The Labour Relations Board
Saskatchewan

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL No. 1400, Applicant, v. SASKATOON CREDIT UNION, LIMITED, SASKATOON CREDIT UNION (2002), FIRSTSASK HOLDINGS INC., FIRSTSASK FINANCIAL GROUP INC., FIRSTSASK EMPLOYEE SERVICES INC., CANADA LOAN ADMINISTRATION SERVICES INC., AND FIRSTSASK MORTGAGES INC., Respondents and KRISSY MARTENS, CHRISTOPHER HAREUTHER AND CARLOS VILLAFUERTE (on behalf of various intervenors)

LRB File No. 010-08; April 30, 2009
Vice-Chairperson, Steven Schiefner; Members: Duane Siemens and Joan White

For the Applicant Union:	Mr. Drew S. Plaxton
For the Respondent Employer:	Mr. John R. Beckman, Q.C.
For the Intervenors	Mr. Jay D. Watson

Certification – Amendment – Practice and Procedure – Multiple employees simultaneously filed similar replies objecting to Union's application to amend existing certification Order – Union alleges method of applying to Board violated principle of confidentiality of union support and sought dismissal of replies from employees - Board concludes that greater labour relations harm would arise if employees prevented from participating in proceedings – Board consolidates replies filed by individual employees and granted intervenor status to representatives of group of employees.

Certification – Amendment – Evidence – Union files application to amend existing certification Order without direct evidence of support from employees to be added to bargaining unit – Board determines that evidence of support from add-on employees required - Board not prepared to accept evidence of vote conducted by employer and union as part of voluntary recognition agreement – Application to amend certification Order dismissed.

Certification – Amendment – Practice and Procedure – Union files application to amend existing certification Order outside of open period - Employer's agreement to proposed amendment required pursuant to s. 5 (j)(i) – Parties in agreement on some aspects of desired certification Order but one issue remained unresolved and direction sought with respect to remaining issue – In circumstances, Board not satisfied it has jurisdiction - Application to amend certification Order dismissed.

***The Trade Union Act*, s. 3, 5(j) and 5(k).**

REASONS FOR DECISION

Background:

[1] **Steven Schiefner, Vice-Chairperson**: By Order of the Saskatchewan Labour Relations Board (the "Board") dated December 10, 2003, the United Food and Commercial Workers, Local 1400, (the "Union") was designated as the bargaining agent for a unit of employees of Saskatoon Credit Union Limited, Saskatoon Credit Union (2002), FirstSask Financial Group Inc., FirstSask Employee Services Inc., Canada Loan Administration Services Inc., and FirstSask Mortgage Inc. (the "Employer") "*in their places of business located in Saskatoon, Saskatchewan and surrounding area*."

[2] On January 18, 2008, the Union filed an application with the Board pursuant to s. 5(j) of *The Trade Union Act*, R.S.S. 1978, c.T-17, (the "*Act*") to amend its certification Order in the follow respects:

(a) to reflect the corporate restructuring and the change in name of the Employer (including each of its constituent corporations);
(b) to expand the geographical scope of the Order (from Saskatoon and surround area) to "*all of Saskatchewan*";
(c) to include a new list of exclusions.

[3] The effective date of the collective agreement in place between the parties was January 1, 2007. As the Union's application for amendment was not filed during the open period, the agreement of the Employer was required pursuant to s. 5(j)(i) of the *Act***.**

[4] The Employer filed its reply on February 6, 2008 admitting the facts and circumstances alleged by the Union in their application for amendment subject only to the following qualification:

> PARAGRAPH 5. Comment: THIS PARAGRAPH CONTAINS A LIST OF EXCLUDED POSITIONS AND EXCLUDED LOCATIONS. THIS LIST IS NEITHER COMPLETE NOR ACCURATE AT THE PRESENT TIME. WITH THE SIGNFICIANT CHANGES AND RESTRUCTURING UNDERWAY AS A RESULT OF A RECENT MERGER ON JANUARY 1, 2008, IT IS VIRTUALLY IMPOSSIBLE TO ESTABLISH A PROPER LIST AT THIS TIME. THE APPLICANT AND THE RESPONDENT HAVE AGREED THAT THEY WILL RETURN TO THE BOARD AT A LATER DATE TO EITHER PROVIDE THE

> BOARD WITH AN UPDATED LIST FOR EXCLUSION FROM ANY AMENDED CERTIFICATION ORDER OR, IN THE EVENT THAT PARTIES CANNOT AGREE ON THE APPROPRIATE EXCLUSIONS, TO SEEK AN AMENDED WITH AN ACCURATE LISTING OF EXCLUSIONS.

[5] By letter to the Board dated February 6, 2008, from Ms. Lolita Humm, Human Resources Manager, Affinity Credit Union, the Employer advised the Board that it was not opposed to the Union's application and further that the Employer was not opposed to the Board dealing with the Union's application notwithstanding that, as of that date, the Employer and the Union had not agreed on a new list of exclusions.

[6] Because the Union's application appeared to be uncontested, the matter was set down for hearing before an *in camera* panel of the Board on February 19, 2008. However, the *in* camera panel declined to rule on the Union's application. Thereafter, the Board Registrar wrote to the parties and indicated the following:

> The Board has declined to consider the application *in camera* and feels that an oral hearing appears to be necessary due to the following considerations:
>
> 1. The apparent uncertainty about the appropriate exclusions from the proposed bargaining unit description; and
>
> 2. The fact that the application appears to request an expansion to the geographic scope of the certification order but does not provide information about the employees affected by the proposed expansion and their status under the current certification order.

[7] As a consequence, the Board Registrar sought and obtained scheduling information from the parties and the dates of September 8, 9 and 10, 2008 were set for an oral hearing of the Union's application to amend its certification Order.

[8] On August 29, 2008, the Board began receiving replies from individuals identifying themselves as employees of Affinity Credit Union objecting to the Union's application. In total, the Board received one hundred and four (104) such replies (hereinafter referred to as the "Individual Objections"). All of the replies were filed within a few weeks of each other and

contained substantively the same objections and used similar language.[1] The general substance of the objections was as follows:

(a) that the process used to determine majority support for the Union was not done in accordance with the requirements of *The Trade Union Act*;

(b) that Union dues for certain employees were being deducted by the Employer without written authorization from those employees to do so; and

(c) that the Individual Objectors did not wish to be represented by the Union for purposes of collective bargaining with the Employer.

[9] Following receipt of the Individual Objections, the hearing set for September 8, 9 and 10 of 2008 was adjourned. However, on September 8, 2008, Chairperson Love presided over an Executive Officer conference with the parties for the purpose of determining how to proceed with the Union's application in light of the Individual Objections. On this date, Counsel for both the Union and the Employer appeared. Also appearing were a number of unrepresented individuals, including Ms. Krissy Larsen, an employee from the City Centre Branch of Affinity Credit Union, and Ms. Patrice Beauchamp from the St. Mary's Branch of the Affinity Credit Union, who identified themselves as spokespersons for the employees whom had filed Individual Objections.

[10] Upon the request of the Executive Officer, Ms. Beauchamp and Ms. Larsen undertook to establish a method of communication with the Individual Objectors for the purpose of participating in proceedings before the Board and for communication with both the Union and the Employer. Ms. Beauchamp and Ms. Larsen also undertook to determine from the Individual Objectors a unified position with respect to the Union's application, including, if possible, an articulation of their concerns and what specifically they would be seeking from the Board by way of remedy.

[11] The Executive Officer encouraged the employees in attendance to form a singular group for the purposes of participating in proceedings before the Board, communication with the

[1] Although most of the replies were nearly identical, some contained additional information. Other than the fact that there were variances, the substance of these variances is not relevant for purposes of these Reasons for Decision.

other parties, and for coordinating their respective concerns. Although this indirectly became an issue during the proceedings, the Board accepts that this course of action was both appropriate and reasonable under the circumstances for a number of reasons. Firstly, the concerns of the Individual Objectors were substantively the same making the participation of multiple additional parties redundant. Secondly, the participating at an oral hearing of all of the Individual Objectors would have represented a major and unnecessary disruption in the Employer's workforce. Thirdly, multiple additional parties would have rendered communication between parties impracticable. Finally, while the replies filed by the Individual Objectors were similar, they were not identical, with some alleging facts and/or concerns not raised by others, potentially causing confusion for the Union in understanding (without an appropriate degree of specificity) the allegations being made against them and for the Union to know whom to cross-examine.

[12] By letter dated October 2, 2008, Ms. Krissy Martens (nee: Larsen) indicated to the Board, the Union and the Employer that a representative group or committee of the Individual Objectors had formed. This document included a listing of the group's concerns and the remedies they would be seeking from the Board.

[13] Subsequent to the conference with the Executive Officer of September 8, 2008, approximately thirty-seven (37) of the employees who had filed Individual Objections sent notifications to the Board indicating their intention to withdraw their respective replies; thirty-two (32) of which were filed by facsimile transmission and five (5) being received by ordinary mail. The Board will comment further on this issue later in these Reasons.

[14] Out of respect for the principle of confidentiality of union support, the Board has declined to name the employees who filed Individual Objections with the Board, save Ms. Krissy Martins (nee: Larsen), Mr. Christopher Hareuther and Mr. Carlos Villafuerte, who appeared and testified before the Board.[2] Furthermore, the Board has elected to exercise its discretion pursuant to s. 19 of the *Act* to consolidate all of the Individual Objections and hereinafter has collectively referred to the employees who filed Individual Objections as "Individual Objectors". In so doing, the Board has given no weight to the number of replies that were filed; being satisfied that one (1) objection from one (1) employee within the group of employees potentially being swept in by the Union's application was sufficient to justify standing to the group of

[2] While Ms. Beauchamp appeared during the September 8, 2008 conference with the Board's Executive Officer, she did not testify during the hearing before the Board.

individuals seeking to intervene. Ms. Martins and Mr. Hareuther were accepted by the Board as the spokespersons for the Individual Objectors. The Board will comment further on this issue later in these Reasons.

[15] The Union's application was heard on March 9, 10, and 11, 2009 in Saskatoon, Saskatchewan.

[16] At the commencement of the hearing, a number of individuals were present in the gallery and the Board asked if anyone was present who had filed a reply with the Board (a reply that had not been subsequently withdrawn), who did not wish to be represented by Ms. Martins and Mr. Hareuther (on behalf of the Individual Objectors) and who wished to make separate representations to the Board. No one in the gallery expressed a desire to do so. As a consequence, the Board is satisfied that the various individuals who filed replies with the Board either abandoned their desire to do so or were satisfied to be represented by Ms. Martins, Mr. Hareuther and Mr. Villafuerte. The Board will comment further on this issue later in these Reasons.

