Labour Relations Board
Saskatchewan

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4802, Applicant v. BOARD OF EDUCATION OF THE SUN WEST SCHOOL DIVISION No. 207, Respondent

- and -

OUTLOOK DIVISION SUPPORT STAFF ASSOCIATION, Applicant v. BOARD OF EDUCATION OF THE SUN WEST SCHOOL DIVISION No. 207 (formerly Outlook School Division, No. 32), Respondent, CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4802, Interested Party

LRB File Nos. 113-06 & 061-07; November 28, 2008

Chairperson, James Seibel; Members: Clare Gitzel and Maurice Werezak

For the Applicant Union:	John Elder
For Sun West School Division:	James McLellan
For Outlook Division Support Staff Association:	Clayton Ylioka and Helen Watson

REASONS FOR DECISION

Background:

[1] Effective January 1, 2006 the provincial government made a general restructuring of boards of education and their school divisions. The restructuring was compulsory for the public school system and voluntary for the separate school system. The amalgamation of 68 of 81 school divisions into 15 larger school divisions resulted in the present 28 public and separate school divisions in the province.

[2] The Board of Education of Sun West School Division No. 207 (the "Employer") was created by the amalgamation of six (6) smaller school divisions (the "legacy school divisions" or "pre-amalgamation school divisions"), as follows:

(1) Biggar School Division No. 50
(2) Kindersley School Division No. 34
(3) Rosetown School Division No. 43
(4) Davidson School Division No. 31
(5) Eston-Elrose School Division No. 33
(6) Outlook School Division No. 32

[3] The Employer admits that it is the successor employer to the legacy school divisions within the meaning of Section 37 of *The Trade Union Act*, R.S.S. 1978, c.-T-17 (the "*Act*"), and that it is bound by the certification Orders and existing collective agreements made with the predecessor employer legacy school divisions.

[4] Certain locals of the Canadian Union of Public Employees ("CUPE") had been certified as the bargaining agents for certain units of non-teaching support staff employees of certain of the legacy school divisions as follows:

(1) *CUPE Local 2128 (includes members of former Local 4262) -- Biggar School Division*
LRB File No. 054-99 -- Bargaining Unit: all school bus drivers and mechanics; and the support staff employees in the certification Order for Local 4262.

(2) *CUPE Local 2739 -- Kindersley School Division*
LRB File No. 013-83 -- Bargaining Unit: all school clerical employees, except the school division secretary-treasurer, assistant secretary-treasurer, confidential secretary to the secretary-treasurer, director of education, assistant director of education, plant supervisor, school bus supervisor, school bus drivers, and teachers.

(3) *CUPE Local 3002 -- Rosetown School Division*
LRB File No. 420-77 -- Bargaining Unit: all employees, except the secretary- treasurer, assistant secretary treasurer, school bus drivers, maintenance foremen and teachers.

(4) *CUPE Local 4729 -- Davidson School Division*
LRB File No. 111-05 -- Bargaining Unit: all employees, except the director of education, secretary-treasurer, transportation supervisor, maintenance supervisor, executive secretary, assistant secretary, curriculum coordinator and teachers.

(5) *CUPE Local 4766 -- Rosetown School Division*

LRB File No. 234-05 -- Bargaining Unit: all permanent bus drivers.

(6) *CUPE 4278 -- Outlook School Division*
LRB File No. 080-99-- Bargaining Unit: all school instructional assistants and clerical assistants (also known as school secretaries, librarians, library assistants and teacher assistants) and all school caretakers, except all substitutes.

[5] These Union locals merged and transferred their rights to Canadian Union of Public Employees, Local 4802 (the "Union"). The Union seeks the Board's recognition of the merger pursuant to s. 39 of the *Act*. (It should be noted that CUPE Local 4262 had previously merged with CUPE Local 2128 effective August 10, 2000. Accordingly, the Union seeks a "housekeeping" order rescinding the certification Order for Local 4262 dated April 14, 1999).

[6] The sixth local, CUPE Local 4278, is inactive. In LRB 061-07, Outlook Division Support Staff Association seeks to designated as the certified bargaining agent for a unit of employees of the former Outlook School Division, which includes those employees covered by the certification Order for CUPE Local 4278. Both that matter and the present matter came on for hearing at the same time. The Union objected that LRB File No. 061-07 should be dismissed, or alternatively, that LRB File No. 113-06 should be heard and determined without regard to the other matter. After hearing representatives of the parties, the Board adjourned LRB 061-07 pending the decision in LRB 113-06, on the basis of a principle of "first-in-first-out", and on the basis of logic given the fact that the Outlook School Division no longer exists, and its former non-teaching support staff employees are subject to an existing certification Order (albeit the local Union is inactive).

