

**The Labour Relations Board
Saskatchewan**

HEALTH SCIENCES ASSOCIATION OF SASKATCHEWAN, Applicant and SUNRISE HEALTH REGION, Employer and CANADIAN UNION OF PUBLIC EMPLOYEES and SERVICE EMPLOYEES INTERNATIONAL UNION, Interested Parties

LRB File No. 036-08; November 12, 2008

Chairperson, Kenneth G. Love, Q.C.; Members: John McCormick and Ken Ahl

For the Applicant HSAS:	Mr. Gary Bainbridge
For the Employer:	Ms. Eileen Libby
For the Interested Party CUPE:	Mr. Michael Keith
For the Interested Party SEIU:	Mr. Drew S. Plaxton

Reference of Dispute – Interpretation of Memorandum of Agreement between parties – Recreation Therapist – Recreation Working Supervisor – Job Descriptions – Appropriate Bargaining Unit for positions – Board determines that positions should be placed with Health Sciences Bargaining Unit.

Practice and Procedure – Board discusses the criteria for References of Disputes to the Board.

Jurisdiction of Board – Jurisdiction of Board under s. 24 flows from Reference by parties – Board discusses that Reference must be clear and unequivocal.

The Trade Union Act, s. 24.

REASONS FOR DECISION

Background:

[1] This is a Reference of Dispute pursuant to Section 24 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”) by the Health Sciences Association of Saskatchewan (“HSAS”) in relation to two employees of the Employer, Sunrise Health Region (“Sunrise”) who currently hold positions as Recreation Working Supervisors.

[2] In Sunrise, the Union certified to represent Recreation Working Supervisors is the Canadian Union of Public Employees (“CUPE”). Other similar positions in other health regions are represented by the Service Employees International Union (“SEIU”).

[3] HSAS claims that the two incumbents of the positions are performing the duties of, and functioning as, Recreation Therapists, which positions are all within HSAS, across Saskatchewan, regardless of the health region to which they are employed. HSAS maintains that these positions are more properly placed in the HSAS bargaining unit.

[4] The Board has been asked by the Applicant and Sunrise to decide the following:

Whether the Employer is obligated to recognize the two incumbents as properly classified as Recreation Therapists, and properly placed within the Health Support Practitioner bargaining unit as represented by HSAS; or whether the status quo should be maintained.

[5] At the commencement of the hearing of this matter, SEIU applied for and was granted intervenor status in this application.

Facts:

[6] In 1997, as a result of the Reorganization of Saskatchewan's Health Labour Relations ("Dorsey Commission Report") which final report was dated January 15, 1997, there was significant change to the bargaining unit descriptions among the various unions providing services in Saskatchewan's health regions. Those changes were implemented through regulations enacted pursuant to *The Health Labour Relations Reorganization Act*, S.S. 1996, c. H-0.03, ("HLRRA") Table "C" to the HLRRA included within the list of occupational classifications assigned to HSAS, the classification of "Recreational Therapists."

[7] However, the HLRRA also assigned similar occupational classifications to CUPE and SEIU. These classifications were Activity Worker I and Activity Worker II. Those positions were later reclassified as Recreation Worker and Recreation Working Supervisor.

[8] A disagreement arose between SEIU, CUPE, and HSAS over the classification of certain employees employed in the health regions as to whether they should be classified as Recreational Therapists or as Activity Workers I or II. On August 26, 1998, those parties, along with the Saskatchewan Association of Health Organizations ("SAHO"), as bargaining agent for all of the health regions, entered into a Memorandum of Agreement ("MOA") which defined when a particular position would fall within the Recreational Therapist classification and, as a result, fall within the scope of the HSAS certification rather than SEIU or CUPE.