Facts:

[17] The relevant facts were not in dispute. The Union has been certified to a unit of employees of Saskatoon Credit Union for many years, with certification Orders filed with the Board dating back to 1996. The Union and the Employer have a mature and cooperative relationship.

[18] Until approximately 2006, the Saskatoon Credit Union had seven (7) branches (together with a Commercial Services Centre, a MemberTrust office, a FirstSask Mortgage office and a Teleservices) located as follows:

> **Saskatoon Credit Union Branches** (as of 2006)
>
> **Broadway** – 912 Broadway Avenue, Saskatoon
> **Eighth Street** – 2201 8th Street East, Saskatoon
> **Fairhaven** – 3315C Fairlight Drive, Saskatoon
> **Main** - 309 22nd Street East, Saskatoon
> **River Heights**, Bay 7 - #7 Assiniboine Drive, Saskatoon
> **Westview** – 1624 33rd Street West, Saskatoon
> **Warman** – 204 Central Street West, Warman, Saskatchewan

Commercial Services Centre – 300 310 20th Street East, Saskatoon
MemberTrust Office – 401A – 310 20th Street East, Saskatoon
FirstSask Mortgages – 234 21 Street East, Saskatoon

[19] In late 2006 or early 2007, Saskatoon Credit Union merged with both the Langham Credit Union and the Shellbrook Credit Union (hereinafter referred to as the "2007 merger"). Immediately prior to the 2007 merger, the Saskatoon Credit Union consisted of the above captioned branches and the Langham and Shellbrook Credit Unions respectively had the following branches:

Langham Credit Union Branch (as of 2006):
Langham – 302 Main Street, Langham, Saskatchewan
Martensville - #7 – 7 Centennial Drive, Martensville, Saskatchewan
Borden – 107 Shepard Street, Borden, Saskatchewan
Dalmeny – 115 3rd Street, Dalmeny, Saskatchewan
Hepburn – 402 Main Street, Hepburn, Saskatchewan
Waldheim – 3001 Central Avenue, Waldheim, Saskatchewan

Shellbrook Credit Union Branches (as of 2006):
Canwood – 561 Main Street, Canwood, Saskatchewan
Leask – Main Street, Leask, Saskatchewan
Marcelin – Marcelin, Saskatchewan
Shellbrook – 31 Main Street, Shellbrook, Saskatchewan.

[20] The 2007 merger of the Saskatoon, Shellbrook and Langham Credit Unions resulted in the formation of FirstSask Credit Union.

[21] Prior to the 2007 merger, neither the Shellbrook nor Langham Credit Unions were certified. As part of the merger process, a vote was conducted by the Union and the Employer of each of the two (2) groups of branches; one (1) group consisting of the employees of the branches of the Langham Credit Union; and one (1) group consisting of the employees of the branches of the Shellbrook Credit Union. The employees in the Langham Credit Union voted to join the Union; but the employees of the Shellbrook Credit Union did not. As a result of this vote (which was not supervised by the Board), the Employer voluntarily recognized the Union as the bargaining agent for the employees working at the branches of the former Langham Credit

Union, while the employees working at the branches of the former Shellbrook Credit Union were not voluntarily recognized by the Employer

[22] On January 1, 2008, FirstSask Credit Union merged with Affinity Credit Union (hereinafter referred to as the "2008 merger"). Immediately prior to the merger, FirstSask Credit Union contained the above caption branches and Affinity Credit Union consisted of the following branches:

Affinity Credit Union – Rural Branches (as of 2007):

Aberdeen – 207 Main Street North, Aberdeen, Saskatchewan
Alvena – Alvena, Saskatchewan
Bellevue – 200A Grenier Crescent, Bellevue, Saskatchewan
Davidson – 123 Garfield Street, Davidson, Saskatchewan
Hague – 302 Main Street, Hague, Saskatchewan
Kamsack – 316 3rd Avenue South, Kamsack, Saskatchewan
Kenaston – 607 3rd Street, Kenaston, Saskatchewan
Laird – 220B Main Street, Laird, Saskatchewan
Lintlaw – 212 Main Street, Lintlaw, Saskatchewan
Milestone – 118 Main Street, Milestone, Saskatchewan
Nokomis – 209 Main Street, Nokomis, Saskatchewan
Norquay – 24 Main Street, Norquay, Saskatchewan
Osler – 228 Willow Drive, Osler, Saskatchewan
Pelly – 123 Main Street, Pelly, Saskatchewan
Rosthern – 2003 6th Street, Rosthern, Saskatchewan
Sedley – 121 Broadway Street, Sedley, Saskatchewan
Semans – Main Street, Semans, Saskatchewan
Simpson – 408 George Street, Simpson, Saskatchewan
Strasbourg – 208 Mountain Street, Strasbourg, Saskatchewan
Togo – 175 Main Street, Togo, Saskatchewan
Tugaske – 114 Ogema Street, Tugaske, Saskatchewan
Watrous – 210 Main Street West, Watrous, Saskatchewan
Wecan Branch – Ashley Street, Bulyea, Saskatchewan

Affinity Credit Union – Regina Branches (as of 2007):

Hill Avenue – 3418 Hill Avenue, Regina, Saskatchewan
Rochdale – 4503 Rochdale Blvd, Regina, Saskatchewan
Scarth Street – 2101 Scarth Street, Regina, Saskatchewan

Affinity Credit Union – Saskatoon Branches (as of 2007):

City Centre – 130 1st Avenue North, Saskatoon, Saskatchewan

St. Mary's – 1515 20th Street West, Saskatoon, Saskatchewan

[23] Prior to the 2008 merger, the Employer and the Union entered into an agreement respecting the potential labour relations consequences of the anticipated merger[3]. The agreement contained the following provisions:

1. The First Nations district will be unionized.
2. Any new branches opened will be unionized. The union status of the planned new branch in south-east Regina will be the same as other Regina locations.
3. a) Upon a successful union vote, the union will apply for a provincial certification.
   b) If the Union vote is not successful, the credit union will continue to offer UFCW an opportunity, as per point 5, in all future mergers.
4. A mutually agreed Question and Answer document will be distributed to Affinity employees.
5. Management will not interfere with the organizing of new districts; management will remain neutral; the union will have access to new potential members in their workplace; this is to be arranged with management's cooperation.
6. Seniority would work in the same method as Langham merger.
7. Employees in non-union branches will not have mobility to unionized branches.
8. Once Credit Union votes are completed successfully, union notices to be posted.
9. Union tours of Affinity branches November 19 to 23.
10. Meetings in regions November 26 to 30 – Affinity to assist with setting up meetings.
11. Union to conduct organizing drive via phone for new members.
12. Vote conducted by union December 10 to 14; union to hold vote in each Credit Union branches of Affinity and Nokomis districts.

[24] In 2008 (after the 2008 merger), Affinity Credit Union opened the Last Oak Branch located on reserve land belonging to the Cowessess First Nation.

[3] Contained within a document entitled "**Board Proposal**", dated October 23, 2007 and signed by the General Manager/Secretary of Affinity Credit Union and the CEO of FirstSask Credit Union on or about November 6, 2007.

[25] By the time of the hearing, the Employer and the Union had agreed to a list of excluded position (in the event the Union's application to amend the geographic scope of its certification Order was granted) and that information was provided to the Board. However, the Employer and the Union were not in agreement as to the list of corporate entities that should be subject to the certification Order. At the hearing, the Board received and heard evidence with respect to this issue. The Board will comment further on this issue later in these Reasons.

Preliminary Proceedings:

[26] At the commencement of the hearing, Mr. Plaxton on behalf of the Union objected to the Individual Objectors being granted standing to participate in the hearing. Firstly, the Union queried as to the authority in the *Act* pursuant to which they were seeking standing. Secondly, the Union noted that the mode of participation by the Individual Objector (ie. the simultaneous filing of 104 individual replies) was akin to filing a petition of support evidence and, thus, breached the principle of confidentiality of union support and, therefore, all of the replies should be dismissed as was done by the Board in *John Berner, et. al, and Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Loraas Disposal Services Ltd.*, [2002] Sask. L.R.B. No. 776, LRB File No. 034-00. Thirdly, the Union argued that the Individual Objectors (whom were seeking the conduct of another vote on the representative question) were, in effect, seeking a recission of the Employer's voluntary recognition of the Union (in the form of an objection to the Union's application to amend its certification Order). The Union took the position that the proper course of action for the employees would be to bring a formal recission application as provided for in the *Act* (ie., filed during the open period, together with the necessary threshold of support for their application). Finally, with respect to the issue of the collection and remittance of dues (which was an issue identified in the replies filed by the Individual Objections), Mr. Plaxton on behalf of the Union argued that this issue was beyond the jurisdiction of the Board to adjudicate or grant a remedy.

[27] The Employer took no position with respect to the participation of the Individual Objectors in the proceedings before the Board.

[28] Mr. Watson argued that his clients (ie. the Individual Objectors) had filed replies in accordance with s. 18 of *The Regulations and Forms, Labour Relations Board*, S.R. 163/72, and that the regulations permitted participation in proceedings before the Board by not only "employers", "trade unions" and "labour organizations" but also by "persons directly affected" by

an application before the Board. The Individual Objectors argued that they were directly affected by the Union's application because, if the proposed amendment to the Union's certification Order was granted, they would be swept into the bargaining unit; that they had legitimate concerns regarding the process that was used to determine support for the Union; and that they wished to make representations to the Board regarding these concerns.

[29] During the hearing, the Board granted standing to the Individual Objectors to intervene in the hearing as an interested party on the basis that they were persons affected by the Union's application. However, the Board reserved decision on the final determination as to the status to be given, if any, to the Individual Objectors (either individually or collectively) in light of the concerns respecting their mode of participation in the proceedings.

[30] In the Board's opinion, the interests of the Individual Objectors are distinct from the interests of both the Union and the Employer and these interests have the potential of being affected by the outcome of the Union's application to amend its certification Order. As a consequence, they have the right to be heard and, thus, participate in these proceedings. In so concluding, the Board relies on its decision in *Saskatchewan Government and General Employee's Union and Government of Saskatchewan v. Various Intervenors*, [2001] Sask. L.R.B.R. No. 237, LRB File No. 114-99. The question then becomes did the Individual Objectors' mode of participation (by simultaneously filing multiple individual replies with the Board) so offend the principle of confidentiality of support evidence, such that the Board ought to preclude their participation in the proceedings?