[7] The Union estimates that in the predecessor bargaining units it represents 310 of the approximately 425 non-teaching support staff employees of the Employer (i.e., approximately 73 percent)[1]. The Union has applied to amend the certification Order to reflect the amalgamation and the successorship, and to include all

[1] This number includes 48 employees of the former Outlook School Division represented by Local 4278. If they are deducted, the Union claims to represent 262 of 425 employees, or approximately 62 percent.

of the employees of the legacy school divisions in a single bargaining unit, including those employees that were previously not represented by a union. The proposed unit description is as follows:

> *all employees of the Employer, except the director of education, executive assistant to the director of education, superintendents of education, business and human resources, supervisor of business, supervisor of technology, supervisor of facilities, supervisor of transportation, and teachers.*

[8] The Employer objects to the creation of such an all non-teaching support staff bargaining unit as not being "an appropriate unit", and takes the position that the bargaining units in existence before the school division amalgamation should be maintained.

Evidence:

[9] Bill Robb has been a Union national servicing representative since 1995. He was involved in assisting all of the Union locals in the legacy school division bargaining units. He said that Local 4802 has already negotiated collective agreements with the Employer covering the former employees of the legacy Davidson and Rosetown School Divisions represented by the Union. He testified that the employees in the same classification performed essentially the same work regardless of the different school division employers.

[10] The Employer, Sun West School Division, covers a large geographic area. After the amalgamation of the legacy school divisions, the 41 individual schools in the enlarged school division pretty much operated as before, but there were significant changes in the main office and central administration. There was no shifting of employees at that time. The Union represents only one employee in the Employer's central office.

[11] Janet Caswell-Beckman is the Employer's director of education. She was formerly the director of education for the Outlook School Division. She testified that there are approximately 403 employees, of which 240 (*sans* former Outlook School Division employees), or 59 percent, are represented by the Union.

[12] In cross-examination, Ms. Caswell-Beckman admitted that it was easier to administer one set of policies and one collective agreement rather than six. The parties are in the process of negotiating a single collective agreement covering all of the employees that were represented by the Union in the legacy school divisions. She agreed that if the Union had organized all of the employees in the legacy school divisions prior to amalgamation, the Employer would not have objected to merger of the bargaining units, but said that the groups of unrepresented employees that remain should be able to choose whether to be represented.

Argument:

[13] John Elder, counsel on behalf of the Union, submitted that the present case is indistinguishable from the situation in the Board's first decision arising out of this round of school board reorganization and consolidation, *Canadian Union of Public Employees, Local 4799 v. Board of Education of Horizon School Division No. 205*, [2007] Sask. L.R.B.R. 425, LRB File 053-06, and that the Union was not seeking to re-litigate that case. However, counsel argued that an all-employee support staff bargaining unit is not only an appropriate unit, but the most appropriate unit, and that the Board should order a vote of all the employees in the proposed bargaining unit to determine if they want to be represented by the Union. The Board has a long-standing policy of preferring larger more-inclusive bargaining units: see, *Horizon School Division, supra* ,at para. 75).

[14] Counsel submitted that there are several sound reasons for a larger more-inclusive unit in the present case: (1) it promotes industrial stability, allows for fewer opportunities for strikes or lockouts causing disruptions in work, and for these reasons is in the public interest; (2) larger units are stronger and more viable; (3) a single-unit structure abrogates the possibility of jurisdictional disputes; (4) it increases efficiency in bargaining, i.e., a single table, requiring fewer resources of both the union and the employer; (5) a single unit enhances employee mobility and job security – employees can apply for vacancies across the school division; in the event of lay-offs, seniority can likewise be exercised across the school division; there is more opportunity for the employer to make accommodation for employees where required; (6) the Board has a policy that employees in the same job classification should not be in separate

bargaining units (see, *Saskatchewan Union of Nurses v. Prince Albert District Health Board*, [1996] Sask. Labour Rep. 368, LRB File 304-95.)

[15] Accordingly, counsel said, an all-employee support staff unit is an appropriate unit in the present case, and the Board should order a vote of all employees. Counsel also submitted that the Union and Employer should be allowed to bargain the scope of exclusions from the bargaining unit after the vote, in the event the Union is successful.