[9] That MOA set forth the following as the criteria on which a position would be considered by the parties to be a Recreational Therapist position:

- (a) *the job description for the said position names the position as a "Recreational Therapist" and requires a recognized Degree in Recreation Studies with a specialization in Therapeutic Recreation or a recognized Diploma in Therapeutic Recreation; and*
- (b) *the incumbent of the position is employed, qualified and functioning as a "Recreation Therapist"; and*
- (c) *The Recreation Therapist's primary function is to work on a one-to-one basis with clients doing individual assessments to determine client needs and outcome objectives for each client, thereafter developing a recreational program plan to attain the outcomes, participate in the implementation of the plan, observe the outcomes and revise the client outcomes and/or recreation program as required;*

[10] In accordance with the MOA, the parties to the agreement undertook a review of a number of positions throughout the various health regions in Saskatchewan. As a result of that review, a number of positions were re-classified as Recreation Therapists from Activity Worker I and II and transferred to the HSAS bargaining unit. However, some positions which had formerly been classified as Recreational Therapists reverted to the Activity Worker classification within the SEIU or CUPE bargaining unit and some positions remained as originally classified. Those determinations were the subject of a Letter of Understanding dated December 23, 1998 from Mr. Jeff Waselenchuk, Consultant, Human Resource Services, SAHO to representatives of each of the affected Unions.

[11] Following this review, SEIU and CUPE, along with SAHO began a Joint Job Evaluation Process (the "JJE") to ensure that all employees were properly placed within the various job classifications. As a result of that process, both of the employees, on whose behalf this application was brought by HSAS were re-evaluated and placed within a new classification being a Recreational Working Supervisor.

[12] In addition to the JJE, some additional changes came into play with respect to the two persons who are the subject of this application, Leanne Buchinski and Brian Honeywich.

Leanne Buchinski

[13] Ms. Buchinski works for Gateway Lodge, Kamsack, Saskatchewan which is in the Sunrise Health Region. Her current classification is a Recreation Working Supervisor and she is currently represented by the CUPE bargaining unit.

[14] In a letter dated August 30, 1999, to Linda Kezima, Director of Human Resources, Assiniboine Valley Health District, Ms. Buchinski applied for a bursary from her employer to upgrade her education. She was currently enrolled in the Therapeutic Recreation Diploma program being offered by the Saskatchewan Institute for Applied Science and Technology ("SIAST"). By letter of December 18, 1999 from Ms. Kezima, Ms. Buchinski was successful in her request for funding assistance and continued with her course of studies, graduating with a Therapeutic Recreation Diploma on May 30, 2003.

[15] While enrolled in her course, Ms. Buchinski was required to complete a practicum as a part of the program. Because of her many years of experience, it was recommended that she challenge the exam for this part of the program. Someone from the Kelsey Campus in Saskatoon came to her workplace to observe her skills. While undergoing that review, the person involved in the skills review suggested that when Ms. Buchinski received her diploma, she should probably be reclassified as a Recreation Therapist. She was advised to contact HSAS as those positions were under their jurisdiction.

[16] Also while Ms. Buchinski was enrolled in her diploma program, the JJE process was underway. In June of 2003 she was notified that she had been classified as a Therapeutic Recreation Therapist. That notification enclosed a draft job description which listed as the qualifications for the position, a "Two (2) year Therapeutic Recreation Diploma (2236 hours)."

[17] An appeal of this decision was taken by her supervisor. On March 17, 2005 the result of that appeal on that she was reclassified as a Recreation Working Supervisor. The qualifications for the position of Recreation Working Supervisor was a "Therapeutic Recreation Diploma." The job description for that position which was provided to the Board was dated June 26, 2005. A similar job description dated June 26, 2005 for a Recreation Worker had dropped the requirement for a diploma of any kind. The only qualification was "Grade 12."

[18] Concurrently with this JJE, HSAS, on behalf of Ms. Bushinski, wrote to the Sunrise Health Region on September 16, 2003, as follows:

Re: Reclassification request: status of Leanne Buchinski's position

This issue is a brand new labour-relations matter. Please consider this letter as not only an outline of the Health Sciences Association of Saskatchewan (HSAS) position in the above matter, but also as a formal grievance filed on behalf of the HSAS against Sunrise Health Region (SHR).