[31] In the Board's opinion, while the mode of participation by the Individual Objectors violated the principle of confidentiality of support evidence, in the circumstances of the present case, greater labour relations harm would arise if their error prevented them from participating in these proceedings. In so finding, the Board is mindful of the important caution expressed by this Board in *Loraas Disposal, supra,* about allowing a party to violate (intentionally or otherwise) the principle of confidentiality of support evidence through their mode of participation in proceedings before the Board. However, in the Board's opinion, the principle of confidentiality must also be balanced with the Board's duty to ensure that persons, whose interests are likely to be affected by proceedings before the Board, have reasonable and appropriate opportunity to participate in those proceedings. In this regard, the Board relies, to the extent necessary, on the curative authority provided for in s.19 of the *Act* to balance these interests in the present case.

[32] In *Loraas Disposal, supra,* the Board was dealing with a rescission application brought by members of a trade union in circumstances of ongoing labour relations tension between an employer and the union in the period before a first collective agreement had been concluded and following two (2) previously unsuccessful rescission applications that had been dismissed by the Board due to inappropriate conduct on the part of the employer. Although the Board's caution regarding maintaining the confidentiality of support evidence is valid in all circumstances, the appropriate remedy in the event of a potential breach is dependent upon the facts of each case.

[33] In the Board's opinion, the circumstances in *Loraas Disposal, supra,* were wholly dissimilar to the circumstances of the present case. In dismissing the application for recission, the Board in *Loraas Disposal, supra,* had a heightened concern about whether the process had allowed employees in that work place to freely express or withhold their support, without pressure or fear of retaliation (from either the employer or the trade union). In the present case, the Union and the Employer have a long and mature relationship, with both parties demonstrating a high degree of respect and cooperation. Furthermore, the Individual Objectors were not seeking to rescind an existing certification Order to which they are already subject; they were resisting an amendment to the scope of a certification Order in which they have not previously been included. Finally, the error occurred by individuals trying to navigate the complexities of a quasi-judicial proceeding without (at that time) the benefit of legal counsel.

Evidence on behalf of the Union:

[34] The Union called Mr. Darren Kurmey, Ms. Traci-Lee Wasylenko, Ms. Jennifer Mok and Ms. Brandi Tracksell-Sampson.

[35] Mr. Darren Kurmey was the Secretary Treasurer of the Union, a position he had held since January 5, 2009. Prior to that, he had been a service representative for the Union for approximately five (5) years. During this time, Mr. Kurmey's service responsibilities included the workplace of the Employer.

[36] To assist the Board in understanding the background, Mr. Kurmey described the history of mergers and amalgamations that had occurred in recent years resulting in the corporate transition from Saskatoon Credit Union (and it various affiliates) to Affinity Credit Union

(and its related affiliates), including both the 2007 and 2008 mergers described previously in these Reasons.

[37] Mr. Kurmey testified that, as part of the 2007 merger between Saskatoon, Langham and Shellbrook Credit Unions, a vote had been conducted of each of the two (2) previously unrepresented groups of branches; one (1) group consisting of the employees of the branches of the Langham Credit Union; and one (1) group consisting of the employees of the branches of the Shellbrook Credit Union. Mr. Kurmey testified that the employees from the branches of the former Langham Credit Union voted to join the Union and, as a result of this vote, the Employer voluntarily recognized the Union as the bargaining agent for these employees.

[38] Mr. Kurmey testified that, following the 2007 merger, the Union concluded that it was not necessary for the Union to seek an amendment to its certification Order at that time because it believed that the employees being added to the bargaining unit already fell within the geographic scope of its certification Order, which included "*Saskatoon and surrounding area"*. Mr. Kurmey indicated that, prior to the 2007 merger, the Warman Branch of the then Saskatoon Credit Union, located in Warman, Saskatchewan, was the rural outlet justifying the extended geographic scope of the Union's certification Order (ie. "*and surrounding area*"). On a map, Mr. Kurmey identified for the Board the locations of the branches of the then Langham Credit Union that were recognized following the 2007 merger. In this respect, the Board notes that Warman is approximately 24 kilometres North of Saskatoon on Highway No. 11 and the Langham and Borden branches are approximately 34 and 54 kilometres, respectively, Northwest of Saskatoon on Provincial Highway No. 16; the Dalmeny branch is 26 kilometres North of Saskatoon on Provincial Highway No. 305; the Hepburn and Martensville branches are 47 and 18 kilometers, respectively, North of Saskatoon on Provincial Highway No. 12; and the Waldheim branch is 55 kilometers North of Saskatoon on Provincial Highway No. 312.

[39] Mr. Kurmey indicated that, prior to the 2008 merger between the FirstSask and Affinity Credit Unions, the Employer and the Union agreed to certain principles associated with the anticipated merger and its potential labour relations consequences and that these principles were articulated in a document that was endorsed by the management of both FirstSask and Affinity Credit Unions. Mr. Kurmey indicated that the Employer and the Union agreed to a process of providing information about the Union and unionization (including a question and

answer document developed cooperatively by the Union and the Employer) to the employees at unrepresented branches of Affinity Credit Union (as it was then); a series of tours of these branches by members of the Union (coordinated with the assistance of the Employer); and a series of informational meetings conducted by the Union where a more detailed presentation could be provided to employees and where attendees could be given an opportunity to ask questions of the Union and/or raise any concerns that they may have. Mr. Kurmey testified that these branch tours and informational meetings were conducted, as planned, in late November of 2007.

[40] Mr. Kurmey testified that the Employer and the Union also agreed on a process for conducting a vote of employees in unrepresented branches to be supervised by both the Employer and the Union. Mr. Kurmey indicated that a voters list was prepared and the Employer and the Union agreed to a series of voting dates and locations in each of the unrepresented branches of Affinity Credit Union. Mr. Kurmey also testified that the Employer and the Union agreed to have scrutineers present during voting and to seal the ballot box as it moved from location to location, with the Union keeping possession of the ballot box and the Employer keeping possession of the key to unlock the box.

[41] Mr. Kurmey provide the Board with a copy of the "*Staff Voting List*" (dated November 15, 2007), which he indicated had been prepared in consultation between the Union and the Employer and which identified 212 employees eligible to vote, consisting of the employees working within the legacy Affinity branches; and which had been used by the Union and the Employer to determine employee eligibility to vote.

[42] Mr. Kurmey testified that, at the time of the 2008 merger between FirstSask and Affinity Credit Unions, there were approximately 183 employees within the bargaining unit of FirstSask and approximately 199 employees joined the bargaining unit from Affinity. Mr. Kurmey also testified that, based on the most recent dues check off information available to the Union at the time of the hearing, there was approximately 225 members working within the legacy branches of the former Affinity Credit Union and approximately 200 members working within the legacy branches of the former FirstSask Credit Union.

[43] Mr. Kurmey testified that the Union was not aware of any objection as to the conduct of the vote by any employees until August of 2008, when the Union began receiving copies of the replies that had been filed by the Individual Objectors.

[44] Mr. Kurmey testified that, since the 2008 merger, the Union has been actively involved with the Employer in rationalizing differences in job descriptions, in negotiating adjustments to job titles, grade scales and job duties. In this respect, some employees working in legacy FirstSask branches have received new job descriptions based on job descriptions used in legacy Affinity branches and *vica versa*. Mr. Kurmey indicated that, in addition to changes for specific employees associated with changes in job descriptions, various other adjustments to the conditions of employment for all employees working within the merged workplaces had occurred, including, for example, a reducing from a 37.5 hour to a 36 hour work week for employees from the legacy Affinity branches to be consistent with the work week of employees from the legacy FirstSask employees.

[45] Mr. Kurmey testified that, since the 2008 merger, a new seniority list was developed for employees in the bargaining unit wherein employees working in legacy Affinity branches were given seniority for past years of service. More specifically, Mr. Kurmey indicated that various seniority lists were utilized depending on the circumstances (1 seniority list for employees from the legacy Saskatoon branches; 1 list for employees from the legacy Langham branches; and 1 for employees from legacy Affinity branches; together with “super” seniority list for employees that had transferred from one legacy group to another). Mr. Kurmey testified that a similar process had been used following the 2007 merger, when employees from the legacy Langham branches joined the bargaining unit. Mr. Kurmey also testified that, as with the 2007 merger, employees from the legacy Shellbrook branches were not included within the new seniority list(s) following the 2008 merger.

[46] Mr. Kurmey testified that, since the 2008 merger, there had been a “fair” amount of movement of employees between the legacy Affinity and FirstSask Credit Union branches and that these staffing changes had been posted and filled based on the revised seniority list(s) and the seniority rights provided for in the Union’s collective agreement with the Employer. Mr. Kurmey also testified that, in addition to assisting in staffing actions, the revised seniority list(s) had also been used for determining the vacation schedule and scheduling for both groups of employees.

[47] Finally, Mr. Kurmey testified that a number of problems would arise for both the Union and the Employer if the legacy Affinity employees were removed from the bargaining unit, including adjustments to the procedures for posting positions and adjustments to wage rates, hours of work and vacation accrual (all of which, Mr. Kurmey noted, had been to the benefit of the legacy Affinity employees).

[48] In cross-examination, Mr, Kurmey estimated that, at the time of the Union's most recent certification Order (December 10, 2003), the bargaining unit contained approximately 180 members.

[49] Ms. Traci-Lee Wasylenko testified that she had been an employee of the Employer for approximately fourteen (14) years, working originally for Saskatoon Credit Union and having worked in almost every branch in Saskatoon. Ms. Wasylenko testified that she was a member of the Union, was on the Union's Executive, and has been a shop steward for approximately ten (10) years.

[50] Ms. Wasylenko testified that she assisted in the Union's campaign to obtain the support of employees in both the 2007 and 2008 mergers. With respect to the 2008 merger, Ms. Wasylenko testified that she assisted in the four (4) presentations to employees conducted between November 26 and November 29, 2007 (1 presentation in Simpson for employees working in the legacy Affinity branches of Wecan - Bulyea, Nokomis, Watrous, Simpson, Semans and Strasbourg; 1 in Regina for employees in the Milestone, Sedley, and the 3 legacy Affinity branches in Regina; 1 in Saskatoon for employees in the Kenaston, Davidson, Tugaske, Bellevue, Hague, Laird, Rosthern, Osler, Aberdeen and 2 legacy Affinity branches in Saskatoon; and 1 for employees in the Kamsack, Togo, Pelly, Norquay and Lintlaw branches).

[51] Ms. Wasylenko testified that the employees attending the four (4) informational sessions were shown a PowerPoint presentation outlining the history of the Union and the various workplaces that it represented. Attendees also received copies of a document containing answers to various anticipated questions related to the 2008 merger, the process of conducting a vote among affected employees, and the implications of a decision by the majority of employees to join or not join the Union. As the substance of this material was not called into question during the hearing, the Board will not recount the particulars of the information provided

to attendees in these Reasons for Decision. However, in the Board's opinion, the information articulated in this material appeared to be reasonable, balanced and appropriate. The information was also indicative of a mature and cooperative relationship between the Union and the Employer.