[16] James McLellan, counsel on behalf of the Employer, argued that an all-employee support staff unit is not an appropriate unit for collective bargaining. There is no history of the inter-mingling of employees, or of applications for positions outside of one's legacy school division boundaries.

[17] Counsel submitted that the Board's decision in *Retail, Wholesale and Department Store Union v. Sunnyland Poultry Products Ltd*., [1993] 2nd Quarter Sask. Labour Rep. 213, LRB File No. 001-92, established that the Union must demonstrate that it has support in the add-on non-unionized group. Therefore, there should be separate votes of the unorganized employees in each of the former legacy school divisions of Outlook, Eston-Elrose, the Kindersley bus drivers, and all other unorganized employees.

[18] Counsel submitted that the Employer's concerns with an all-employee support staff unit and a single vote of all support staff employees included the fact that it would be all or nothing: if the Union wins, there would be a single bargaining unit, but if it loses, there would be no bargaining unit at all, and that is not consistent with industrial relations stability.

[19] In response, Mr. Elder argued that the assertion that there should be separate votes among the unorganized employees of each legacy school division is inconsistent with the fact of successorship and that they are now all employed by the Employer: if the Union were presently seeking to certify a bargaining unit of only former employees of a legacy school division, surely the Employer would object. The issue is

simply whether a support staff bargaining unit comprising all employees of the Employer is appropriate for the purposes of collective bargaining.

[20] Nonetheless Mr. Elder conceded that in *Sunnyland*, *supra*, the Board held that, where a union wishes to expand its bargaining unit by adding groups of employees who are not covered by the existing certification order, it must show majority support among the employees in the accretion, and in many cases since has adopted this approach in considering s. 5 accretion-related amendment applications. He argued, however, that the Board's power under s. 37(2)(c) of the *Act* are fundamentally different than its powers on such amendment applications. Under s. 37(2)(c), he said, the Board's mandate to determine what trade union, if any, represents a majority of employees is specifically limited to the "unit determined to be appropriate pursuant to clause (b)"; that is, the Board is specifically directed to consider only evidence of support in the enlarged unit found to be appropriate and not the accretion. Whether the union has majority support from the group of employees being added is irrelevant so long as it has an overall majority in the proposed enlarged unit.

Analysis and Decision:

There are two applications before us in the present case. One is the Union's application pursuant to s. 39 of the *Act* to recognize the transfer of rights and obligations from the Union locals representing the bargaining units in the pre-amalgamation legacy school divisions to Union Local 4802. The other is the Union's application pursuant to s. 37 of the *Act* to deal with the successorship of the Sunwest School Division, No. 207 following the statutory amalgamation of the legacy school divisions as at January 1, 2006.

Transfer of Bargaining Rights – Section 39

[21] There is no contention between the parties regarding the application pursuant to s. 39. Amalgamation or merger of the Union locals is not the same as consolidation of the bargaining units, which the Union has not asked for. Notwithstanding the fact that pursuant to s. 39(b) of the *Act*, no order of the Board is required to effect such an amalgamation, – the Board's records are "deemed to be amended" to reflect the change – we are of the opinion that the transfer of bargaining rights to a single Union local by the separate Union locals in the legacy school divisions

is not inappropriate for the purposes of collective bargaining. An Order will issue recognizing the transfer of bargaining rights from, and the amalgamation of, the separate locals to Local 4802. Pursuant to s. 39(b) of the *Act* all extant orders, agreements and proceedings in effect between the Union locals in the legacy school divisions shall inure to the benefit of Local 4802 and shall apply to all persons affected thereby.

[22] It is, therefore, also appropriate to grant the application to rescind the certification Order of CUPE Local 4262 with respect to the former Biggar School Division.

Successorship – Section 37

[23] With respect to the application pursuant to s.37 and the matter of successorship, the Employer admits that it is the successor employer to the boards of education of the pre-amalgamation legacy school divisions, and that pursuant to s. 37(1) of the *Act* it is bound by the existing certification Orders and collective bargaining agreements between those former school divisions and the respective Union locals. Accordingly, there is no issue with respect to s. 37(2)(a). This Board having recognized above the merger and amalgamation of the separate Union locals and the transfer of bargaining rights in and to Local 4802, there is no issue that the Employer is bound by the fact that the extant orders, agreements and proceedings of the Board inure to the benefit of Local 4802.

