

**Labour Relations Board
Saskatchewan**

**HEALTH SCIENCES ASSOCIATION OF SASKATCHEWAN, Applicant v. CANADIAN
BLOOD SERVICES, Respondent**

LRB File No. 030-08; July 11, 2008

Chairperson, Kenneth G. Love Q.C.; Members: Gloria Cymbalisty and Leo Lancaster

For the Applicant: Gary L. Bainbridge
For the Respondent: Leah Schatz

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 concludes that proposed bargaining unit appropriate unit

Bargaining unit – Appropriate bargaining unit – Board policy – In determining whether under-inclusive unit appropriate unit, Board considers parties’ wishes, community of interest, viability, employer’s organizational structure, historical patterns of organizing – Board concludes that proposed bargaining unit appropriate unit.

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

REASONS FOR DECISION

Background:

[1] The Health Sciences Association of Saskatchewan (the “Union”) has applied to be certified pursuant to s. 5(a), (b) and (c) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”) as the collective bargaining agent for employees of the Canadian Blood Services Regina Centre (the “Employer”). The application is in respect of:

All employees employed by the Canadian Blood Services Regina Centre in the city of Regina, Saskatchewan who are trained as Laboratory Technologists and working in that capacity, and those trained as Biomedical Engineering Technologists and working in that capacity.

[2] The Saskatchewan Union of Nurses (“SUN”) is certified as the bargaining agent for “all nurses employed by Canadian Blood Services, Saskatchewan Centre (with work locations in Regina and Saskatoon) in Saskatchewan, except the manager of collections and the assistant nursing manager”.

[3] The Service Employees’ International Union, Local 299 (“SEIU”) is certified as the bargaining agent for:

all employees employed by Canadian Blood Services, Regina Centre, Regina, Saskatchewan, except the Centre Director, Centre Manager, Collections Manager, Laboratory Manager, Medical Officers/Directors, Scientists/Medical Researchers, Computer Services Supervisor, Clinic Operations Supervisor, Transport Supervisor, Clinic Coordinator, Donor Retention Coordinator, Marketing Coordinator, Communications Coordinator, Quality Assurance Manager, a Centre Confidential Secretary, Biomedical Technologists, all Registered Laboratory Technologists and all Registered and Graduate Nurses employed and functioning as such.

[4] Notice of the application by the Union was forwarded to both the Saskatchewan Union of Nurses and Service Employees’ International Union, Local 299. Neither of these interested parties filed a reply or appeared at the hearing of this matter.

[5] One of the positions applied for, that of the biomedical technologist, had been the subject of a previous application to the Board to be included within the bargaining unit represented by Service Employees’ International Union, Local 299. For the reasons cited in that decision (LRB File No. 024-07), the Board declined to include that position in the previously certified bargaining unit.

[6] The Employer, in its reply, took the position that the proposed unit was inappropriate insofar as it would create further fragmentation of the “total complement of employees.” The Employer also took the position in its reply that the proposed bargaining unit should not include the references:

‘who are trained’ and ‘working in that capacity’ (Laboratory Technologists) and ‘who are trained’ and ‘working in that capacity’ (Biomedical Technologist) since there are managers in the employ of the Employer who are trained as Laboratory Technologists and

Biomedical Engineering Technologists who do perform some related work but are clearly not employees under the Trade Union Act. In particular, the positions of Regional Manager, Production Manager, Medical Office Patient Services and Quality Assurance Manager should be specifically excluded from the proposed bargaining unit.

[7] The Application was heard by the Board on May 22, 2008. At the outset of the hearing, the Union advised the Board that it agreed with the Employer that the following positions should be excluded from the proposed unit:

- a) Regional Manager Production; and
- b) Medical Officer Patient Services; and
- c) Quality Assurance Manager.

[8] The parties also had an issue with respect to the position of charge technologist. The Union initially felt the position should be excluded. The Employer took the position it should be included. The Union, after hearing evidence from the Employer agreed the position should be included in the proposed unit.

[9] The Statement of Employment which was filed included the position of charge technologist, but excluded the three positions referred to in paragraph 7 above. As a result, the proposed unit comprised 19 employees in the following classifications:

- a) Quality Control Technologists (3)
- b) Biomedical Technologists (1)
- c) Technologist IIB Trainer (1)
- d) Technologist IIB (3)
- e) Technologist II (10)
- f) Charge Technologist (1)

[10] Of the above noted positions, all of the employees are laboratory technicians save for the one position of biomedical technologist.

[11] Ms. Irene Buechert gave evidence for the Employer. She described the role and function of Canadian Blood Services and the various employees covered by the application. She described the various functions performed by the Canadian Blood

Services, which included collection of blood, the manufacturing of blood products, and the distribution of blood products. In her evidence she also provided job descriptions for the various classifications of employees in the proposed unit as well as outlining the functions performed by each.

[12] Mr. Martin Hajek also gave evidence for the Employer. He is a Senior Employment Consultant with the Employer and was responsible for collective bargaining for the Saskatchewan Region. He noted in his evidence that the Employer looked to other health care employers, principally, the Saskatchewan Association of Health Organizations (SAHO) to determine salary ranges for employees in the classifications applied for by the Union.