[52] As did Mr. Kurmey, Ms. Wasylenko testified that she was not aware of any complaints from employees until August of 2008, when the Union began receiving copies of the replies that had been filed by the Individual Objectors.

[53] Ms. Wasylenko also confirmed that there had been movement of employees between the legacy branches of FirstSask and Affinity Credit Union. Ms. Wasylenko had accessed the Employer's intranet (as employees were entitled to do) and had observed that there had been several hundred positions posted by the Employer since January 1, 2008 and that the vast majority of these had been in-scope positions and that, by the date of the hearing, the vast majority of these staffing actions were completed.

[54] Finally, Ms. Wasylenko testified that she had been present during the counting of the ballots resulting from the vote of employees, which took place on December 14, 2007. Ms. Wasylenko testified that representatives of both the Union and the Employer were present when the vote was counted; that one hundred and ninety-two (192) ballots had been cast; that no spoiled ballots were observed; and that the result of the vote was as follows:

> Do you want to be represented by UFCW Local 1400?
> Those voting "YES" 104 (54%)
> Those voting "NO" 88 (46%)

[55] In cross-examination, Ms. Wasylenko acknowledged that, in the reconciliation of benefits following the 2008 merger, employees in the legacy Affinity branches had lost a preferred loan program (providing a preferential interest rate to those employees). Ms. Wasylenko also acknowledged that the Employer and the Union, in preparing for the 2008 merger, had planned for both the eventuality that the legacy Affinity employees would be added to the bargaining unit and that they would not.

[56] Ms. Jennifer Mok testified that she was an employee of the legacy Affinity Credit Union, having worked in both the City Centre and St. Mary's branches since 2004.

[57] Ms. Mok testified that she attended the November 28, 2007 informational meeting conducted by the Union in Saskatoon. Ms. Mok's evidence regarding the nature and extent of information provided to employees attending these meetings was consistent with the evidence provided by Ms. Wasylenko.

[58] Ms. Mok also confirmed that there had been movement of employees between the legacy Affinity branches to the legacy FirstSask branches and provided the Board with specific examples of movements of employees from legacy FirstSask branches to legacy Affinity branches, including the movement of the "accounting branch" from the Main branch (legacy FirstSask) to City Centre branch (legacy Affinity), as well as two (2) financial service representatives who had moved to her branch.

[59] Ms. Tracksell-Sampson testified that she was been a long term member of the Union and a service representative since 2003, with responsibilities that included the workplaces of the Employer.

[60] Ms. Tracksell-Sampson testified that she attended the four (4) informational meetings sponsored by the Union and confirmed the information provided by Ms. Mok and Ms. Wasylenko regarding the provision of information to attendees. Ms. Tracksell-Sampson also testified that the issue of payment of union dues was raised at the informational meetings and was included within the material provided by the Union. Ms. Tracksell-Sampson testified that the information provided by the Union to the employees was clear and consistent; that being, if employees voted to join the Union, they would be responsible for the payment of dues to the Union.

[61] Ms. Tracksell-Sampson testified that she was a scrutineer for the Union during the vote conducted by the Union and the Employer. Ms. Tracksell-Sampson testified that the form of the ballot was as follows:

UFCW SECRET BALLOT

Do you want to be represented

By UFCW Local 1400?

YES ☐ NO ☐

PLEASE MARK ONE BOX CLEARLY

[62] Ms. Tracksell-Sampson testified that polling commenced on December 10, 2007 at the City Centre branch; that representatives of both the Union and the Employer were present during voting; that one (1) common ballot box was used to store the votes, with the Union maintaining possession of the ballot box and the Employer maintaining possession of the key to unlock the ballots box; that, following the close of voting at the City Centre branch, the ballot box was sealed; that the representatives of the Union and the Employer traveled from polling location to polling location based on a predetermined schedule that had been posted and distributed to eligible employees; that voting at the various branches was conducted in accordance with that schedule; that, following the close of voting at each subsequent branch, the ballot box was resealed; and that voting concluded on December 14, 2007. Ms. Tracksell-Sampson testified that voting took place at twenty-six (26) separate locations, utilizing the same procedure at each location.

Evidence on behalf of the Various Intervenors:

[63] Ms. Krissy Martins testified on behalf of the Individual Objectors and Mr. Plaxton, on behalf of the Union, was granted leave to cross-examine Mr. Christopher Hareuther and Mr. Carlos Villafuerte.

[64] Ms. Martins testified that she was an employee of a legacy Affinity branch; that she was currently working at the City Centre branch and had done so for approximately one and one-half (1 ½) year prior to the date of the hearing; and that previously she had worked at the St. Mary's branch (also a legacy Affinity branch).

[65] Ms. Martins testified that, following the vote that was conducted in the fall of 2007, she assumed that her workplace was automatically certified to the Union. She indicated that she was not aware, until seeing a copy of the Union's application to amend its certification Order (which she indicated had been posted on a bulletin board at work in May or June, 2008), that the consent of the Labour Relations Board was required before certification would take place. Ms. Martins testified that, upon making this discovery, she contacted the Board's office and obtained a copy of the *Act*. Ms. Martins indicated that she spoke to Board staff and learned the procedures for filing a reply. Ms. Martins indicated that, after reviewing the *Act* and talking to Board staff, she began discussing the status of the Union's certification with other employees. As a result of these discussions, Ms. Martin testified that she and a number of other employees decided to file replies with the Board.

[66] Ms. Martins testified that, after the 2008 merger, employees of the legacy Affinity branches lost the preferred rates on their loans, lost incentive pay on the insurance sales, and lost their annual bonus.

[67] With respect to her specific concerns regarding voting, Ms. Martins testified that, after reviewing the *Act*, she came to the realization that the voting process that had been conducted by the Union and the Employer was not done in accordance with the *Act* with her primary concern being that the vote had not been supervised by the Board as provided for in the *Act*. Because of this defect, Ms. Martin believed that the Board should Order a new vote to be conducted in accordance with the *Act* (ie. supervised by the Board).

[68] Ms. Martins testified that, following the conference with the Board's Executive Officer on September 8, 2008, she understood that the employees wishing to object to the Union's amendment application were required to organize themselves into a group. Ms. Martins testified that a committee was formed and that she undertook to coordinate communications on behalf of the group with the Board, the Employer and the Union.

[69] Ms. Martins testified that, following the Executive Officer conference, the plan of their committee was to have all of the Individual Objectors, who were not members of the committee, withdraw their replies and have the committee members attend the proceedings before the Board and present the concerns of the larger group. Ms. Martins also testified that she was aware that a number of employees had withdrawn their replies in response to the

committee's request to do so. Ms. Martins testified that she contacted Board staff to obtain information regarding the procedure for withdrawing replies and that she communicated this information to the Individual Objectors.

[70] Ms. Martins also testified that, following the conference, she and a number of other employees decided to ask the Employer to stop deducting and withholding union dues. Ms. Martins testified that on or about September 12, 2008, she and several other employees specifically requested that the Employer to stop doing so. Ms. Martins testified that, while the Employer initially responded positively to their request, after review a transcript of the September 8, 2008 proceedings and after consulting with the Employer's legal counsel, the Employer indicated its intention to continuing deducting Union dues in accordance with the Employer's agreement with the Union.

[71] Ms. Martins testified that she and Ms. Patrice Beauchamp next contacted the Labour Standards Branch of the Ministry of Advanced Education, Employment and Labour asking for clarification as to whether or not the Employer and the Union had the right to deduction union dues from their paychecks. By letter dated November 25, 2008, the Labour Standards Branch indicated that whether the "*deduction of union dues is allowable*" or "*whether or not the workplace is certified or properly certified"* was outside the jurisdiction of the Labour Standards Branch and, as such, the Department indicated that they could not assist the employees.

[72] Ms. Martins testified that she had not signed an authorization allowing the Employer to deduct union dues; indicated that she believed that Union dues had been improperly deducted; and asked the Board to direct that the Employer stop deducting union dues and that the dues that had been collected from her, and the other affected employees, be returned.

[73] In cross-examination by counsel for the Union, Ms. Martins admitted that the only issue she had with the vote conducted by the Employer and the Union was that it was not supervised by the Board. Ms. Martin admitted that she had not attended the informational meetings conducted by the Union. She also admitted that she understood the purpose of the vote was to determine whether or not the employees wished to be represented by the Union and that, if the employees were bound by the Union's collective agreement with the Employer, they were required to pay union dues.

[74] In cross-examination, Ms. Martins admitted that she had contacted the Board's staff to determine how to file a reply, about the material that was required to do so, and the process to be followed. Ms. Martins also admitted that she originally understood that the names of the persons filing replies would be kept confidential; that she later became aware that this was incorrect; and that she had communicated the wrong information to many employees. Ms. Martins indicated that she gave the correct information to anyone she spoke to after she learned the correct information.

[75] In cross-examination, Ms. Martins admitted that, following the September 8th conference, she encouraged Individual Objectors, who were not on their recently formed committee, to withdraw their replies. However, the information that she provided to employees was that they could withdraw their replies by faxing a letter to the Board's Office. Ms. Martins later came to learn that this was also incorrect information and that she subsequently gathered a number of original copies of withdrawals from employees (approximately 85-90). Ms. Martins admitted that she gathered these documents from employees but did not submit them to the Board. Ms. Martins indicated that, after speaking to their legal counsel, she decided not to do anything further with the withdrawal documents. When asked whether or not the reasons they did not forward these documents to the Board was because they were concerned that so many withdrawals may be seen as a lack of support for their objections, she answered "yes".

[76] In cross-examination, Ms. Martins admitted that, prior to filing her reply with the Board, she had not brought her concerns to the Union's attention; and that, since January 1, 2008, her wage had gone up and that her work week had been shortened.

[77] Mr. Christopher Hareuther was cross-examined by counsel for the Union. Mr. Hareuther indicated that he had worked at City Centre branch since March of 2007 and, before that, at St. Mary's branch (both legacy Affinity branches). Mr. Hareuther testified that, since the 2008 merger, he had bid on two (2) positions at legacy FirstSask branches but that persons with fewer years of service (than he had) had been hired because of the use of multiple seniority lists. Mr. Hareuther indicated that he had recently been hired into a position at the Langham branch, but that he understood that no one from a legacy FirstSask branch had bid on the position; in fact, he understood that no one else had bid on the position.

[78] Mr. Carlos Villafuerte was cross-examined by counsel for the Union. Mr. Villafuerte testified that he was a legacy Affinity employee and had worked at the St. Mary's branch as a network server analyst. He also testified that, since the 2008 merger, he had bid on a system administrator position at the Main branch but that someone with less years of service had got this position; Mr. Villafuerte understood that this was because of practice under the collective agreement of utilizing multiple seniority lists.