[24] However, there is a difference between the parties with respect to the Union's application that we find that a single bargaining unit comprising all non-teacher support staff employees of the Employer, including those that were not organized in the legacy school divisions and included in the existing certification Orders, is an appropriate unit for the purposes of collective bargaining, and, should we so find, with respect to its application that a vote be held among all of the employees in the proposed single bargaining unit, rather than just among the employees that would be added.

[25] In *Horizon School Division, supra*, the Board extensively reviewed and analyzed the pertinent case law with respect to the matter of school division amalgamation and successorship generally. In deciding this case, we have attempted to apply the principles enunciated in *Horizon School Division, supra*, as far as we are able,

and where that case does not provide for appropriate direction given the particular circumstances of the present case, to fashion and apply such principles as we deem to be appropriate and as consistent as possible with the former decision.

[26] 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 was not unionized. The new larger Saskatchewan Rivers School Division admitted that it was the successor employer and applied, pursuant to s. 37, to create a single bargaining unit of all organized non-teaching staff by consolidating the existing units. 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 of the employees in that group. The Board granted the Union's certification application for the certification of the employees of 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.*

[27] In *University of Saskatchewan v. Canadian Union of Public Employees Local 1975, Administrative and Supervisory Personnel Association and Saskatchewan (Labour Relations Board),* [1978] 2 S.C.R. 834 (S.C.C.); (1977) 22 N.R. 314 (Sask. C.A.), it was determined that the Board had exclusive jurisdiction, not reviewable on judicial review, to consolidate existing bargaining units, but that the Board must consider any application to represent employees beyond those included by a mere consolidation, as an application for certification pursuant to ss. 5(a), (b) and (c) of the *Act*. Mr. Justice Bayda (as he then was) stated as follows:

> *If the scope of the new certification order containing the amendment is only to consolidate into one bargaining unit the previously established seven bargaining units then the order is clearly within the jurisdiction of the Board. . . .*
> *. . . .*
>
> *If, however, the scope of the order containing the amendment extends beyond the consolidation of bargaining units (or some like amendment) and embraces matters which properly fall under section 5(a) (b) and (c) of the Act, then the Board has no jurisdiction to make that order on an application under Section 5(a) or 5(k) of the Act, unless the Board deals with the application as if it were one under Section 5(a) (b) and (c) and considers those matters which are relative to applications under Section 5(a) (b) and (c).*

[28] *University of Saskatchewan, supra,* also held that for the purposes of determining whether the unit applied for is appropriate for collective bargaining, the Board is not bound to consider the employees' wishes. Mr. Justice Bayda stated as follows:

> *It is, I think, now settled that to enable the Board to make an Order under s. 5(a) of the Act, the Board is not required to ascertain the employees' wishes respecting the composition and determination of an appropriate unit . . . . That, however, is not true of an order under Section 5(b) of the Act. The import of the provisions of Section s 3 and 5(b) of the Act, is such that where a new bargaining unit is established the employees in that unit have the right to choose the union they wish to represent them and the wishes of the majority of the employees in that unit shall prevail. These provisions impose a concomitant obligation upon the Board to ascertain those wishes before it can exercise its right to determine what union, if any, represents the majority in that unit. The Board may use whatever evidence of those wishes it deems appropriate evidence it must have. The commission by the Board of an error of law or fact respecting that evidence cannot form the basis of an order to quash.*

[29] In *Horizon School Division*, *supra*, the Board extensively reviewed many of the cases that arose out of the earlier reorganization of health care. We do not propose to do so again here, and the Board continues to subscribe to our comments in that case with respect to those decisions. The conclusions drawn by the Board in *Horizon School Division*, *supra,* after that review included the following:

> *In our opinion, the cases regarding labour relations difficulties that arose from the earlier reorganization of health care did not result in the Board establishing any standard definition for the treatment of those situations. However, there are certain themes that run through several of the cases, including the fact that as a general principle, it is not the role of the Board to preside over the implementation of a new configuration of bargaining (in health care, there was pressure from some quarters to implement sectoral bargaining). Another principle was the refusal to depart from the consideration of criteria that have been historically applied when it was sought to include previously unrepresented employees in existing bargaining units. Such "historical criteria" include the requirement that the wishes of such employees be canvassed before the unit is reshaped.*

[30] What this means is that the Board may determine whether a particular bargaining unit is appropriate for the purposes of collective bargaining without regard to the wishes of the employees, but before such a unit may be certified, the Board's policy is to canvass the employees.

[31] In *Horizon School Division*, *supra*, the Board found that a single larger consolidated bargaining unit comprising employees in the existing bargaining units in the extant certification Orders of the Board regarding the legacy school divisions constituted an appropriate unit for the purposes of collective bargaining. As held in *University of Saskatchewan, supra,* the Board's exclusive jurisdiction to consolidate bargaining units is not reviewable.

