unit in a school or group of schools, because there are no standard bargaining unit descriptions in the education sector, there is no basis to compel the inclusion of clerical employees in this bargaining unit. As previously stated, the history of organizing in this sector shows a wide variety of bargaining unit descriptions, many of which were agreed to by the parties involved and, therefore, a bargaining unit is appropriate with or without clerical employees. Because the Union did not seek to represent clerical employees in this unit, we are not prepared to force their inclusion and representation by the Union. To do so would be to conclude that there must be standard bargaining unit descriptions and that the only appropriate unit in a school is an all-support staff unit all of which is contrary to the principles we have adopted as a guide to determining the appropriateness of units in this sector.

Status of Ms. Struik

[143] The parties remained in dispute as to whether Ms. Struik should be listed on the statement of employment in relation to LRB File No. 096-06 (Ashley Park School and Central School).

[144] In *Regina District Health Board, supra*, the Board was required to determine whether an employee who spent part of her time performing duties in a bargaining unit represented by the Saskatchewan Union of Nurses and part or her time as one of the employees in the group the union sought to certify (an "assessor care co-ordinator"), belonged on the statement of employment in relation to the application. The Board stated at 139:

> *If the employee performs two distinct sets of duties, one of which would place her in the bargaining unit represented by the Saskatchewan Union of Nurses, and one of which would put her in the bargaining unit proposed in this application, it is possible that the terms and conditions of employment related to the two sets of duties would be determined by collective bargaining between the Employer and both of the trade unions representing the two bargaining units. There is nothing conceptually foreign about having an employee working part-time at two different jobs. It is possible that we have misunderstood the representations made with respect to this employee, and that her situation is either more or less complicated than this; if this is the case, we will remain seized for the purpose of hearing further evidence or argument about the circumstances of this employee.*

[145] In *Saskatchewan Union of Nurses v. Saskatoon City Hospital, supra*, the Board was required to determine a similar issue, at 202:

> *Counsel for the Union described as one of the major concerns the status of employees who, while based in one facility, carry out duties in other facilities. She said that the Employer is making increasing use of this practice, and that this has created tensions between employees in different bargaining units. This kind of development is a clear outgrowth of the organization of health services along district lines rather than in individual facilities.*
>
> *It is not clear that the granting of an amendment of the kind proposed in this application would resolve whatever difficulties this has created for the Union. The Board held in the Southwest District Health Board decision that employees who have a*

> *significant connection with a particular facility may fall into a bargaining unit based on that facility, even though their duties as now assigned may take them to other facilities. Counsel conceded that, even if the application were granted, the Employer could continue to base programs in other facilities, which would mean that the bargaining unit based at City Hospital would still have to accommodate the presence of employees based at Royal University Hospital or elsewhere. Whatever tensions or difficulties this produces must, in our view, be worked out between the bargaining units represented by the Union and the Employer, whether through the gradual bringing together of bargaining units or through some other means.*
>
> *With respect to employees who are truly peripatetic, and of whom it would be stretching reality to say that they are based in any particular facility, the comments we have made earlier apply to this point as well. While it may at some point be desirable to define a bargaining unit covering these employees on some basis other than the boundaries of a facility, the Union is not saying that there are currently any such employees in the employ of the Employer, and we are reluctant to speculate about the shape such a bargaining unit might take.*

[146] It is clear that Ms. Struik performs her duties as a teacher assistant in relation to students at three different schools – Swift Current Comprehensive, Ashley Park School and Oman School – by accompanying them on a special needs bus to and from school. It could therefore be said that she is carrying out her work in greater than one facility. There is a distinction to be made between the issue of whether an individual should be on a statement of employment and the issue of to which bargaining unit the employee belongs. In our view, Ms. Struik has a significant connection to Ashley Park School such that she should be included on the statement of employment in LRB File No. 096-06. Although the nature of her work does not neatly divide into "part-time jobs," the matter of which bargaining unit Ms. Struik belongs to in the course of performing her duties must be the subject of negotiation between the parties. As stated in *Saskatoon City Hospital, supra*, any "tensions or difficulties" produced by her performance of work that, in part, belongs in one bargaining unit, must be worked out between the parties. In making this determination, we have considered the scope of Ms. Struik's duties as of the time the application was filed, although the added scope of her duties in September 2006 to include special needs' students at Central School and noon-hour supervision at Central School means only that the parties will have to take the changing scope of her position into account in collective bargaining.

Employee Support for Applications

[147] We have reviewed the support evidence filed in relation to each of the applications and find that there is proper majority support for the following applications and an order for certification will issue accordingly:

LRB File No.	**Location/Geographical Description**	**Number of Employees**	**Bargaining Unit Description**
070-06	Val Marie School and Vanguard Community School	21	Teacher assistants, clerical, custodians, librarians, caretakers, noon hour supervisors, bus drivers and substitutes in the said classifications.
095-06	Shaunavon High School, Shaunavon Public School and Shaunavon Service Centre	46	Teacher assistants, clerical, custodians, librarians, caretakers, noon hour supervisors, bus drivers and substitutes in the said classifications at the Shaunavon High School and the Shaunavon Public School and mechanical and maintenance workers employed at the service centre in Shaunavon.
097-06	Spring Lake School	3	Teacher assistants, clerical, custodians, librarians, caretakers, noon hour supervisors, bus drivers and substitutes in the said classifications.
098-06	Neville Elementary School	15	Teacher assistants, clerical, custodians, librarians, caretakers, noon hour supervisors, bus drivers and substitutes in the said classifications.
099-06	Bone Creek School	2	Teacher assistants, clerical, custodians, librarians, caretakers, noon hour supervisors, bus drivers and substitutes in the said classifications.

[148] In relation to the following application, the Union has not filed evidence of majority support but has filed support from at least 25% of the employees listed on the applicable statement of employment and we therefore order a secret ballot vote among those employees employed as of the date of the vote:

096-06	Ashley Park Elementary School and Central Elementary School	47	Teacher assistants, custodians, librarians, caretakers, noon hour supervisors, bus drivers and substitutes in the said classifications.

DATED at Regina, Saskatchewan, this **7th** day of **December, 2007**.

LABOUR RELATIONS BOARD

Angela Zborosky,
Vice-Chairperson