Brief Summary of Facts:

Since April 1984, Leanne Buchinski has been working for Gateway Lodge, a long-term care facility, as an Activity Worker I. In May of this year Leanne was awarded a Diploma in Therapeutic Recreation from SIAST. I recognize that an upgrade in education by itself does not warrant a reclassification. However, the union takes the position that Leanne's recently earned Diploma, together with her current scope of practice, in effect tips her classification in favor of that of a Recreation Therapist under the HSAS/SAHO collective agreement.

I recognise that Leanne is a CUPE member. I look forward to CUPE's participation and input into this matter. However, I must stress that this action taken on behalf of the HSAS is definitely not an attempt to "raid" member(s) of other unions. The HSAS is simply taking the position that no union should block the career path of an individual employee, particularly if that path leads to the betterment of that employee. In this particular case, the HSAS simply believes that it would be in the best interests of Leanne to be recognised as a Recreation Therapist, and join an already well-established community of Recreation Therapists within the HSAS.

I understand, as is often the case with labour relations, that there are complicated factors, but the big picture here strongly supports the HSAS position. As you know, The Health Labour Relations Reorganisation Regulations (also known as the Jim Dorsey Regulations) clearly places Recreation Therapists in Table C. All Table C employees are currently represented by the HSAS. Never the less, the Dorsey Regulations never defined the Recreation Therapist.

Fortunately, the problem surrounding the definition of Recreation Therapist was clearly addressed in the August 26, 1998, Letter of Understanding between various unions (SEIU, CUPE and HSAS) and SAHO, the employer representative. The HSAS takes the position that Leanne is functioning as a Recreation Therapist as defined in the August 26, 1998 agreement. For example, Leanne develops recreational programs and assesses the needs of each client. In short, the Dorsey Regulations, as well as this Letter of Understanding, support the transferring of Leanne into HSAS and assigning her a Recreation

Therapist – Diploma classification. In summary, the union alleges that SHR has not properly classified the position currently occupied by Leanne and therefore violates the Dorsey Regulations and the August 26, 1998 agreement.

Remedy sought:

The HSAS is asking the SHR to facilitate a grievance meeting with Leanne, a CUPE representative and myself. I truly look forward to a mutual sharing of all the information and to a cooperative solution in this matter. However, as it stands, the HSAS is asking for retroactive compensation for Leanne at the appropriate rate for a Recreation Therapist – Diploma and for all benefits that she would have otherwise be entitled to under the HSAS/SAHO collective agreement until the date of filing of this grievance. The union will also seek, from the employer, a retroactive adjustment for all the lost union dues.

That letter invoked the earlier MOA concerning classifications at issue. A copy of that letter was provided to CUPE.

[19] No response was received to HSAS's letter until January 24, 2006, at which time the Sunrise Health District advised, in part, as follows:

. . . Since that time [September, 2003], it has been established that the positions occupied by Ms. Buchinski and Mr. Honeywich are those of CUPE Recreation Working Supervisors. A review of the CUPE job description, including qualifications and required duties, leads us to believe they are very similar to those criteria outlined for HSAS Recreation Therapists, according to the agreement of August 28 (sic), 1998 between SEIU, CUPE, HSAS, and SAHO. So similar, that we cannot differentiate anything that that may determine the appropriate jurisdiction.

... We would suggest to you, in order to conclude this matter satisfactorily for all parties, and through the appropriate venue, that the Saskatchewan Labour Board hear the jurisdictional arguments and render the appropriate decision.

[20] While all of this was going on, there were also changes occurring in the role of recreation in the field of health care. As Ms. Buchinski testified, up until about 1984, recreation programming was diversional in nature. After that time, recreation programming became more focused on specific programming for patient needs as an adjunct to the rehabilitation process or for other health care related purposes. What was occurring was summarized in a publication

produced by the Sunrise Health Region known as "Connection." That article, entitled "Therapeutic Recreation Information Session" and dated January 16, 2008, says:

Recreation programming in long term care has been evolving since its implementation to LTC. In the past, the Activity Department strived to keep the residents "busy" and "entertained" - essentially diversional programming. The past twenty years in Saskatchewan have seen a gradual shift in recreational delivery to that of therapeutic based programming.

...