Evidence on Behalf of the Employer:

[79] Mr. Gordon Hamilton testified on behalf of the Employer. Mr. Hamilton indicated that he was the Senior Vice-President of Human Resources and Labour Relations for Affinity Credit Union.

[80] With respect to the issue of the collection and remittance of union dues, Mr. Hamilton testified that he understood that the Employer had an agreement with the Union to the effect that, if the majority of employees in the previously unrepresented branches of the former Affinity Credit Union voted in favour of being represented by the Union, those employees would become subject to the collective agreement and, thus, subject to the collection of dues. As a result of the vote conducted in late 2007, the Employer was satisfied that the majority of the affected employees did support the Union and, effective January 1, 2008, the Employer began deducting union dues from the paychecks of the employees in the legacy Affinity branches.

[81] Mr. Hamilton testified that, following the conference with the Board's Executive Officer, a number of employees complained to the Employer about the deduction of dues and that, in response to these complaints, the Employer discussed the issue with the Union. Mr. Hamilton testified that the Employer originally came to the conclusion that it should not be deducting dues based of the comments of the Board's Executive Officer at the September 8th conference and the fact that the Employer had not received signed authorizations from employees to do so.

[82] Mr. Hamilton testified that the normal practice for the Employer (ie. the practice utilized following the 2007 merger) was that new employees were required to sign dues authorization cards as a condition of employment and that new employees received an orientation from both the Employer and the Union and that authorization cards (dues check-off

information) would be received by the Employer from the Union (following the employee's orientation with the Union).

[83] Mr. Hamilton testified that, following the 2007 merger, the Employer received authorization cards from the Union for dues check-off for the employees being added to the bargaining unit at that time (ie. the employees from the legacy Langham branches). Mr. Hamilton indicated this practice (which he referred to as the "normal practice") did not occur following the 2008 merger. Mr. Hamilton testified that the Employer contacted the Union and expressed its concern about not receiving dues authorization information and was informed that this information was "confidential". Mr. Hamilton testified that the Employer had not received any authorizations for dues check-off for employees from the legacy branches of the former Affinity Credit Union; the employees for whom the Employer had voluntarily recognized the representative authority of the Union.

[84] Mr. Hamilton indicated that, after speaking to the Union and to its legal counsel, the Employer concluded that it would continue to deduct union dues from the "add-on" employees on the strength of its voluntary recognition agreement with the Union.

[85] In cross-examination by Mr. Watson, Mr. Hamilton indicated that, since mid September of 2008, approximately forty (40) employees had asked the Employer to stop deducting Union dues.

[86] Finally, Mr. Hamilton indicated that the Union and the Employer had a good relationship. When asked by Mr. Watson to comment on the potential problems that might arise if the Union's application was not granted, Mr. Watson indicated that he was confident that the Union and the Employer would be able to overcome whatever issues there might be, as they have done so with other issues in the past.

Application for Summary Dismissal:

[87] After the close of evidence, the Union asked the Board to summarily dismiss the replies of the Individual Objectors on the basis of abuse of process. The Union argued that the evidence of Ms. Martins indicated that she received documents from Individual Objectors wishing to withdraw the replies they had filed with the Board (ie. their objections to the Union's application to amend its certification Order) and that Ms. Martins indicated to these employees

that she would file their documents with the Board but that she did not do so. The Union argued that Ms. Martins' failure to provide these documents to the Board was an abuse of process, with the appropriate remedy being to dismiss all of the replies that had been filed by the Individual Objectors and to reject their evidence.

[88] The Union argued that the reason the Intervenors had not filed these documents with the Board was because they were afraid that the withdrawal of so many objections might be interpreted by the Board as a lack of support for their concerns. The Union argued that Ms. Martins' conduct amounted to gross impropriety on her part, which coupled with the breach of the principle of confidentiality of support evidence arising through the filing of multiple replies, left the Board with no option but to reject their evidence and dismiss their replies. The Board reserved decision on the Union's application for summary dismissal.

[89] In the Board's opinion, as a representative of her group of employees, Ms. Martins should have provided any documents intended for the Board to the Board. This was an error on her part and, in the Board's opinion, a not insignificant lapse in judgment. As in any judicial or quasi-judicial proceeding, litigants seeking a remedy (particularly a discretionary remedy) ought to come before the decision-maker with "clean hands". However, in the Board's opinion, the significance of the error was overstated by the Union, as was the appropriate remedy under the circumstances. While an error of the kind committed by Ms. Martins (ie. a representative failing to provide documents intended for the Board to the Board) may well have undermined an application on her part in other circumstances and certainly could have called her credibility as a witness into question, the error in the circumstances of this case was not so egregious.

[90] Firstly, Ms. Martins (and possibility the Union) appeared to be operating under the erroneous assumption that the number of employees objecting to the Union's application would be significant to the Board and that an overwhelming response from staff would raise serious concerns as to the Union's application to amend its certification Order. As indicated, the volume of objections is not relevant to the Board; the Union's application is either in order or it is not. The number of employees raising the same objection does not strengthen the validity of the objection under the *Act*. The employees either have a valid concern or they do not. As with the filing of multiple replies with the Board, Ms. Martins' concern over the "volume" of objections was misplaced and had the greater potential for harming her cause than helping it. For this same

reason, the significance of Ms. Martins' failure to transmit the impugned withdrawal documents was also overstated.

[91] Secondly, Ms. Martins was forthright and candid in her testimony before the Board. She answered all questions promptly and directly and showed no indication of evasion or minimization, including on the sensitive issue of her handling of the impugned documents. The direction for Individual Objectors to withdraw their replies (excluding the members of the committee) came from Ms. Martins. The evidence before the Board was that no withdrawals were filed with the Board until after the September 8th conference and after Ms. Martin contacted them and suggested that they do so. In this regard, it is entirely possible that the Individual Objectors, including Ms. Martins, may have misinterpreted either the advice they received from the Board's staff when seeking assistance as to the mode and procedures for participating in proceedings before the Board or may have misinterpreted the comments of the Board's Executive Officer in attempting to assist the parties in preparing for hearing. In either event, the remedy proposed by the Union of summarily dismissing all of the replies filed by the Individual Objectors and rejecting their testimony was, in the Board's opinion, disproportionate to the significance of the error committed by Ms. Martins.

[92] As a consequence of the foregoing, and for the same reason the Board has given no weight to the number of Individual Objections, the Board has given no weight to the number of individuals that filed withdrawals (properly or otherwise) or that gave documents to Ms. Martin indicating their desire to withdraw their replies (transmitted to the Board or otherwise), provided that one (1) objection remained from one (1) employee within the group of affected employees, which there was. As a consequence, the Union's application for summary dismissal is denied.

Argument of the Parties:

[93] The Union asked the Board to grant its application to expand the geographic scope of its certification Order (from "*Saskatoon and surrounding* area" to "*in the province of* Saskatchewan") and to utilize the list of exclusions that had been agreed to by the Employer.

[94] The Union took the position that the Employer and the Union had, in good faith, entered into a voluntary recognition agreement wherein, if the employees (from the previously unrepresented branches of the former Affinity Credit Union) vote in favour of being represented by the Union, the Employer would voluntary recognize the Union as the bargaining agent for

those employees. The Union argued that, although the Employer's voluntary recognition of the Union was not expressly provided for in the *Act*, it was also not illegal or inappropriate. The Union argued that all employees were provided with full information about the benefits and implications of unionization, including seniority rules, the application of the collective agreement, and the payment of union dues.

[95] The Union took the position that there had been an intermingling of the two (2) work places since January 1, 2008 and argued that not granting the Union's application would cause confusion in the workplace and would create uncertainty as to the status of numerous employees who had moved from one (1) work place to another. The Union argued that the status of employee who had moved from legacy FirstSask branches to legacy Affinity branches was particularly precarious because they had moved from a certified workplace to a potentially uncertified workplace without realizing what they had done.

[96] The Union took the position that, as its application was not a certification application (but rather a consent amendment to an existing certification Order), the importance of demonstrating support for the Union from affected employees was less important. In this regard, the Union relied on the decision of this Board in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, Retail Wholesale and Department Store Union, Local 568 and Retail, Wholesale and Department Store Union, Local 558 v. Canadian Linen and Uniform Services Co.*, [2004] Sask. L.R.B.R. 69, LRB File Nos. 062-04 & 090-04.

[97] The Union argued that, even without granting the Union's application, many of the "add-on" employees were already covered by the Union's certification order because their branches were within the existing geographic scope of the certification Order; being "*Saskatoon and surrounding area*" and thus a representative vote of these employees was not required. In this regard, the Union relied on the decision of this Board in *Energy and Chemical Workers' Union, Local 911 v. Donna Brown and 593516 Saskatchewan Ltd., carrying on business in the City of Regina under the business name of "Microdata Consulting Services (MCS)"*, [1992] 1st Quarter Labour Report, LRB No. 172-90, and *International Brotherhood of Electrical Workers, Local 2067 v. Luscar Ltd.* [2001] Sask. L.R.B.R. 352, LRB File No. 269-00.

[98] The Union then took the position that, after you removed the employees from the legacy Affinity branches that were within the geographic scope of the Union's existing

certification Order, the few remaining add-on employees could also be added to the bargaining unit without evidence of their support on the basis of their disproportionately small number relative to the size of the bargaining unit. In this regard the Union relied on the decision of this Board in *Estevan Coal Corporation, a Subsidiary of Luscar Coal Income Fund and Prairie Coal Ltd, a Subsidiary of Manalta Coal Income Trust, v. United Mine Workers of America, Local 7606 and United Steel Workers of America, Local 9279*, [1998] Sask. L.R.B.R. 709, LRB File No. 186-98 as standing for the proposition that, if the group of employees to be added to the bargaining unit represent less than 25% of the existing bargaining unit, a representative vote is not required. As examples of this concept, the Union relied on the decision of this Board in *Communication Energey and Paperworkers Union v. Government of Saskatchewan, Saskatchewan Environment, Saskatchewan Watershed Authority, Saskatchewan Water Corporation, Saskatchewan Government and General Employees' Union and Saskatchewan Wetland Conservation Corporation*, [2002] Sask. L.R.B.R. 615, wherein the Board allowed seventeen (17) employees to be added to an existing bargaining unit comprised of one hundred and seventeen (117) employees without a representative vote; and *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Pioneer Co-operative Association Limited*, [2005] Sask. L.R.B.R. 334, LRB File No. 151-01, wherein the Board allowed twenty-eight (28) employees to be swept into an existing bargaining unit of three hundred (300) employees.