[32] However, in the present case, the Union does not seek consolidation of the existing bargaining units, but, rather, seeks a declaration that a single unit comprised of all support staff employees – i.e., those presently unionized and those that are not – constitutes a unit appropriate for the purposes of collective bargaining. On that issue, we have accepted the reasons advanced by counsel for the Union as to the appropriateness of a single bargaining unit of all support staff employed by the Employer. The Board's jurisdiction to determine the "appropriateness" of a proposed bargaining unit is exclusive.

[33] The matter of establishing support for such a unit aside, a single bargaining unit would: reduce fragmentation (another union could potentially seek to

represent presently unrepresented employees); allow the employees in the bargaining unit to bargain together with a view to obtaining a single coherent collective agreement; serve to lessen administrative and bargaining complexity for both the Union and the Employer; and, significantly enhance labour relations stability and promote industrial peace, by abrogating the risk of multiple disruptions in service. It is almost certain that, had the Union applied for such a bargaining unit in the first instance, the Board would have found it to be appropriate. The non-union employees, as we understand it, are all in classifications currently represented by the Union in the extant certified bargaining units.

[34] While inter-mingling of the employees in the legacy school divisions has been minimal, it is a near certainty that it will occur, and at an increasing rate. A single bargaining unit would greatly reduce employee conflict with respect to new postings, vacancies and transfers, and would abrogate the situation where union and non-union staff performing the same job would be working side-by-side with different terms and conditions of work and protection through the grievance and arbitration process. With respect to the last point, the Board stated as follows in *Horizon School Division*, *supra*:

> *In our opinion, it is a certainty that, if intermingling of union and non-union employees doing the same jobs has not yet occurred, it will in the very near future and with increasing frequency. Conflict is inevitable when such employees work side by side, with different terms and conditions of work including access to grievance and arbitration procedures, and will increase when problems of transfer, mobility, lay offs, job posting, seniority, and application of multiple collective agreements, etc., occur more and more frequently.*

[35] However, as in *Horizon School Division*, *supra*, we are not prepared to simply "sweep in" the presently unorganized support staff, and the Union has not asked us to consider doing so in this case. It has asked for a representational vote to be conducted among all the employees. The Employer, however, takes the position that a vote should only be held among the employees that are not in a union (i.e., among those that would be added).

[36] In *Prince Albert Co-operative Association Limited v. Retail, Wholesale and Department Store Union, Local 496*, (1982) Sask. R. 314, 141 D.L.R. (3d) 524

(Sask. C.A.), affirming [1982] May Sask. Labour Rep. 55, LRB File No. 535-81, the Board had made the original certification Order in 1953. In 1981 the Union applied for an amended certification order under s. 5(k) of the *Act* for an enlarged bargaining unit. There were approximately 120 employees in the original unit at the Employer's place of business in Prince Albert. The union sought to add 38 employees employed in towns outside Prince Albert at places of business that the employer had acquired since the original certification Order. The union filed direct evidence of majority support among the employees in the add-on group, but relied upon the existing certification order as proof of support of the majority of employees in the original unit. The employer objected that this was not evidence of majority support for the enlarged unit. The Board allowed the application. The employer applied for judicial review. In its judgment, written by Bayda, C.J.S., the Saskatchewan Court of Appeal affirmed the Board's decision and iterated that an existing certification order is at least *prima facie* proof of the wishes of a bare majority of the employees to be represented by the union, i.e., 50 percent plus one – that is, it is not necessary for the union to "re-prove" that it has majority support among that group of employees for the purposes of an application to amend the order to add previously unrepresented employees to the bargaining unit. If it chooses, the Union may rely upon its bargaining certificate, and need demonstrate only that it has majority support in the add-on group.

[37] But, neither *University of Saskatchewan, supra,* nor *Prince Albert Co-operative, supra,* resolved the issue as to whether employee wishes must be determined on the basis of evidence of majority support among the employees in the add-on group (the "accretion") only, or of all the employees in the new proposed enlarged unit.