Therapeutic Recreation is a relatively new field. It had its origins in European asylums and came across the Atlantic post war to help meet the recreational/diversional needs of veterans. Nationally recreation therapists are moving towards licensing or credentialing. Recreation professionals are found anywhere a "special needs" population exists such as rehabilitation and corrections. Scope of practice is determined by education and job description.

...

Therapeutic Recreation is defined as a service provided to individuals who have physical, mental, social or emotional limitations which impacts their ability to engage in meaningful leisure experiences. Therapeutic Recreation interventions are directed toward treatment, leisure education and participation opportunities. These interventions support the goal of assisting the individual to maximize independence in leisure, optimal health and the highest possible quality of life.

[21] As noted in the article, there was a movement to "licensing or credentialing" Recreational Therapists. This was occurring not only in Saskatchewan but throughout Canada. Ms. Ann Robins testified on behalf of the Applicant and described the efforts in Saskatchewan to develop both a Saskatchewan based accreditation agency as well as a national body. She described the work being done by the Saskatchewan Association of Recreation Professionals to achieve certification Canada-wide for Recreation Therapists, which accreditation would permit those who were properly certified to use the title "Recreation Therapists".

[22] Both of the persons on whose behalf this application were made were members of the Saskatchewan Association of Recreation Professionals, which required for membership that they have a recognized diploma or degree and have worked in the field for a minimum of one year.

[23] Ms. Robins also described the model of practice which was supported by the Saskatchewan Association of Recreation Professionals, which was the “Leisure Ability Model.” That model followed the acronym “APIE” and the use of this model was crucial, in her view, for distinguishing between persons who were engaged in recreation therapy and those that were engaged in non-recreational therapy work. “APIE” stands for the process to be used in the delivery of the recreation service. The first component is “Assessment”, the second is “Planning”, the third is “Implementation” and the final component is “Evaluation.”

[24] Ms. Robins reviewed the job descriptions for Recreation Therapists and Recreation Working Supervisors. It was her opinion that only the job description for Recreation Therapist required that there be an independent “Assessment” of a patient or client and hence met the requirements of APIE.

[25] Ms. Buchinski’s uncontradicted testimony was that her job required that she follow the “APIE” model and that she did follow that model in her day to day work. She testified that she provided all four of the requirements of the “APIE” model and testified that she was doing the work of a Recreation Therapist. For that reason she asked HSAS to assist her to be reclassified as a Recreation Therapist rather than a Recreation Working Supervisor. Her evidence was consistent with that of Ms. Robins insofar as the position of Recreation Working Supervisor lacked the element of Assessment as a part of the job description. Her evidence was that she could not perform her job without performing the assessment part of the APIE model.

Brian Honeywich

[26] Mr. Honeywich was the other employee on whose behalf HSAS has made this application. He is employed at St. Paul Luthern Home in Melville, Saskatchewan as a Recreation Working Supervisor in the CUPE bargaining unit.

[27] Mr. Honeywich commenced working as an Activity Worker II in 1992. He holds a Bachelor of Kinesiology (which was known as a Bachelor of Physical Activity Studies at the time the degree was granted) from the University of Regina. His course of studies included an emphasis in “Adaptive Measures.”

[28] His testimony supported the changes which occurred in the field as noted above. He was also the author of the article "Therapeutic Recreation Information Session" published in "Connection."

[29] His evidence was that his job required that he follow the APIE model. He testified that he was required in the performance of his job to make assessments, make plans for his clients to achieve their goals, to implement those plans and programs, and to then evaluate the progress of the clients towards those goals, and to adjust as necessary.

[30] He testified that the position of Recreation Working Supervisor failed to recognize his degree or to take into account the job which he was actually performing. In 2005, he learned that there was a classification within HSAS that both recognized his degree and took into account the work he was doing, so he contacted HSAS to ask for their assistance.

[31] His evidence was consistent with that of Ms. Buchinski and Ms. Robins with respect to the need for all of the elements of the APIE model to be performed for the position to be a Recreation Therapy program or position.