[99] In any event, the Union argued that it had the support of the majority of "add-on" employees on the basis of the vote that was conducted as part of its voluntary recognition agreement with the Employer. In this regard, the Union observed that the majority of employees participated in this representative vote (192 out of 212) and that the majority of employees vote in favour of being represented by the Union (ie. 104 out of 192). The Union argued that it should not be relevant that it was not a Board supervised vote, if the vote was properly conducted, which it argues was the case.

[100] The Union argued that the Board does not have jurisdiction to interfere in the Union's voluntary recognition agreement with the Employer. The Union argued that, even if the Union's application was not granted, it still had the Employer's voluntary recognition. To which end, the Union took the position that granting the remedy sought by the intervenors (ie. and to conduct a new representative vote) would cause hardship to labour relations in the workplace and had the potential of disenfranchising a number of employees. Furthermore, the Union queried as to which employees would be eligible to vote; employees as of December 10-14,

2007 – the date of the original vote; employees as of January 1, 2008 – the date of the voluntary recognition; or employees as of January 18, 2008 – the date of the Union's application to amend? Similarly, the Union queried as to which branches would be included in the representative vote; employees in all of the former branches of Affinity Credit Union; or just those legacy Affinity branches that were not within the geographic scope of the Union's existing certification Order? The Union took that position that whether or not the Board should order a vote is a discretionary determination and, the Union argued, in the present circumstances, such discretion should not be exercised.

[101] With respect to the issue of dues, the Union took the position that the imposition and collection of dues is a matter of the collective agreement between the parties and is outside the jurisdiction of the Board. The Union argued that the Employer had acted in good faith in deducting union dues in accordance with the voluntary recognition agreement and that the Union had acted in good faith in representing the "added–on" employees since January 1, 2008. The Union argued that the majority of employees voted to pay dues to the Union when they voted to be represented by it. The Union acknowledged that written authorization for dues check-off had not been provided to the Employer (from the add-on employees). However, the Union argued that this fact should not be determinative of the issue because s. 32 of the *Act* deals with merely a method of collection of dues not the obligation to pay same, which, the Union argued, arises as a consequence of representation by the Union; not as a consequence of signing an authorization form. The Union argued that the employees were enjoying the benefits of representation by the Union, including the application of the Union's collective agreement with the Employer. As a consequence, these same employees, the Union argued, should share in the cost of providing those benefits through the payment of Union dues.

[102] Finally, the Union argued that, if the Board is inclined to order a representative vote, the Union indicated a desire to make further representations to the Board with respect to the conduct of that vote. The Union observed that numerous details would need to be worked out between the Union and the Employer.

[103] The Employer took no position with respect to the Union's application save two (2) points. Firstly, the Employer observed that the Union's application was an application to amend an existing certification Order pursuant to s. 5(j) of the *Act* and that the Union was not making an application for successorship pursuant to s.37 of the *Act*. The Employer took the position that, in

its voluntary recognition agreement with the Union, it had not agreed to a successorship application. As counsel for the Employer put it; "*that was not the deal*." Counsel argued that the Employer had agreed that, if there was a successful vote in favour of the Union, the Union would apply to the Board for a "provincial certification" and, in so doing, the Employer would "remain neutral." The corollary of this point was that the Employer took issue with the Union's argument that it could be "deemed" to have the support of the majority of the previously unrepresented employees from the legacy Affinity branches within the geographic boundaries of its existing certification Order.

[104] Secondly, the Employer echoed the position of the Union that, if the Board was inclined to direct that a new representative vote take place, the parties should be permitted the opportunity to make further representations to the Board as to the conduct of that vote.

[105] The Individual Objectors took the position that, before the Board could grant the Union's application to amend its certification Order, the Board must have evidence, in a form acceptable to the Board, that the majority of employees to be added to the bargaining unit supported the Union. In taking this position, the Individual Objectors relied on the decision of this Board in *Canadian Union of Public Employees, Local 4799 v. Board of Education of Horizon School Division No. 205 and Deer Park Employees' Association*, [2007], 144 C.L.R.B.R. (2d) 271, LRB File No. 053-07.

[106] The Individual Objectors also argued that, as a consequence of the amendments to s. 6 of the *Act* that resulted from passage of *The Trade Union Amendment Act, 2008* that become effective May 14, 2008, the Board was thereafter required to direct that a vote take place to determine the question of majority support and that, as a consequence of this change, the Board is not permitted to accept any other evidence of majority support for the purposes of determining that question.

[107] In taking this position, the Individual Objectors relied upon the decision of the Saskatchewan Court of Appeal in the case of *University of Saskatchewan v. Women 2000* (2006), 268 D.L.R. (4^{th}) 558, 279 Sask. R. 74, 48 Admin. L.R. (4^{th}) 110. In that case, our Court of Appeal was called upon to consider the effect of a change in legislation with regard to a pending application before the Saskatchewan Human Rights Commission. In so doing, the court reviewed the common law presumptions associated with the application of changes in legislation

to pending applications. The Court concluded that the new provision should apply to the pending application because the change in legislation did not involve any vested or substantive rights. Rather, the Court concluded that the changes went to the "process" used by the Commission to handle a complaint and thus relied upon the presumption associated with "procedural" changes in legislation, as noted by the Court at para.17:

> *There is a second common law presumption which must also be considered in assessing the University's argument. It is to the effect that procedural legislation has an immediate effect and applies to all matters, including those commenced or initiated before the legislation came into force. This rule has been expressed by some writers as meaning there is no vested right in procedure. See, for example: Côté, The Interpretation of Legislation in Canada, 3rd ed. (Scarborough: Carswell, 2000) at p. 178. It was explained in the following terms in Wright v. Hale (1860), 6 H.& N. 227, at p. 232, 158 E.R. 94:*
>
> > *… where the enactment deals with procedure only, unless the contrary is expressed, the enactment applies to all actions, whether commenced before or after the passing of the Act.*

[108] The Individual Objectors also relied on the decision of the British Columbia Labour Relations Board in the cased of *Campbell River Fibre Ltd*., [2001] WL 34062793 (B.C. L.R.B), BCLRB File No. B356/2001; *Wayden Transportation Systems Inc. v. C.M.S.G.,* 78 C.L.R.B.R. (2d) 197, BCLRB File No. B457/2001; and *Choices Market (1998) Ltd. v. Retail Wholesale Union, Local 580*, [2001] WL 34065686 (B.C. L.R.B.), BCLRB File No. B424/2001.

[109] In *Campbell River Fibre Ltd., supra,* the trade union had applied for certification under the British Columbia *Labour Relations Code*. At the time of the union's application, the B.C. *Code* provided for certification without a vote if the applicant union tendered sufficient evidence of card support. After the trade union's application had been filed and before the board could hear the matter or render a decision, the B.C. *Code* was amended to remove the board's previous authority to grant certification without a representative vote, with the new legislation directing that votes be taken in all certification applications (meeting the prescribed threshold). In *Campbell River Fibre Ltd., supra,* the B.C. Board concluded that the determination of the wishes of employees for purposes of a certification application was purely a procedural matter and thus the legislative changes must be applied to all pending applications before it, including the trade union's application for certification.

[110] Counsel argued that the change to s. 6 introduced by *The Trade Union Amendment Act, 2008* was "procedural" within the meaning ascribed by the Saskatchewan Court

of Appeal in *Women 2000, supra,* and thus, must be applied by the Board to the Union's application to amend its certification Order. In other words, irrespective of any evidence of support that may have been filed or may be tendered by the Union, the Board has no option but to direct that a representative vote of the add-on employees be conducted to determine their support for the Union's application. In this respect, the Individual Objectors argued that the voluntary recognition agreement between the Employer and the Union was frustrated by the passage and enactment of *The Trade Union Amendment Act, 2008* and, as a consequence, that agreement was no longer binding on the parties.

[111] Simply put, the Individual Objectors took the position that the Board should not accept the evidence of majority support resulting from the vote that was conducted in December of 2007 because it was not supervised by the Board in accordance with the *Act*. In any event, with the passage of *The Trade Union Amendment Act, 2008*, the Board has no option but to direct that a representative vote (supervised by the Board) be conducted to determine which trade union, if any, enjoys the support of the majority of employees to be added to the bargaining unit.

[112] The Individual Objectors argued that, absent a statutory framework for voluntary recognition of a trade union by an Employer, while the Employer may have recognized the Union on the strength of their agreement, individual employees did not automatically become members of the Union unless they sign authorization cards expressing their desire to do so. In the present case, the Individual Objectors argued that they have not done so and, thus, should not be subject to the payment of dues. To which end, the Individual Objectors sought an Order of the Board directing the Employer to cease deducting union dues and directing the Union to return all dues that had been collected absent express written authorizations to do so, calculated retroactive to January 1, 2008. In the alternative, the Individual Objectors sought the return of union dues for the employees who expressly asked the Employer that dues no longer be deducted retroactive to the date they did so.

[113] With respect to the jurisdiction of the Board regarding the payment of dues and the Board's authority to grant the desired remedy, the Individual Objectors argued that s. 32 of the *Act* provides general jurisdiction to the Board to deal with the issue of the collection and remittance of dues and, thus, their return if inappropriately collected.

[114] The Employer took no position with respect to the positions advanced by the Individual objectors. However, Counsel did observe that the Employer found itself in a difficult situation and sought direction from the Board with respect to the issue of union dues.

[115] On the issue of the changes to s. 6 of the *Act*, the Union took the position that *The Trade Union Amendment Act, 2008* did not apply to their application because it was filed prior to the changes in the legislation provided for in this amendment. In this respect, the Union noted that 2008 amendments to the *Act* did not contain a transition provision providing for the retroactive application of the changes set forth therein nor did it contain other express language dealing with the issue of retrospectivity. As a consequence, the Union argued that the common law presumption applied; that being, that the legislature did not intend its legislation to operate in circumstances were its application would interfere with vested rights or be construed to have retrospective operation unless such construction is expressly provided for in the language of the enactment (which, in this case, no such provision was contained). In this regard, the Union relied upon the decision of the Supreme Court of Canada in *Gustavson Drilling v. Canada (Minister of National Revenue)*, [1977] 1 S.C.R. 271 and the decision of this Board in *International Union of Operating Engineers, Hoisting, Portable and Stationary, Local 870 v. K.A.C.R. (A Joint Venture)*, [1983] November, Sask. Labour Rep. 56, LRB File No. 275-83.

[116] Simply put, the Union's position was that the changes to s.6 provided for in *The Trade Union Amendment Act, 2008* had no application to the present case.

[117] In all other respect, the Union resisted the remedies sought by the Individual Objectors for the reasons stated earlier in these reasons.