[38] Shortly after those decisions, the Board addressed the issue when the matter was raised again in *Sunnyland Poultry Products Ltd*., *supra*. In that case, the union applied to amend the certification Order under s. 5 of the *Act* to expand the geographic scope of the Order which would have the effect of sweeping in four groups of employees at locations not included in the bargaining unit described in the existing Order. The Board observed as follows:

> *Bayda C.J.S. found that a majority of the employees in the accretion supported the union's application, but did not stop there, which he would be expected to do if he felt that a majority in the*

> *accretion was determinative. Instead he continued with a discussion of* ***how the union could prove majority employee support in the overall unit, which appears to be the constituency he had in mind.***
>
> *(Emphasis added.)*

[39] As we interpret the above three decisions, the Union must prove that it has support in the "overall unit" (in this case, the proposed single all-employee unit that we have found to be appropriate). This is further supported by the fact that, arguably, pursuant to s. 37 (2)(c) of the *Act*, in the case of successorship, the Board's mandate to determine what trade union, if any, represents a majority of employees is limited to the "unit determined to be appropriate pursuant to clause (b)"; that is, that the Board is specifically directed to consider only evidence of support in the enlarged unit found to be appropriate and not in the accretion alone; and whether the union has majority support from the group of employees being added is irrelevant so long as it has an overall majority in the proposed enlarged unit.

[40] Proof of the support of a majority of employees in the "overall unit" may be established in any of several ways, as pointed out in *Horizon School Division*, *supra*:

> *(1) the Union could have relied on its existing bargaining certificates as evidence of the support of a bare majority of the employees in those units, and filed support card evidence of majority support among the group of presently-unrepresented employees;*
>
> *(2) the Union could have filed support card evidence of the employees in the existing bargaining units of a number sufficient to establish the majority support of the total number of support staff employees both within and outside of the bargaining units (i.e., in the enlarged proposed unit);*
>
> *(3) the Union could have relied upon its existing bargaining certificates as evidence of majority support of the employees in those units, and asked for a representation vote of the group of*

previously unrepresented employees sought to be added, that represents their majority support; or,

(4) the Union could request that a representation vote be held among all of the support staff employees, both presently represented and unrepresented, in the proposed enlarged unit, that demonstrates their majority support.

[41] The Union has applied to demonstrate its support through the fourth option.

[42] We have heard no valid criticism for not allowing a vote of all employees in the proposed enlarged bargaining unit, particularly in light of the overarching principle of employee choice and the object and purpose of the *Act* set out in s. 3, and will order such vote.

[43] For the purposes of future direction, had the Union simply requested consolidation of the existing bargaining units and relied upon its bargaining certificates as evidence of a majority of the employees in the consolidated unit, as it did in *Horizon School Division*, *supra*, we would likely have found the consolidated unit to be appropriate for the same reasons enunciated in that case and accepted such evidence.

Conclusion

[44] Orders will issue to the following effect:

(1) Transferring the bargaining and representational rights of Canadian Union of Public Employees, Locals 2128, 2739, 3002, 4729, 4766 and 4278, to Canadian Union of Public Employees, Local 4802;

(2) Declaring that Sunwest School Division No. 207 is the successor employer to each of Biggar School Division No. 50, Kindersley School Division No. 34, Rosetown School Division No. 43,

Davidson School Division No. 31, Eston-Elrose School Division No.33, and Outlook School Division No.32;

(3) Declaring that the following bargaining unit is appropriate for the purposes of collective bargaining:

> *all employees of the Employer except the director of education, executive assistant to the director of education, superintendents of education, business and human resources, supervisor of business, supervisor of technology, supervisor of facilities, supervisor of transportation, and teachers employed and working as such.*

(4) Directing that a representation vote be held among all of the employees in the proposed bargaining unit;

(5) The parties having requested the opportunity to bargain with respect to further or other exclusions, in the event that the representation vote directed in paragraph (4) above demonstrates that the Union has the support of a majority of the employees in the proposed bargaining unit exclusive of the exclusions identified in paragraph (3) above, the parties shall have the opportunity to bargain with respect to further or other exclusions for a period of 90 days following the release of the results of the vote, after which either party may apply to the Board to determine any issues outstanding with respect to exclusions. This panel of the Board does not retain jurisdiction for that purpose.

[46] The Board had adjourned LRB File No. 061-07 pending the decision in 113-06 on the principle" of first-in-first-out", and on the basis of logic given that the Outlook School Division no longer exists, and its former non-teaching support staff employees are subject to an existing certification Order (albeit an inactive local union).

Given the outcome of the Board's decision in LRB File No. 113-06, the application is moot and is therefore dismissed.

DATED at Saskatoon, Saskatchewan this **28th** day of **November, 2008**.

LABOUR RELATIONS BOARD

James Seibel,
Chairperson