Susan Balladance

[32] Relevant testimony was also given by Ms. Susan Balladance, who was called by the Union. Ms. Balladance is employed by SAHO as a Consultant in Job Description and Evaluation. Prior to joining SAHO, Ms. Balladance had held a position as a Recreation Manager at Santa Maria Nursing home in Regina. Ms. Balladance also holds a degree in Physical Activities Studies from the University of Regina.

[33] While employed at the Santa Maria Nursing Home, Ms. Balladance was one of the employees impacted by the review conducted by SAHO, CUPE and SEIU in 1998. In fact, she was one of the employees impacted by that reclassification as she was reverted from a position as a Recreation Therapist to that of Activity Worker II.

[34] The reason for her reclassification from Recreation Therapist to Activity Worker II was because the position she occupied at Santa Maria Nursing Home did not perform patient or client assessments. Because of changes in staffing, assessments were centrally administered and her position was not one that did assessments.

[35] Her evidence was that assessments were an important and critical function in the work performed by Recreation Therapists. She defined assessment as being “professional judgment based on knowledge/skill to determine an appropriate or necessary course of treatment.”

[36] Her evidence was consistent with that of Ms. Buchinski, Ms. Robins and Mr. Honeywich with respect to use of the APIE model. Her evidence was that the job descriptions for Recreation Working Supervisor and a Recreational Therapist were different. That difference was that Recreational Therapists were required to perform independent assessments of patients and clients as a part of their job duties.

[37] Ms. Balladance also introduced a letter dated April 5, 2005 from SAHO which had been directed to HSAS regarding the Recreation Therapist issue. That letter from Francis E. Schmeichel, Manager, Classification and Job Evaluations, provided, in part, as follows:

. . . In my letter of November 10, 2004, I indicated that the majority of the individuals functioning under the “Draft Provincial Job Descriptions” of Therapeutic Recreation Technologist and Recreation Working Supervisor do not meet the agreed to definition in the Letter of Understanding signed on August 26, 1998.

SAHO has determined through discussions with employers that there are positions that may belong within the HSAS definition of Recreation Therapist. These positions have been identified within Sunrise Health Region, Prairie North Health Region and Five Hills Health Region.

Sunrise Health Region has already contacted HSAS to pursue these positions through the grievance process with a meeting that was set for February 18, 2005.

...

With respect to the “Draft Provincial Job Descriptions”, these job descriptions are still draft and not finalized as the Provider Reconsideration process is not complete. SAHO has provided the documentation from HSAS to the Reconsideration Committee for their review...

[38] With the consent of the parties, Mr. Plaxton, on behalf of SEIU, introduced the names of four other individuals within the SEIU bargaining unit that may also be impacted by this application.

Relevant statutory provision:

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

24 A trade union representing the majority of employees in a unit of employees may enter into an agreement with an employer to refer a dispute or disputes or a class of disputes to the board and the board shall hear and determine any dispute referred to it by either party pursuant to such agreement and the finding of the board shall be final and conclusive and shall in regard to all matters within the legislative jurisdiction of the Legislature of Saskatchewan be binding upon the parties and enforceable as an order the board made in accordance with this Act.

Analysis and Decision:

[40] The Board's jurisdiction with respect to disputes referred to it under s. 24, since its decision in *The Brotherhood of Painters and Allied Trades v. Days Paints Ltd. and Daymart Coatings Ltd.*, [1983] Nov. Sask. Labour Rep. 39, LRB File No. 243-83 at 41 is confined: "to hearing and determining those matters specifically agreed upon by the parties." Furthermore, in *Federated Co-operatives Limited and Retail Wholesale and Department Store Union, Local 540* [1984] Oct. Sask Labour Rep. 31, LRB File No. 059-83, the Board confirmed that, at 33, that it is "reluctant to assume jurisdiction under Section 24 of the *Act* unless the parties have clearly and unequivocally agreed to refer the dispute or class of disputes to the Board"...

[41] In accordance with those statements of the Board's jurisdiction is framed by the parties reference of the dispute to the Board. For ease of reference, the question referred to the Board by the parties was as follows:

Whether the Employer is obligated to recognize the two incumbents as properly classified as Recreation Therapists, and properly placed within the Health Support Practitioner bargaining unit as represented by HSAS; or whether the status quo should be maintained.