[13] The position of the Employer was that a separate group of employees, certified by the Union would not be an appropriate unit. One of the Union's witnesses, Carrie Derin, a Technologist IIB, gave evidence that employees within the bargaining unit certified to SEIU are not the peers of the laboratory technologists for whom certification is being sought. She did not feel that being included within the larger group of employees represented by SEIU would allow for the best interests of the laboratory technologists to be represented. Her evidence was that while most of the laboratory technologists' positions were full time positions and that very few of the SUN and SEIU positions were full time.

[14] The Union also called Greg Lindstrom, the biomedical technologist to testify. While this position was previously the subject of an application, his evidence was that he felt his interests would be better served by being included within the group of employees which is the subject of this application. His evidence was that he works alongside the laboratory technicians to assist them to do their job.

Statutory Provisions:

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

2 *In this Act:*

(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 likely 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 sub clause (i) be sealed in ballot boxes and not counted except as directed by the board;*

Analysis and Decision:

[16] At the hearing the parties resolved any issues related to the exclusions and proper description of the proposed unit. That left only the issue of whether or not the unit which had been applied for by the Union was appropriate for bargaining collectively.

[17] The Employer took the position that another bargaining unit would complicate its already complex collective bargaining structure. It felt that this group of employees was more appropriately included within the group of employees represented by SEIU.

[18] The Union took the position that the unit was an appropriate unit. It suggested that the test for appropriateness was not what if another unit would be better or ideal, but rather whether the unit itself could be considered appropriate on its own for collective bargaining.

[19] 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 unit sought by the Union is inappropriate in the circumstances of this case.

[20] While it is likely beyond dispute that the most inclusive and therefore *most appropriate unit* would be an all employee unit of non nursing 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 *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. 332-95, involving a union's application for the amendment 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.

[21] The test for determining if an under-inclusive bargaining unit is an "appropriate bargaining unit" was set out in *Graphic Communication 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 at 780, as follows:

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.

[22] In the present case, the majority of employees are included from the scope of SEIU's bargaining unit. There was evidence that lab assistants, one of the groups represented by SEIU in particular, intermingle and work directly with the laboratory technicians. However, the laboratory technicians oversee and supervise the work of the lab assistants on a daily basis, and while not being in a position to discipline or hire and fire lab assistants, the laboratory technicians do supervise and manage the work of the lab assistants. In addition, the laboratory technicians and the biomedical technician are

full time positions rather than being part-time which is what most of the laboratory assistants are. Furthermore, laboratory technicians and the biomedical technician do have a discrete skill set from those included within the SEIU bargaining unit.

[23] In *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, 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.

[24] 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 *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 decision, 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.

[25] Applying the factors set out in *O.K. Economy, supra*, for the reasons which follow, leads the Board to its decision that the group of employees applied for by the Union is an appropriate unit for collective bargaining.

Community of interest

[26] 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 following closely the agreements negotiated by SAHO for employees governed by its bargaining jurisdiction. In this proposed unit, all of the employees, save one are laboratory technologists, and that employee works beside those other employees to insure proper and accurate laboratory results. The employees applied for are principally full time employees while the other employees whom the employer seeks to join them with are primarily part-time employees. The laboratory technicians and the biomedical technician have specific job skills that separate them from the other employees, similar to the exclusion of the nursing professionals from the larger "all employee" unit. The laboratory technologists perform a supervisory role with respect to some of the employees in the larger unit, and while they do work with the other employees, it was clear from the evidence of both Carrie Derin and Irene Buechert that they perform a much different function within the organization.

Viability

[27] While it is near impossible for us to determine whether the proposed bargaining units are viable in the long-term, it is apparent that such smaller units have proven viable in the past. While *The Health Labour Relations Reorganizations (Commissioner) Regulations*, R.R.S. c. H-0.03 Reg 1 (the "Dorsey Regulations") attempted to make larger units the norm, in addition to avoiding conflict between potential choices of bargaining agents, these regulations are no longer in force and did not apply to this Employer. Nevertheless, particularly in the field of education, such units have proven to be viable for collective bargaining.

Employer's organizational structure

[28] The evidence of Martin Hajek established that the employer bargained with respect to a complex number of collective bargaining units throughout Canada. He noted in his evidence that laboratory technicians were generally certified within the same bargaining unit as the support staff. He noted that for bargaining purposes he would prefer to bargain with SEIU on behalf of these employees because SEIU was known to him in collective bargaining in other provinces and situations, whereas the Health Sciences Association of Saskatchewan was not.

[29] As noted above, while it would be more desirable to have a more inclusive unit of employees, the wishes of the employer in this regard cannot prevail over the wishes of the employees as expressed in the evidence of both Carrie Derin and Greg Lindstrom and the evidence of support which has been filed in respect of this application. The right of employees "to organize in and to form, join or assist trade unions and to bargain collectively through a trade union of their own choosing", is set out in s. 3 of the *Act*.

Historical patterns of organizing

[30] As noted above, the "Dorsey Regulations provided for consolidation of bargaining units in the health care sector and mandated a movement towards larger, more inclusive bargaining units. However, this Employer was never subject to the Dorsey Regulations, which implemented the consolidation of bargaining units within the newly created Health Districts and Regional Health Authorities. These Regulations were repealed on January 1, 2006. As a result, they can not apply to this situation.

Employee Support for Application for Certification

[31] We have reviewed the support evidence filed by the Union with respect to the application and find that there is a majority support. A certification Order will issue accordingly.

DATED at Regina, Saskatchewan, this **11th** day of **July, 2008**.

LABOUR RELATIONS BOARD

Kenneth G. Love Q.C.,
Chairperson