Defining the Employer:

[118] During the argument phase of the proceedings, it became apparent that the Employer and the Union were not in agreement as to the identity of the new Employer; specifically, the listing of corporate entities that should be subject to the proposed new certification Order.

[119] With leave, Mr. Gordon Hamilton was recalled to provide further evidence as to the history of corporate reorganization affecting the Employer, as well as the Employer's current

corporate structure. Mr. Hamilton testified that he had assisted in most of the relevant corporate restructuring and sat as a director on several of the Employer's companies.

[120] In summary, Mr. Hamilton testified that "Saskatoon Credit Union, Limited" was inactive and had been discontinued effective October 1, 2002; that "Saskatoon Credit Union (2002)" became "SCU Transition Holdings Inc." and later was amalgamated into "FirstSask Holdings Inc." effective January 1, 2007; that "FirstSask Holdings Inc." was amalgamated into "Affinity Holdings Inc." effective January 1, 2008; that the name of "FirstSask Financial Group Inc." had been changed to "Affinancial Services Group Inc." effective July 1, 2008; and that the name of "FirstSask Employee Services Inc." had changed to "Affinancial Employee Services Inc." effective July 1, 2008.

[121] Mr. Hamilton acknowledged that the corporate history of the Employer was complicated but testified that the various corporate changes had been done to facilitate the 2007 and 2008 mergers and to comply with regulatory requirements associated therewith.

[122] Mr. Hamilton testified that, at the time of the hearing, the only corporate entitles of the Employer conducting the business of the Employer were "Affinity Credit Union", "Affinancial Services Group Inc.", "Affinancial Employee Services Inc.", "Canada Loan Administration Services Inc." and "FirstSask Mortgage Inc."

[123] Mr. Hamilton testified that "FirstSask Holdings Inc." continued to exist and contained certain assets from the legacy Saskatoon Credit Union. Mr. Hamilton testified that this corporate entity had no employees, conducted no business, and merely existed to comply with regulatory requirements related to contingent liabilities associated with activities of the Employer's previous corporate incarnations.

[124] The Union took the position that all corporation entities belonging to, or associated with, and all previously corporate incarnations of, the Employer should be listed in the Union's certification Order and sought the following list of corporations:

> Affinity Credit Union
> Saskatoon Credit Union, Limited
> Saskatoon Credit Union (2002)

FirstSask Holdings Inc.
FirstSask Financial Group Inc.
Affinity Employees Services Inc.
Canada Loan Administration Services Inc.
FirstSask Mortgage Inc.

[125] The Employer took the position that any new certification Order issued by the Board should be confined to the current active corporations of the Employer carrying on the business of the Employer and proposed the following list of corporations:

Affinity Credit Union
Affinancial Services Group Inc.
Affinancial Employees Services Inc.
Canada Loan Administration Services Inc.
FirstSask Mortgage Inc.

[126] While not strenuously objecting to the Employer's list of corporations, the Union asked the Board to make the certification Order as broad as possible so as to prevent the Union from losing bargaining rights by failing to include inactive corporations that may later become active. The only substantive dispute between the parties was with respect to "FirstSask Holding Inc.", which Mr. Hamilton had testified was inactive, but continued to hold assets of the predecessor corporations of the Employer. The Union sought to have this additional corporation included in its certification Order.

[127] While not strenuously objecting to the inclusion of "FirstSask Holdings Inc." in the certification Order, the Employer argued that doing so was redundant and unnecessary.

Relevant Statutory Provisions:

[128] Relevant statutory provisions of the *Act* provide as follows:

> 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:

. . .

(j) amending an order of the board if:

(i) the employer and the trade union agree to the amendment; or

(ii) in the opinion of the board, the amendment is necessary;

(k) rescinding or amending an order or decision of the board made under clause (a), (b) or (c) where:

(i) there is a collective bargaining agreement in existence and an application is made to the board to rescind or amend the order or decision during a period of not less than 30 days or more than 60 days before the anniversary of the effective date of the agreement; or

(ii) there is no agreement and an application is made to the board to rescind or amend the order or decision during a period of not less than 30 days or more than 60 days before the anniversary date of the order to be rescinded or amended;

notwithstanding a motion, application, appeal or other proceeding in respect of or arising out of the order or decision is pending in any court;

Analysis and Decision:

[129] In the Board's opinion, the Union's application must be dismissed. The Union's application is defective in two (2) important respects. Firstly, direct evidence of support was not tendered by the Union for the group of employees proposed to be added to the bargaining unit and the Board is not prepared to accept the evidence of support arising from the vote conducted by the Employer and the Union in December of 2007. Secondly, the Employer was not "in agreement" with the proposed amendment as required by s. 5(j)(i) of the *Act* for a consent amendment.

[130] With regard to the issue of evidence of support, in the Board's opinion, the number of employees that would be added to the bargaining unit by the proposed amendment compels that direct evident of support be filed for the group of add-on employees and that this evidence must be in a form acceptable to the Board, in accordance with the requirements set forth in *Retail, Wholesale and Department Store Union v. Sunnyland Poultry Products Ltd*., [1993] 2nd Quarter Sask. Labour Rep. 213, LRB File No. 001-92. See also: *University of*

Saskatchewan v. Canadian Union of Public Employees, Local Union No. 1975 (1977), 78 C.L.L.C. 14,159 (Sk. C.A.), rev'd [1978] 2 S.C.R. 834 (S.C.C.), and *Prince Albert Co-operative Association Limited v. Retail, Wholesale and Department Store Union, Local 496* (1982), 20 Sask. R. 314 (Sk. C.A.).

[131] The Board is not prepared to accept the argument of the Union that it is "deemed" to enjoy the support of the majority of employees working in the legacy branches of the former Affinity Credit Union falling within the geographic scope of its existing certification Order nor is the Board prepared to sweep in the remaining employees outside of this region on the basis that their numbers are insufficient to warrant a representative vote.

[132] Firstly, the number of employees working in legacy Affinity branches outside of the geographic scope of the Union's existing certification Order is independently sufficient to warrant a representative vote. Although not determinatively of the issue, Mr. Kurmey testified that, in his opinion, the Aberdeen, Bellevue, Hague, Laird, Osler, Rosthern, City Centre and St. Mary's branches of the former Affinity Credit Union were located within the geographic scope of the Union's existing certification Order. Assuming (without deciding) that Mr. Kurmey is correct, according to the "Staff Voting List", these branches account for approximately eighty-seven (87) of the employees the Union seeks to add to the bargaining unit; leaving approximately one hundred and twenty-five (125) add-on employees outside of the geographic scope of the existing Order. Irrespective of how the size of the existing unit is calculated, the group of employees to be added to the bargaining unit is independently sufficient to warrant a representative vote.

[133] Secondly, the Union did not apply to amend its certification Order to add previously unrepresented employees acquired by the Employer within the geographic scope of its existing certification Order; it applied to add a different; a larger group of employees. In the Board's opinion, the onus is on the Union to demonstrate majority support from that group of employees; the group of employees that it proposes be added to the existing certification Order. The Union did not file an application for successorship and, while the Board will amend procedural errors pursuant to s. 19 of the *Act* (to ensure that the real questions raised by an application may be determined), the Board will not utilize this authority to substitute one application for an entirely different one or treat the application as part one application and part another. See: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v.*

Yorkton Co-operative Association Limited, [1985] Dec. Sask. Labour Rep 60, LRB File No. 248-85.

[134] This Board, in *Horizon School Division, supra, concluded as follows*:

> [107] The overarching object and purpose of the Act is expressed in s. 3, that is, that employees have the right to join and be represented in collective bargaining by the trade union of their choice. All provisions of the Act must … be interpreted with consideration of that fundamental object and purpose in mind. We view the overall import of the opinions of Bayda, J.A. expressed in *University of Saskatchewan* and *Prince Albert Cooperative Association*, both *supra,* as endorsed by the Supreme Court of Canada and confirmed by the Board in *Sunnyland*, *supra,* and numerous cases since, that requiring evidence of the wishes of employees sought to be added to an existing bargaining unit strikes "an appropriate balance between the secure and stable status for a trade union and the entitlement of employees to express their wishes when there is to be an alteration in the existing method by which their terms and conditions of employment are determined."

[135] In *Pioneer Cooperative, supra,* this Board summarized the principles applicable to an application to amend an existing certification Order in circumstances were the proposed amendment will add previously unrepresented employees to the bargaining unit:

> [18] In *University of Saskatchewan*, *supra,* the certified union filed an application to amend a series of certification orders held by it for various employee groups at the University to provide for an "all employee" unit with certain specified exceptions – the proposed unit also included employees who had not been previously included in any of the previous bargaining units specified in the existing orders. Evidence of support of the group of "added-on" employees (representing approximately 15 per cent of the total number of employees in the proposed unit) was adduced, but it did not support the applicant union as choice of bargaining agent. The Board rescinded the several existing orders and granted the "all employee" order as being "an appropriate unit". The decision was taken to judicial review. The majority opinion of the Court of Appeal held that in determining the appropriate unit of employees the Board was not required to consider the wishes of the employees. In a dissenting opinion, Bayda, J.A. (as he then was), it was within the Board's jurisdiction to issue a new certification

order that would only consolidate into one bargaining unit the previously established units, but that the Board's order exceeded its jurisdiction by dealing with the application, which expanded the scope of the existing orders, as an amendment pursuant to ss. 5(i) or 5(k) of the Act, rather than as a certification application pursuant to ss. 5(a), (b) and (c). While the Board need not consider the wishes of the employees in determining whether the unit is appropriate pursuant to s. 5(a), it is required to do so with respect to the designation of the bargaining agent pursuant to s. 5(b). On appeal, the Supreme Court of Canada reversed the decision of the court of appeal and endorsed the dissenting opinion of Bayda, J.A.

[19] In *Prince Albert Co-op*, *supra,* the union held an existing certification order including the employer's employees (numbering approximately 120) in the City of Prince Albert. It applied for a new certification order to include those employees and to add the employer's 38 employees in several towns outside the City. The union filed evidence of support for the application of a majority of the employees in the add-on group, but relied upon the existing certification order as evidence of the support of a majority of employees in the existing unit. In upholding the decision of the Board in granting the application, the Court of Appeal, per Bayda, C.J.S., held that the existing certification order was evidence of support for the union of a "bare majority" of the employees in the existing unit, and that, combined with the direct evidence of the support for the union of the employees in the add-on group, constituted evidence of the support of the evidence of the majority of the employees in the enlarged unit.

[20] The Board confirmed this principle and described its rationale in *Wascana Rehabilitation*, *supra,* as follows at para. 24:

> In our opinion, this approach, which allows the Union to rely on a valid and subsisting certification order as proof that it enjoys majority support in an existing unit, but requires that the wishes of a new group of employees be canvassed before the unit can be reshaped to include them, seems to provide an appropriate balance between the secure and stable status for a trade union, and the entitlement of employees to express their wishes when there is to be an alteration in the existing method by which their terms and conditions of employment are determined, whether that be through representation by some organization other than a union, or by some other means.
>
> . . . .

> . . . In the case of applications to amend the description of the bargaining unit to include new groups of employees, the jurisprudence indicates that, as on a certification application, the Board must take into account the wishes of employees as well as the appropriateness of the unit applied for.
>
> [21] We are of the opinion that the principles enunciated in these cases require that there be direct evidence of the support for the amendment sought of a majority of the employees in the group to be added to the bargaining unit. It is immaterial that the Employer already provides this group of employees with the same wages and working conditions as those in the existing unit. There many more reasons that the Union may cite to the employees in this group as advantages to union membership – not least of which is access to the protection afforded by the grievance and arbitration procedure – in seeking their support.

[136] In the Board's opinion, the onus is on the Union to demonstrate majority support from the group of employees that it proposes be added to the bargaining unit. Therefore, the principal issue to be determined is whether the Union has demonstrated majority support among that group. In this regard, the Board notes that the Union's application was not filed with any information as to the number of employees that would be swept into the bargaining unit (in the event the amendment to the geographic scope of the certification Order was granted) nor was direct evident of support (ie. support cards) for the Union filed with respect to this "add-on" group of employees. Certainly, at the time the Union filed its application, the filing of support cards would have been the accepted method of providing direct evidence of support from the group of employees to be added to the bargaining unit.

[137] The Union asks the Board to accept, as evidence of support for the Union, the results of the vote conducted by the Employer and the Union as part of its voluntary recognition agreement. However, and with all due respect to the level of cooperation and effort demonstrated by this process, the Board is not prepared to accept the results of this vote for the purposes of the *Act* because the vote was not supervised by the Board and, thus, was not in compliance with the *Act*. In this regard, the Board notes that there was no evidence of inappropriate or objectionable conduct on the part of either the Employer or the Union associated with their vote or the information they provided to affected employees. Nonetheless, the vote did not comply with the requirements of the *Act* in a number of important respects:

1. the Board's agent did not determine the list of employees eligible to vote;

2. the Board's agent did not determine the form of the ballot;

3. the Board's agent did not determine the date or dates and hours for taking the vote;

4. the Board's agent did not determine the number and location of polling places;

5. the Board's agent did not prepare and cause the posting of prescribed notices;

6. the Board's agent did not act as returning officer; and

7. the Board's agent did not prepare a report in accordance with the requirements set forth in s.27 of the *Regulations and Forms, Labour Relations Board*, S.R. 163/72.

[138] All of the above defects arose because the vote conducted by the Employer and the Union was not supervised by the Board. While to some this may not appear to be a significant defect, in the Board's opinion the agents of the Board provide independence and impartiality in the conduct of representative votes and, in so doing, help to maintain confidence in Saskatchewan's labour relations regime. While the unsupervised vote may have been sufficient for the purposes intended by the Employer and the Union (proceeding under their voluntary recognition agreement), the Board is not prepared to accept this evidence for purposes of determining majority support in accordance with the *Act* (amending a certification Order to expand the scope of the bargaining unit).

[139] In coming to this conclusion, the Board is mindful that the Employer and the Union entered into a voluntary recognition agreement and that such agreements are not illegal or contrary to the *Act*. While the Board has held that collectively bargaining relationships and agreements between employers and unions can exist independent of an Order of the Board and outside the system provided for in the *Act*[4], such relationships do not enjoy the same rights and

[4] See: *Saskatchewan Government Employees Union v. Saskatchewan Institute of Applied Science and Technology*, [1989] Summer Sask. Labour Rep. 51, LRB File No. 131-88.

protections provided by the *Act* nor are they subject to the same scrutiny utilized by the Board in granting or amending a certification Order, including determinations related to the appropriateness of the bargaining unit. In *Grain Services Union (ILWU – Canadian Area) v. Heartland Livestock*, [1996] Sask. L.R.B.R. 161, LRB File No. 287-95, the Board canvassed the Board's jurisprudence with respect to voluntary recognition and concluded that the status of a trade union holding a voluntary recognition agreement is a tenuous one. While some rights in relation to a voluntary recognition agreement may be enforceable under the provisions of *Act*, the right of the trade union to exclusively represent the employees is not guaranteed.[5]

[140] Similarly, there is no statutory framework or jurisprudence of the Board to accept an unsupervised vote as evidence of support for either granting or amending a certification Order. In light of the objections from the employees being swept into the bargaining unit, the Board is not prepared to accept the results of this vote as evidence of majority support for the Union. In so holding, the Board is alert to the high percentage of the affected employees that participated in the vote conducted by the Employer and the Union. Nonetheless, in *G.S.U. v. Heartland Livestock, supra*, the Board (in concluding that a voluntary recognition agreement did not establish the union's representative capacity needed to invoke the union security provisions contained in s. 36(1) of the *Act*) made the following comments at page 174 with respect to evidence of majority support arising from a voluntary recognition agreement:

> Although there is little doubt that Grain Services Union enjoys the support of a majority of the employees that it represents, which can be inferred from its long standing bargaining relationship and from the ratification of its last agreement, this evidence of representative capacity does not bring the Union within the scheme of the *Act*. The evidence does not meet the evidentiary standards that are imposed by the Board in determining representative capacity on an application for certification. Similarly, the direct evidence provided by Mr. Hubick that a majority of the employees are members of the Union also does not meet the standards of proof that are required on an application for certification.

[141] For similar reasons, the Board is not satisfied that the evidence of the vote conducted by the Employer and the Union meets the standard of proof that is required for the purposes of amending a certification Order to expand the scope of the bargaining unit.

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[5] See: *Chauffeurs, Teamsters and Helpers Union, Local 395 v. Inconvenience Productions Inc., et. al.*, [2001] Sask. L.R.B. 260, LRB File No. 144-98

Therefore, as the Union's application was not filed with direct evidence of support and the Board is not prepared to accept the evidence of support arising from the unsupervised vote conducted by the Employer and the Union, the Board is left with no evidence of support for the "add-on" employees and, thus, the Union's application must be dismissed.

[142] The second defect in the Union's application was that, in the Board's opinion, it did not enjoy the requisite "agreement" of the Employer. On this point, the Board notes that the Union's application was not filed during the open period provided for in s. 5(k) of the *Act* and, thus, it may only be considered by the Board if either the Employer agrees to the proposed amendment or the Board determines it to be "necessary". In *United Food and Commercial Workers Union, Local 1400 v. Sobey's Capital Inc. (operating as IGA Garden Market)*, [2006] Sask. L.R.B.R. 115, LRB File No. 016-05, the Board noted that s. 5(j) has been used in very limited circumstances. Specifically at pp.27, the Board stated as follows:

> Sections 5(i), (j) and (k) permit the amendment of a variety of Board orders. In our view, s. 5(k) has been used to determine an amendment application filed during the open period, while s.5(j) has been used in very limited circumstances to determine an amendment application filed outside the open period. Both 5(j) and 5(k) are jurisdictional in nature in that they permit the Board to consider amendment applications filed either within (s.5(k)) or outside (s. 5(j)) the open period. The general rule is that amendment applications are to be filed within the open period mandated by s. 5(k), unless an applicant can establish that the parties have consented to the amendment (s.5(j)(i)) or the amendment, in the opinion of the Board, is "necessary" (s. 5(j)(ii)).

[143] The Union's application did not state or imply that it was relying on s. 5(j)(ii) of the *Act* in seeking its desired amendment. Nonetheless, for the purpose of clarity, we are not satisfied that the circumstances of the workplace are so anomalous or constitutes such a threat to viable collective bargaining that the parties could not wait until the next ensuing open period. In *Sobey's Capital Inc., supra*, the Board canvassed its jurisprudence for considering an amendment pursuant to s. 5(j)(ii) and, in the Board's opinion, the present circumstances do not meet the prescribed threshold of "necessity". As a consequence, the agreement of the Employer is a statutory requirement to granting the Union's application to amend the existing certification Order. Therefore, the issue to be determined is whether or not the Union's application enjoys the requisite agreement.

[144] Pursuant to the terms of their voluntary recognition agreement, the Union agreed to apply for a new certification Order of provincial scope and the Employer agreed to remain "neutral". However, the Union applied to the Board before the parties had come to an agreement as to the terms of their desired new certification Order with respect to management exclusions. Furthermore, as of the date of the hearing, while no strenuously objecting to the position being taken by the other, it would be hard to characterize the Employer and the Union as being "in agreement" as to the identity of the Employer. In this regard, the Employer's neutrality may have been appropriate for the purposes of the Union's organizing campaign but fell short of satisfy the statutory requirement of "agreement" anticipated by the Board in considering applications pursuant to s. 5(j)(i) of the *Act*.

[145] As noted by this Board in *Sobey's Capital Inc., supra,* s. 5(j)(j) is utilized by the Board and provides a mechanism for granting amendments to certification Orders outside of the open period but only in the limited circumstances. In the Board's opinion, to invoke this provision, the parties must be "in agreement" and this agreement must extend to the totality of the wording of the desired certification Order. In the present circumstances, the Board is not satisfied that it has jurisdiction to amend the Union's existing certification Order if the Employer is not in agreement; or rather where the Employer and the Union are in agreement on some issues but where the parties seek direction from the Board on a remaining unresolved issue (i.e. the identity of the Employer). As a consequence, the Union's application must also be dismissed because the application does not enjoy the requisite agreement of the Employer required by s. 5(j)(i) of the *Act*.

[146] Given the Board's decision with respect to the disposition of the Union's application, the Board declines to comment further on the remedy sought by the Individual Objectors with respect to a representative vote and/or the significance, if any, of the change in the legislation arising as a result of the enactment of *The Trade Union Amendment Act, 2008*.

[147] With respect to the issues of the collection and remittance of dues, the Board is not satisfied that, under the present circumstances, it has jurisdiction to adjudicate or grant any form of concomitant remedy of the nature sought by the Individual Objectors. However, the Board has a high degree of confidence, based on the professionalism of this workforce and the

mature and cooperative nature of the relationship enjoyed by the Union and the Employer, that the parties will be able to resolve this issue in a satisfactory manor.

[148] For the reasons stated herein, the Union's application to amend its certification Order is dismissed.

DATED at Regina, Saskatchewan, this **30th** day of **April, 2009.**

LABOUR RELATIONS BOARD

Steven Schiefner,
Vice-Chairperson