[42] That reference, however, must be read in conjunction with the MOA between the parties with respect to the classification of Recreation Therapists within the classifications

established by the Dorsey Commission Report. That MOA, as noted above, set out the criteria which the parties had agreed would be determinative of where a particular position fell within the *HLRRA*. It is therefore, incumbent upon the Board to determine, based on the criteria identified by the parties in their MOA where the two disputed positions should be placed.

[43] Before embarking on that consideration, the Board wishes to address an issue which troubled it during the hearing of this matter. That was the nature of the parties' agreement and the alternative remedies available to resolve any disagreements concerning the agreement and its interpretation.

[44] Under s. 18(l) of the *Act*, the Board may "defer deciding any matter if the board considers that the matter could be resolved by arbitration or an alternative method of resolution."

[45] In 1998, when the agreement was first entered into, Sunrise, with the co-operation of the other parties, conducted a wide-ranging analysis of various positions within all of the health regions and determined that some positions required reclassification and some positions did not. That process appeared, from the materials which were provided to the Board, to have been effective insofar as those positions which had been identified and which were subjected to review.

[46] Sunrise, in its letter of April 5, 2005 identified additional positions which may require reclassification. However, rather than embarking on the procedure followed in the past, it appears that the parties were unable to co-operate as they had in the past to resolve this type of dispute in accordance with their MOA. This would, of course, have been the preferred means of dealing with the issue concerning these two individuals.

[47] The Board gave consideration to deferring consideration of this request pending further discussion between the parties as had occurred in the past. However, it became clear during argument that the parties take a different view of the currency of the agreement. HSAS considers the agreement to remain in full force and effect and applicable to future situations, whereas CUPE and SEIU take the view that "the agreement is spent" as a result of the earlier review and that it is no longer applicable in these circumstances. They viewed the actions of

HSAS as being a raid of their membership under the guise of a dispute regarding the applicability of the agreement to the current situation.

[48] In the circumstances of this case, the Board has agreed to deal with this issue under s. 24 rather than defer the issue to the parties for resolution as in the past. As noted above, the approach to the MOA was so diverse that in the Board's opinion, nothing would be resolved by such a deferral in this particular case. The Board felt that it was in the best interest of the labour relations community that it accept jurisdiction in this case and deal with the reference from the parties as requested.

[49] The MOA set forth three criteria for determination when a particular position would fall within the bargaining unit represented by HSAS and when that position would fall within the other bargaining units.

[50] CUPE and SEIU in their evidence and arguments tried to present the position of Recreation Working Supervisor and the position of Recreation Therapist as alternative positions within either bargaining unit. However, the Board cannot agree with this analysis. As pointed out by Ms. Robins, and which was a consistent theme throughout the hearing, the major and compelling difference between the two positions is that a Recreation Therapist must engage in a process of "assessing" an individual prior to the development of a recreational program that will achieve desired outcomes in the patient. That requirement was a part of the APIE model described by numerous witnesses.

[51] Ms. Balladance's evidence, as noted above, was particularly compelling in that it came from a unique perspective. Not only was Ms. Balladance someone who had occupied a position that had been reviewed following the MOA, but she was currently employed as a Job Description and Evaluation Consultant by SAHO. Furthermore, her evidence was called by CUPE. She described "assessment" as noted above, as being a form of professional judgment by the person making the assessment. That evidence was consistent with the evidence of Ms. Robins in her description of the efforts by the Saskatchewan Association of Recreation Professionals to achieve certification Canada wide for Recreation Therapists, which accreditation would permit those who were properly certified to use the title "Recreation Therapists." Her evidence was also consistent with the description of the changes which were

occurring in the field of Recreational Therapy as outlined by both Ms. Buchinski and Mr. Honeywich in their testimony and as outlined by Mr. Honeywich in his article.

[52] That being said, however, it is necessary to review the criteria set out by the parties for determination of the issue. As set out above, those criteria from the August 28, 1998 MOA were:

- a) *the job description for the said position names the position as a "Recreational Therapist" and requires a recognized Degree in Recreation Studies with a specialization in Therapeutic Recreation or a recognized Diploma in Therapeutic Recreation; and*
- b) *the incumbent of the position is employed, qualified and functioning as a "Recreation Therapist"; and*
- c) *The Recreation Therapist's primary function is to work on a one-to-one basis with clients doing individual assessments to determine client needs and outcome objectives for each client, thereafter developing a recreational program plan to attain the outcomes, participate in the implementation of the plan, observe the outcomes and revise the client outcomes and/or recreation program as required.*

[53] In their arguments, CUPE and SEIU tried to draw a distinction with respect to point a) insofar as the position occupied by Ms. Buchinski and Mr. Honeywich was titled a Recreation Working Supervisor, not a Recreational Therapist. Furthermore, they argued that the job description for a Recreation Working Supervisor required a Therapeutic Recreation Diploma. As such, they argued that neither Ms. Buchinski nor Mr. Honeywich qualified as the position they occupied had been classified and evaluated by the JJE as a Recreation Working Supervisor after a review of the job performance criteria submitted by both Ms. Buchinski and Mr. Honeywich.

[54] HSAS argued that the position espoused by CUPE and SEIU invoked a circular argument insofar as to be a Recreational Therapist, one had to be called a Recreational Therapist in the job description. HSAS also argued that this had not been the case in the earlier review where persons whose job description described them as Activity Worker or Activity Worker II had been found to be Recreational Therapists as outlined in the Letter of Understanding dated December 23, 1998 to representatives of each of the affected Unions. The Board concurs with the argument of HSAS with respect to point a) of the MOA.

[55] Furthermore, insofar as the qualification set out in the job description for Recreation Working Supervisor that the position requires a Therapeutic Recreation Diploma, we do not think this requirement is determinative of the issue. Firstly, as noted in the April 5, 2005 letter, the job description which outlines this qualification were still considered to be in draft. Secondly, it is conceivable that a position could be created which, while requiring the credential of a Therapeutic Recreation Diploma, would not require the incumbent of that position to perform assessments and hence not follow the APIE model. Ms. Balladance's testimony was that the draft job description for Recreation Working Supervisor, in fact, did.

[56] Criteria b) requires that the person be "employed, qualified and functioning as a Recreational Therapist." On this point, we have only the evidence of Ms. Buchinski and Mr. Honeywich regarding the position that they occupy. Their evidence established that they were both "employed, qualified and functioning as a Recreation Therapist."

[57] No evidence was provided by either Sunrise, CUPE or SEIU which in any way contradicted the evidence provided by Ms. Buchinski and Mr. Honeywich. Counsel for the Applicant invited the Board to draw an adverse conclusion from this lack of evidence from any of the other parties. The Board declines to do so as no such adverse conclusion is necessary. The uncontradicted evidence provided to the Board clearly establishes that both Ms. Buchinski and Mr. Honeywich met criteria b).

[58] It is conceivable that Sunrise could establish, and arguably has done so with the creation of the position of Recreation Working Supervisor, a position which would not require that the incumbent perform "assessments." In that case, absent direct evidence to the contrary, that the person occupying the position was conducting "assessments", it is unlikely that the incumbent of the position could be found to be qualified or functioning as a Recreation Therapist. That was clearly the case with respect to Ms. Balladance when the last review was conducted by the parties under the MOA.

[59] Both Ms. Buchinski's and Mr. Honeywich's uncontradicted testimony was that they performed assessments in conjunction with the performance of their duties. The requirements of criteria c) in the MOA are, in the opinion of the Board, a recitation of the APIE model followed by both of the incumbents. While the wording is not identical to the model

wording, the components or criteria c) follow the model requirements of “Assessment”, “Planning”, “Implementation” and “Evaluation.”

[60] Therefore, for the reasons set out above, the answer to the question posed by the parties to the Board is that both Ms. Buchinski and Mr. Honeywich meet the criteria set out in the MOA and should be placed within the HSAS bargaining unit.

DATED at Regina, Saskatchewan, this **12th** day of **November, 2008**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson