

**The Labour Relations Board
Saskatchewan**

**THE SASKATCHEWAN INSTITUTE OF APPLIED SCIENCE AND TECHNOLOGY, Applicant
v. THE SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION,
Respondent**

LRB File No. 079-06; December 22, 2009

Vice-Chairperson, Steven D. Schiefner; Members: Bruce McDonald and Clare Gitzel

For the Applicant: Mr. David Stack
For the Respondent: Mr. Rick Engel, Q.C.

Employee – Exemptions from bargaining units – Board reviews considerations for managerial and confidential exemptions – Board notes that parties enjoyed mature bargaining relations, had entered into sophisticated and detailed collective agreements, and had negotiated delegation of various management-like duties to staff within scope of bargaining units – Board concludes that Academic Director of Instructional and Leadership Centre, Recruitment and Retention Analyst, Representative Workforce Consultant and Executive Assistants to Campus Directors ought properly to be excluded from scope of bargaining units.

The Trade Union Act, ss. 2(f)(i), 5(k) and 5(m)

REASONS FOR DECISION

Background:

[1] Steven D. Schiefner, Vice-Chairperson: The Saskatchewan Institute of Applied Science and Technology (“SIAST” or the “Employer”) or is a post-secondary institute that was incorporated on January 1, 1988 pursuant to *The Institute Act*, S.S. 1986-87-88, c.I-9.1¹. SIAST formed out of the merger of four (4) previously independent colleges; now commonly referred to as the Kelsey Campus (Saskatoon), Palliser Campus (Moose Jaw), Wascana Campus (Regina), and Woodland Campus (Prince Albert), together with a number of smaller community colleges in those centres.

[2] The Saskatchewan Government and General Employees’ Union (the “Union”) is certified as the bargaining agent for two (2) units of employees of SIAST. Specifically, on March 10, 1988, the Union was certified to represent a unit of professional service (non-academic)

¹ In 1996, SIAST was continued by *The Saskatchewan Institute of Applied Science and Technology Act*, S.S. 1996, c.S-25.2.

employees and on April 22, 1988, the Union was certified to represent a unit of academic employees. Both certification Orders were “all employee” units with enumerated exclusions therefrom. In this regard, it should be noted that these two (2) bargaining units and the exclusions therefrom were defined by *The Institute Act*.

[3] In the years following certification, significant changes occurred in the workplace affecting both bargaining units. Simply put, SIAST experienced organization-wide restructuring, as the previously loose connection of the four (4) separately-managed colleges evolved into a SIAST-wide management structure, integrating and/or replacing many of the management and administrative functions previously performed on a campus-by-campus basis. New in scope and out of scope positions were developed (and staffed) affecting both bargaining units to the extent that the exceptions provided for in the 1988 certification Orders of the Board became significantly out of date. In addition, with the introduction of *The Saskatchewan Institute of Applied Science and Technology Act, S.S. 1996, c.S-25.2* in 1996, the statutory determinations with respect to exclusions were removed.

[4] On May 30, 2006, the Employer filed an application with the Board to amend (update) the exceptions listed in the Board’s certification Orders. Following the filing of this application with the Board, the parties embarked upon a comprehensive scope review, whereby all out of scope positions at SIAST were examined. As a result of this process (and following two (2) pre-hearings with the Board), the parties came to agreement on the scope of the bargaining units (all positions to be excluded) with the exception of the following:

Academic Director, Instructional and Leadership Development Centre
 Recruitment and Retention Analyst
 Representative Workforce Consultant
 Manager, Accounting and Operations Support
 Executive Assistants to Campus Directors (four (4) incumbents)
 Manager, Business Intelligence

[5] At the time of the hearing, the incumbent of the Manager, Business Intelligence, was on maternity leave. As a consequence, the parties agreed to postpone any determination with respect to this position. In this regard, the parties sought the opportunity to negotiate with

respect to the scope of this position for a period of ninety (90) days following the Board's determination in this matter and leave to return to the Board in the event their negotiations were unsuccessful with respect to this remaining disputed position.

[6] As a result, the parties sought direction from the Board with respect to five (5) positions, involving nine (9) incumbents. A hearing of the matter was conducted in Saskatoon commencing on October 1, 2009 and concluding October 7, 2009.

Evidence with Respect to Disputed Positions:

[7] The parties called numerous witnesses, including incumbents of the disputed positions, and tendered various helpful documents, including organization charts and job descriptions. The testimonial and documentary evidence was thorough and helpful for which the parties should be commended. However, because of the volume, we have not attempted to summarize all of the evidence received during these proceedings. Finally, given the nature of this application, we have organized the evidence as noted below.

Academic Director, Instructional and Leadership Development Centre

[8] The Employer called Ms. Barbara Bremner. Ms. Bremner was an Associate Vice-President responsible for the Educational Services Division of SIAST. Ms. Bremner testified that the Academic Director of the Instructional and Leadership Development Centre (the "ILDC" or the "Centre") reported to her; one (1) of five (5) Directors (academic or otherwise) doing so².

[9] Ms. Bremner testified that the ILDC was created to provide orientation and education programs for new instructors at SIAST and to assist academic and professional staff in their ongoing professional development. Over time, the role of the ILDC evolved from modest beginnings (and with limited resources) as both the volume and scope of training through the Centre increased. At the time of hearing, the ILDC was responsible for the delivery of a number of training programs, including the New Instructor Orientation Program, which assisted in getting recently hired instructors (approximately 100 per year) ready to go into the classroom. The Centre was also responsible for delivering the Faculty Certificate Program; a Program intended to strengthen the faculty's instructional expertise and academic leadership skills through training

in a variety of areas. Through this Program, instructors from the Centre (with assistance and accreditation from the University of Regina) delivered a range of training on topics such as how to instruct students and how to evaluate their work. The Faculty Certificate Program was a new (and somewhat controversial) initiative of the Employer. The Program was controversial in the sense that there appeared to be some dispute between the Union and the Employer as to whether or not staff were required to complete the Faculty Certificate Program, the consequences if they did not satisfy the requirements of the Program (*i.e.*: if they failed), and the benefits arising, if any, if they completed the Program.

[10] Ms. Bremner testified that Mr. Rod Goertzen was the Academic Director of the ILDC, having been hired in May of 2009. The Director was responsible for a staff of six (6), including an administrative assistant, a faculty development advisor and four (4) facilitators; all of which were in scope. As Academic Director of the Centre, Mr. Goertzen played a lead role in developing and organizing the delivery of the ILDC's programs, with the ultimate goal of strengthening the professionalism and instructional skills of SIAST's instructors and encouraging the continuing professional development of all staff.

[11] With respect to managerial responsibilities, Ms. Bremner testified that the Director was responsible, within budgetary limits, for hiring, disciplining, firing and general management of the Centre's staff. Ms. Bremner also testified that the Director was responsible for policy development related to the ILDC; policies that, as Associate Vice-President of Educational Services, she would then advance to and through the Dean's council for approval. Ms. Bremner testified that the Director did not teach any of the programs offered by the Centre but that he could be called into a class room for two (2) reasons; firstly, to monitor the quality of teaching by his staff; and secondly, to intervene in disputes between an ILDC instructor and a student.

[12] With respect to confidential material, Ms. Bremner testified that, as a member of SIAST's senior management (Band "9" and higher), the Director was involved in strategic planning, including discussions related to labour relations. Of particular significance, SIAST was involved in discussions with the Union respecting the application of the Faculty Certificate Program. In this regard, Ms. Bremner testified that a policy grievance had been filed by the Union in 2006 arguing that this Program was not a *bona fide* job requirement and that in 2007

² Namely; the Director of Business Development and International Partnership, the Director of Applied Research, the Academic Director of Instructional and Leadership Development Centre, the Academic Director of

eight (8) grievances had been filed alleging that staff should be paid more if they completed and passed this Program. In cross examination by counsel for the Union, Ms. Bremner admitted that she had handled these grievances, not the Director of the ILDC. However, Ms. Bremner also indicated that there had been no one at the Centre at the time to handle the grievances and that, if grievances were filed in the future involving the Centre, she would expect the Director to handle them.

[13] In cross examination, Ms. Bremner admitted that the Director, in his policy development role, did not have any role in the development of policies related to the wages paid, or benefits offered, to employees; rather the Director's role in policy development was limited to the operation of the Centre. Ms. Bremner also admitted that, while the Centre's initial budget was prepared by the Director, the Senior Management Committee made the final recommendations on budget to the Vice-President.

[14] The Employer also called Mr. Goertzen, who was the incumbent of the disputed Director of the Instructional and Leadership Development Centre. Mr. Goertzen testified that, although he had been an employee of SIAST for twenty five (25) years, he had only held the position of Director of ILDC for a few months (*i.e.*: since May of 2009). As a consequence, at the time of the hearing, Mr. Goertzen had not had an opportunity to experience many of the duties which he understood he would be responsible for.

[15] Mr. Goertzen confirmed Ms. Bremner's testimony with respect to the description of the ILDC and his duties and responsibilities as Academic Director. Specifically, Mr. Goertzen testified that he was responsible for hiring staff, for managing their performance, including conducting probationary and other appraisals, and for administering any necessary and appropriate discipline. In cross examination, Mr. Goertzen testified that he believed that he would be the first step in any grievance involving the ILDC, but admitted that he had not yet received any formal training on how to handle or how to investigate disciplinary issues.

[16] With respect to the Faculty Certificate Program, Mr. Goertzen testified that the Employer had made completion of this Program a condition of employment for all new faculty members (*i.e.*: newly hired instructors); and that he worked with the Deans or Program Heads to coordinate when these new instructors would take the required courses. Mr. Goertzen testified

that new faculty members were required to complete the Faculty Certificate Program within five (5) years from their date of hire.

[17] In cross examination, Mr. Goertzen testified with respect to his past experience as a Program Head. Mr. Goertzen testified that he had been the head of Basic Education at the Kelsey Campus and that, as a Program Head, he had also been involved in hiring staff (*i.e.*: instructors) and in conducting probationary reviews. Ms. Goertzen testified that, as a Program Head, when he was dealing with issues involving discipline or performance management of his staff, he would involve his Dean. However, as Director of the ILDC, he was now expected to manage (*i.e.*: his staff) on his own.

[18] The position's job description was lengthy, verbose and, in what appears to be the style of the Employer, imposed nearly Herculean expectations on the incumbent. Nonetheless (and with the foregoing caveat), the Job Description appeared to be reasonably consistent with duties and responsibilities of the position as described by both Ms. Bremner and Mr. Goertzen.

Representative Workforce Consultant and Recruitment and Retention Analyst

[19] The Employer called Ms. Rebecca Macaulay. Ms. Macaulay was an Associate Vice-President responsible for the Human Resources Division of SIAST. Ms. Macaulay testified that three (3) departments reported to her³, including the People Strategies directorate and within that directorate there were two (2) disputed positions; namely, the Representative Workforce Consultant and the Recruitment and Retention Analyst.

[20] Ms. Macaulay testified that the incumbent of the Recruitment and Retention Analyst was Mr. Ian Paydli and that this position was responsible for provide management with current and accurate workforce demographic information and strategic advice with respect to the recruitment and retention of employees at SIAST. The position did so by collecting (or coordinating the collection of) both internal staffing information and demographics, together with related information from similar employers. Ms. Macaulay testified that this position provided management with forecasts of SIAST's corporate staffing trends and needs, analyzed workforce demographics and trends from other institutions, and provide management with strategic advice used in developing SIAST's recruitment and retention policies; used by senior management in

³ Namely, the Director of People Strategies, the Director of Employee Relations and the Director of Human Resource Advisory Services.

decisions with respect to the salary and benefits paid to staff; and used by the Employer during collective bargaining with the Union. For example, Ms. Macaulay testified that the incumbent had authored SIAST's "Strategic Work Force Action Plan", from which document the Employer made decisions with respect to market stipends (adjustments) for specific positions to correct for market demand. In cross examination, Ms. Macaulay admitted that the Recruitment and Retention Analyst did not have any staff reporting to him and essentially did not have any budgetary responsibility. Furthermore, Ms. Macaulay admitted that much of the research that he conducted was obtained from either publicly available information (in the case of other institutions) or internal information that was available to many other in scope staff including information that was considered confidential by SIAST. Finally, Ms. Macaulay admitted that the essence of the Recruitment and Retentions Analyst's role was to research and to make recommendations to management based on his findings, not to implement the results of his research.

[21] Ms. Macaulay testified that the incumbent of the Representative Workforce Consultant position was Ms. Liz Duret and that this position was specifically created by SIAST in response to its corporate goal of increasing the proportionality of its aboriginal employees. The Representative Workforce Consultant was responsible for providing management with advice and strategies for the recruitment of persons of aboriginal decent, for identifying internal barriers to aboriginal employment, for recommending changes to SIAST's recruitment and retention practices. Ms. Macaulay testified that SIAST had entered into various Letters of Understanding with the Union specifically intended to achieve the goal of increased proportionality of aboriginal employees and to provide a mechanism for removing barriers in the collective agreements. An example of such barriers was the prescribed use of seniority in posting and staffing position and that the Letters of Understanding provided for the suspension of the seniority rules for specific positions under specified circumstances.

[22] Ms. Macaulay testified that the incumbent, who was a person of aboriginal decent, played a lead role for SIAST in both building and maintaining networks with the Aboriginal community and in working with managers and Program Heads to identify target positions for preferential hiring of aboriginal employees. Finally, Ms. Macaulay testified that the Representative Workforce Consultant assisted senior management in modifying the language used in various SIAST's document, including individual performance plans, to be more sensitive to the aboriginal community. In cross examination, Ms. Macaulay admitted that the

Representative Workforce Consultant did not have any staff reporting to her and that she had not been directly involved with collective bargaining with the Union (*i.e.*: at the bargaining table). Ms. Macaulay also admitted that the Union was complying with the Letters of Understanding that had been signed between the parties.

[23] Ms. Macaulay testified that all staff in the Human Resources Division were out of scope, including eleven (11) other human resource consultants and five (5) human resource assistants in the Human Resource Advisory Services Branch and the Senior Compensation & Rewards Specialist and Senior Recruitment and Retention Specialists in the People Strategies Branch.

[24] The Employer called Mr. Ian Paydli, the incumbent of the disputed Recruitment and Retention Analyst position. Mr. Paydli confirmed Ms. Macaulay's description of the duties and responsibilities of this position. In his own words, his role was to provide "tools" (strategic analysis, benchmark research, and relative equality comparisons) and "advice" to senior management (based on his research) for use in a number of areas, including preparation for collective bargaining. In terms of work flow, Mr. Paydli would be assigned a research task, would collect data (both internally and externally), would analyze the data he had mined, and would write an analysis or strategy in response to the assigned research project for senior management. Mr. Paydli confirmed that most of the external information he used in his research was publicly available but that the internal information he used in his research was often confidential (*i.e.*: containing personal information relative to the salary and benefits paid to individual employees, as well as information he obtained through "exit interviews", etc.). In cross examination, Mr. Paydli admitted that being a member of the bargaining unit would not restrict his capacity to collect the data he utilized in his analysis, as many in scope staff had access to the information he used in his research. However, Mr. Paydli indicated that, as an in scope employee, he would be researching data and conducting analysis without knowing the use to which his data and analysis was going to be put.

[25] The Job Description for the position of Recruitment and Retention Analyst was reasonable consistent with the duties and responsibilities of the position as described by Ms. Macauley and Mr. Paydli.

[26] The Employer called Ms. Liz Durat, the incumbent of the disputed Representative Workforce Consultant position. Ms. Durat confirmed Ms. Macaulay's description of the duties and responsibilities of her position. Ms. Durat testified that one of the challenges of her position was to get "buy in" or support from both Managers and other employees for the goal of increasing the proportionality of aboriginal employees at SIAST, with one of the main obstacles being the traditional role of seniority in recruitment (posting) and hiring of new staff. In Ms. Durat's words, the program only worked if the Employer was able to get the Union to agree to "*overlook seniority in hiring.*" To which end, Ms. Durat testified that an important part of her role was education, both internally and externally. Ms. Durat testified that she worked with Managers to review and flag potential positions (*i.e.*: usually vacancies) for aboriginal preference. Ms. Durat also indicated that she provided advice to the Employer on cultural biases (often unintended), for example in interview guidelines, postings, etc. In cross examination, Ms. Durat admitted that she had not be directly involved in negotiations with Union with respect to the Letters of Understanding that had been agreed to by the parties respect aboriginal employees, but stated that she anticipated that she would play a role in future negotiations with respect to expanding or extending the program. In cross examination, Ms. Durat admitted that, while she had originally been involved in attending interviews conducted for targeted positions, she was not generally involved in interviews any more. Finally, Ms. Durat admitted that, once an aboriginal person was hired into the work force, they enjoyed the same rights as other members of the bargaining units.

[27] The Job Description for the position of the Representative Workforce Consultant was reasonable consistent with the duties and responsibilities of the position as described by Ms. Macauley and Ms. Durat.

Manager, Accounting and Operations Support

[28] The Employer called Ms. Patsy Gilchrist. Ms. Gilchrist was SIAST's Comptroller. Ms. Gilchrist confirmed the significant changes that had occurred at SIAST in recent years and testified specifically with respect the nature of those changes within the Financial Services Division and to the Comptroller's Branch. Ms. Gilchrist testified that each campus previously had its own Comptroller (together with associated staff). However, in the move to a broader corporate management structure, the individual Comptroller functions from each of the campuses were drawn together and centralized. Ms. Gilchrist testified that this new model resulted in the creation of a number of new positions, one of which was a disputed position,

being the Manager, Accounting and Operations Support. Ms. Gilchrist testified that the duties of this disputed position were previously carried out by out of scope employees in each of the respective campuses. However, in 2006, these duties (*i.e.*: the duties now performed by the disputed position) were consolidated into one (1) position, providing SIAST-wide services.

[29] Ms. Gilchrist testified that his position was responsible (from an accounting perspective) for SIAST's not-insignificant inventory of capital assets (with an approximate net book value of \$58.5 million in 2009). In this respect, the incumbent, Mr. Ron Brown, was responsible for leading the physical count of all capital assets (which was conducted on a periodic basis at the rate of one campus per year); for compiling the capital and maintenance budget requires from various facility managers and making recommendations as to the allocation of this portion of the Comptroller's annual budget; and for tracking and reporting on expenditures and revenues related to SIAST's capital assets. In addition, the position was responsible for developing and reviewing internal controls for the protection of SIAST's physical assets (for example, asset disposal procedures).

[30] Ms. Gilchrist testified that the Manager of Accounting and Operations Support was also the project manager for a number of SIAST's major financial initiatives. For example, Mr. Brown was a lead for SIAST's Banner Financial System. The Banner Financial System was the integration of SIAST's general financial system, its student records, and its human resources system. Simply put, the Banner Financial System was a complex data warehouse providing the backbone for all of SIAST's enterprise systems and, as such, was itself an extremely valuable capital asset, containing all of SIAST's digital records including confidential, sensitive and personal information related to SIAST's corporate affairs, its students and its employees. Because of the corporate significance of the Banner Financial System, it was managed by a steering committee, through which all changes, updates and expansions were coordinated by representatives for each the system's user groups or stakeholders. Ms. Gilchrist testified that the Manager of Accounting and Operations Support was the representative of the Financial Services Division on this steering committee. In addition, because of Mr. Brown's long history with these systems, he was the project manager for most changes or updates to the Banner Financial System and providing leadership, coaching and training to a variety of staff involved with the System, including out of scope staff and senior managers.

[31] The Employer called Mr. Ron Brown, the incumbent of the disputed Manager of Accounting and Operational Support position. Mr. Brown had worked for SIAST for twenty seven (27) years and, at the time of the hearing, had been in the disputed position for two and a half (2 ½) years. Mr. Brown confirmed Ms. Gilchrist's description of the duties and responsibilities of his current position. Mr. Brown testified that, although he worked with a variety of staff (both in scope and out), he only had one (1) report, the Fixed Asset – Accounts Payable Clerk.

[32] Mr. Brown testified that part of his responsibility, in coordinating the count of SIAST's inventory, was to report any discrepancies or irregularities. For example, Mr. Brown testified that, during the last inventory count, his team discovered a discrepancy in the inventory information; a discrepancy he believed had arisen because of an improper disposition of assets by someone at SIAST. Mr. Brown testified that he reported this discrepancy to senior management through the Comptroller; that the discrepancy appeared to have occurred as a result of negligence; and that he understood that the person involved had been spoken to by his/her supervisor. In cross examination, Mr. Brown admitted that, if disciplinary proceedings were initiated as a result of a discrepancy he discovered, his role would be limited to that of a witness.

[33] Mr. Brown also testified that he saw an important part or role of his position being to provide strategic planning for senior management. Mr. Brown cited his role in integrating the bookstore's software as an example of strategic planning for the Banner Financial System (through better integration and enhancements for the various component systems). Mr. Brown testified that he also saw his role in coordinating the financial accounting of SIAST's numerous capital assets as an example of his role in assisting in the allocation of SIAST's scarce capital resource. In Mr. Brown's view, he saw the underlying goal of his position as seeking out and finding efficiencies. In cross examination, Mr. Brown expressed his concern that, if his position was within the scope of the bargaining unit, his role in strategic planning would be different and that the search for efficiencies would no longer be part of his duties.

[34] The Job Description for the position of Manager of Accounting and Operations Support was largely consistent with the description of the duties and responsibilities of the position as described by Ms. Gilchrist and Mr. Brown, although it placed particular emphasis on the position's involvement with the Banner Financial System.

Executive Assistants to Campus Directors

[35] The Employer called Ms. Rita Lehner. Ms. Lehner was the Executive Assistant to the Director of the Woodland Campus in Prince Albert, Saskatchewan; a position she had held since June of 1998.

[36] Ms. Lehner testified that approximately 300 employees work out of the Woodland Campus and that approximately 2,000 students train at and through that facility each year. Ms. Lehner testified that there were nine (9) out of scope staff (including herself) located at the Woodland Campus and that she reported to the Campus Director, who was the most senior manager at the campus.

[37] Ms. Lehner testified that the Campus Director was responsible for the overall operation of the Woodland Campus and, in particular, all facilities located at the campus; that, *inter alia*, he was a member of the Administrative Services Committee; that, under SIAST's Violence Policy, the Campus Director had the power to investigate and remove students and teachers from the premises; and that, in handling student appeals, the Campus Director could be called upon to hear allegations against faculty members.

[38] With respect to her managerial responsibilities, Ms. Lehner testified that three (3) support staff reported to her and that she was responsible for allocating their work, monitoring their performance and completing their probationary reviews. In the past, there had been up to twelve (12) support staff reporting to this position, with most of the support staff providing services to specific departments or programs. However, over the years, a number of these support persons were moved to report directly within the department or program area where their services were provided. By way of example, Ms. Lehner testified that she had recently moved one (1) report to another division because, in her opinion, that was where that support person more appropriately belonged. Ms. Lehner also testified that she was responsible for monitoring the Campus Director's office budget, including the tracking of various budget items on an as need basis.

[39] With respect to confidential information, Ms. Lehner testified that, in the normal performance of her duties, she read all of the Campus Director's incoming mail (both electronic and paper), reviewed and organized the information he received for the Administrative Services Committee, assisted in preparing his reports for senior management; and generally provided

administrative and clerical support to the Campus Director in furtherance of his duties. In doing so, Ms. Lehner testified that she had access to, and was responsible for organizing, confidential and sensitive material, such as budget proposals, complaints under the Violence Policy, and student appeals.

[40] Ms. Lehner testified that the duties and responsibilities of the Executive Assistants for the three (3) other Campus Directors were very similar to that described above. The job description for the position of Executive Assistant to the Campus Director (Woodland Campus) was reasonably consistent with Ms. Lehner's description.

Evidence of Union:

[41] The Union called Mr. Garry Ramage. Mr. Ramage had worked for SIAST for approximately thirty six (36) years in a variety of positions. At the time of the hearing, Mr. Ramage was a Program Head, supervising ten (10) full time and five (5) part time academic staff. Mr. Ramage indicated that, while all of his reports were within the Academic Bargaining Unit, some Program Heads supervise members of both bargaining units.

[42] Mr. Ramage testified that, as a Program Head, he had authority to hire both full time and part time instructors for his program area. Mr. Ramage testified that he did so with the assistance of the Human Resources Division but that "*with HR's assistance, he was totally in charge of hiring.*" Mr. Ramage testified that he provided orientation to new employees, assigned classes to the instructors within his program area, mentored and coached his instructors, assisted the Dean in budget strategies and forecasting, and completed probationary appraisals for the new instructors within his program area. Mr. Ramage testified that, if more formal discipline was required or became involved, he would involve the Dean. However, for most matters related to the day to day administration of the program area, he was in charge. In cross examination, Mr. Ramage admitted that, while in scope supervisors had authority to administer discipline (including written reprimands), the signature and confirmation of that person's immediate out of scope supervisor was required.

[43] Mr. Ramage described incidents where, as a Program Head, he had been called upon to perform various managerial duties and exercise management-like authority. While he was performing these duties, he was not only a member of the bargaining unit; but also a shop steward and on the Academic negotiating team. Mr. Ramage indicated that, in doing so, he did

not perceive any conflict in performing his duties or any compromised in his loyalty to either his Employer or the Union. For example, Mr. Ramage testified that as a Program Head, he had access to both confidential and sensitive information but that, even though he had access to this information, he did not divulge inappropriate information to the Union.

[44] The Union called Ms. Tracy Kurtenbak. Ms. Kurtenbak had worked for the Employer for twenty-five (25) years and, at the time of the hearing, was a Budget Analyst within the Finance Department. Ms. Kurtenbak testified that there were approximately 650 members in the Professional Services Unit and that she had been the chair of the bargaining unit since 2002.

[45] Ms. Kurtenbak testified that as a Budget Analyst she had high level access to SIAST's financial information and some access to its human resource information (*i.e.*: through the Banner Financial System). She routinely worked with various departments in developing their respective budgets and had access to, and had a detailed understand of, the Employer's budget proposals. For example, Ms. Kurtenbak testified that she could even have access to the Employer's budget proposals related to collective bargaining; not necessarily the details, but certainly the total amount that had been set aside by the Employer in anticipation of collective bargaining. Ms. Kurtenbak testified that, even though she had access to this kind of information, she did not share it with the Union. Furthermore, Ms. Kurtenbak testified that she did not feel this information placed her in a conflict with the Union because she was a professional and felt she had a clear understanding of what information she could share with the Union and what information she could not.

[46] Ms. Kurtenback also testified with respect to the hiring practices at SIAST and the scope of authority delegated to in scope supervisors through the collective agreements. Simply put, Ms. Kurtenbak's evidence was that the parties had negotiated very detailed collective agreements dealing with hiring practices, employee behaviour and performance management, rates of pay, overtime, hours of work, bumping, and sick leave; to note but a few.

[47] Finally, the Union called Mr. Jim Steele. Ms. Steele had been with SIAST for nearly thirty seven (37) years and, at the time of the hearing, was on full time leave, and the Chair of the Academic Bargaining Unit.

[48] Mr. Steele confirmed the testimony of previous witnesses with respect to the sophistication of the collective agreements that had been negotiated by the parties. Mr. Steel also testified as to the broad range of employees that were included within the bargaining units and the authority that had been delegated to in scope supervisors at SIAST. In cross examination, Mr. Steel noted that most Program Heads continued to teach, with their supervisory duties being assigned as additional responsibilities for which they received additional remuneration under the Collective Agreement. In cross examination, Mr. Steele confirmed that, if a Program Head becomes involved in discipline beyond coaching and mentoring, that person's immediate out of scope manager (*i.e.*: a Dean) would become involved.

Relevant Statutory Provisions:

[49] The relevant provisions of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "Act"), include:

2 *In this Act:*

(f) "employee" means:

(i) a person in the employ of an employer except:

(A) a person whose primary responsibility is to actually exercise authority and actually perform functions that are of a managerial character; or

(B) a person who is regularly acting in a confidential capacity with respect to the industrial relations of his or her employer;

(i.1) a person engaged by another person to perform services if, in the opinion of the board, the relationship between those persons is such that the terms of the contract between them can be the subject of collective bargaining.

(ii) **Repealed.** 1983, c. 81, s.3.

(iii) any person designated by the board as an employee for the purposes of this Act notwithstanding that for the purpose of determining whether or not the person to whom he provides his services is vicariously liable for his acts or omissions he may be held to be an independent contractor; and includes a person on strike or locked out in a current labour-management dispute who has not secured permanent employment elsewhere, and any person dismissed from his employment whose dismissal is the subject of any proceedings before the board;

...

5 *The board may make orders:*

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

. . .

(m) *subject to section 5.2, determining for the purposes of this Act whether any person is or may become an employee;*

Argument and Analysis:

[50] The Employer argued that none of the disputed positions belonged within the scope of the bargaining units based on either the managerial or confidential exemption or some combination of both and filed a detailed Brief of Law, which the Board has read and is thankful. On the other hand, the Union argued that none of the positions ought to be excluded from the bargaining units and also filed a detailed Brief of Law setting out their arguments.

[51] The Board would like to preface its comments with the observation that the circumstances of the present case are unusual in a couple of important respects. Firstly, although this is an application to amend the exclusions contained in existing certification Orders, we note that the exclusions set forth in the Board's Orders were defined by statute; not determined by the Board; and that this statute has now been repealed. In the Board's opinion (and because of this unique circumstance), the Employer was not required to demonstrate a material change in circumstances with respect to the disputed positions; neither was this threshold issue raised by the parties. However, out of an abundance of caution in this regard, we wish to state that we were satisfied that the evidence demonstrates a material change in circumstances sufficient to satisfy the requirements of the Board. In this regard, the Board notes that a major corporate reorganization occurred in the workplace in the twenty-one (21)

years since the Board's certification Order and that this reorganization resulted in changes to numerous positions, including the disputed positions.

[52] Secondly, the Board notes that in each case the disputed positions had been treated by the parties as out of the scope of the bargaining units. Nonetheless, in the Board's opinion, the Employer bears the burden of establishing that the disputed positions are not "employees" within the meaning of s. 2(f)(i) of the *Act*.

[53] Thirdly, it was apparent to the Board that the parties enjoy a very mature bargaining relationship. For example, the collective agreements for both bargaining units demonstrated a high degree of sophistication, with the parties negotiating resolutions to numerous complex and difficult labour relations issues. The Board also notes that the parties embarked upon a rational and thoughtful process in an effort to resolve the exclusions that they believed were appropriate for these bargaining units and were successful for all but the disputed positions. Finally, we noted that the conduct of the parties throughout the proceedings and, in particular the witnesses that testified, was indicative of a work environment where both the Employer and the Union place a demonstrable emphasis on innovation, academic excellence, and professionalism.

[54] In the present case, the Board is called upon to determine whether or not the positions in question ought to be excluded from the bargaining units either because the primary responsibilities of that position involve the actual exercise of authority, and the actual performance of functions, that are of a managerial character (*i.e.*: the managerial exclusion) or because that position regularly acts in a confidential capacity with respect to the industrial relations of the workplace (*i.e.*: the confidential exclusion) or some sufficient combination of both.

[55] The Board has on many occasions articulated helpful criterion for the making of such determinations but has also concluded that there is no definitive test for determining which side of the line a position falls (*i.e.*: within or outside the scope of the bargaining unit). Simply put, the Board's practice has been to be sensitive to both the factual context in which the determination arises and the purpose for which the exclusion have been prescribed in the *Act*. The Board tends to look beyond titles and position descriptions in an effort to ascertain the true role which a position plays in the organization. See: *Grain Service Union (ILWU Canadian Area) v. AgPro Grain Inc.*, [1995] 1st Quarter Sask. Labour Rep. 243, LRB File No. 257-94;

Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Remai Investments Corporation, [1997] Sask. L.R.B.R. 335, LRB File Nos. 014-97 & 019-97; and *University of Saskatchewan vs. Administrative and Supervisory Personnel Association* [2008] Sask. L.R.B.R. 154, LRB File No. 057-05.

[56] The purpose of the statutory exclusion from the bargaining unit for positions whose primary responsibilities are to exercise authority and perform functions that are of a managerial character is to promote labour relations in the workplace by preserving clear identities for the parties to collective bargaining (and to avoid muddying or blurring the lines between management and the bargaining unit). See: *Hillcrest Farms Ltd. v. Grain Services Union (ILWU – Canadian Area)*, [1997] Sask. L.R.B.R. 591, LRB File No. 145-97.

[57] The purpose of the statutory exclusion for positions that regularly act in a confidential capacity with respect to industrial relations is to assist the collective bargaining process by ensuring that the employer has sufficient internal resources (including administrative and clerical resources) to permit it to make informed and rational decisions regarding labour relations and, in particular, with respect to collective bargaining in the work place, and to permit it to do so in an atmosphere of candour and confidence. See: *Canadian Union of Public Employees, Local 21 v. City of Regina and Regina Civic Middle Management Association*, [2005] Sask. L.R.B.R. 274, LRB Files Nos. 103-04 & 222-04.

[58] The Board has noted that, unlike the managerial exclusion, the duties performed in a confidential capacity need not be the primary focus of the position, provided they are regularly performed and genuine. In either case, the question for the Board to decide is whether or not the authority attached to a position and the duties performed by the incumbent are of a kind (and extent) which would create an insoluble conflict between the responsibilities which that person owes to his/her employer and the interests of that person and his/her colleagues as members of the bargaining unit. However, in doing so, the Board must be alert to the concern that exclusion from the bargaining unit of persons who do not genuinely meet the criteria prescribed in the *Act* may deny them access to the benefits of collective bargaining and may potentially weaken the bargaining unit. As a consequence, exclusions are generally made on as narrow a basis as possible, particularly so for exclusions made because of managerial responsibilities. See: *City of Regina, supra*.

[59] Finally, the Board recognizes that employers and trade unions often negotiate scope issues and come to resolutions that may not be immediately apparent to the Board. In accepting these determinations, the Board acknowledges that the parties are in a better position to determine the nature of their relationship. The determinations that have been made by the parties can be of great assistance to the Board in understanding the maturity of the collective bargaining relationship and kinds of lines that the parties have drawn between management and its staff. However, in the Board's opinion, when it is called upon to make determinations as to scope, the benchmark for our determinations must be s. 2(f)(i) of the *Act* (the definition of an "employee") and our understanding of the purposes for which the statutory exemptions were included. While we are mindful of the agreements of the parties as to the scope, the genesis for our determinations must be *The Trade Union Act* and the jurisprudence of the Board in interpreting that statute.

[60] With these ruminations in mind, we will now turn to the disputed positions.

Academic Director, Instructional and Leadership Development Centre

[61] The Employer argued that the position of Academic Director of the ILDC entailed a sufficient degree of authority and managerial function that it ought to be excluded from the bargaining units. The Employer described this position as being of paramount importance in the management structure of SIAST because of the ILDC's role in advancing the academic standards and skills of the faculty. The Employer distinguished the duties of this position from that of a Program Head by noting that the subject position had broad responsibilities (SIAST-wide) for the professional development of academic staff and had final managerial authority for the staff of the Centre (his six (6) reports).

[62] The Employer relied upon the following decisions of the Board; *Re: MacKenzie Society Ventures Inc.*, [1998] Sask. L.R.B.R. 387, LRB File No. 169-97; and *United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp.*, [2008] Sask. L.R.B.R. 951, 2008 CanLII 64399 (SK.L.R.B.), LRB File No. 069-04.

[63] The Union argued that the subject position had duties and responsibilities similar to other in scope supervisors, such as Program Heads; noting that many Program Heads supervise more staff than the Director of the ILDC. The Union pointed to the fact that Ms. Bremner had handled the past grievances involving the ILDC as evidence of who had actual

authority over the managerial issues arising out of the Centre. The Union took the position that that the managerial responsibilities of the Director of the ILDC were minor and consistent with that of other in scope supervisors. The Union argued that, in a highly sophisticated work place such as SIAST, with the scope of available assistance from the Human Resources Division, there was no requirement to exclude this position from the bargaining units. With respect to the significance of the Director's involvement in the Faculty Certificate Program, the Union took the position that the administration of this Program was not a managerial function merely because it was mandatory for certain members. The Union indicated that it saw no labour relations conflict between faculty (who were students of ILDC programs) and the responsibilities of the Director (in administering the Centre) and that, if disputes or conflicts arose, they could be resolved by a more senior manager (*i.e.*: the Associate Vice-President).

[64] The Board was satisfied that the position of Director of the ILDC demonstrated a sufficient degree of managerial responsibility that it ought to be excluded from the scope of the bargaining units. Firstly, while the staff compliment of the ILDC is relatively small, the Director's primary responsible was for the management of those staff and, through those staff, the delivery of the programs of the Centre. In this respect, the Board did note that, unlike many smaller employers, SIAST has a fully staffed and functional human resource department to assist and augment those positions called upon to exercise managerial and supervisor responsibilities. Nonetheless, we are satisfied that the subject position is assigned true managerial responsibility for six (6) positions and that this responsibility is the primary focus of the position. In this regard, we note that the management responsibilities of this position are sufficiently distinct from the responsibilities assigned to other in scope supervisors at SIAST. For example, the Board observed that Program Heads appear to be instructors who have been assigned, and have agreed to accept, supervisory responsibility in addition to their academic assignments. Furthermore, while in scope supervisors at SIAST exercise many management-like authorities, these additional responsibilities are administered under prescribed conditions set forth in the collective agreements and under the auspices of an out of scope manager, such as a Dean. In the Board's opinion, the Director's managerial responsibilities are the primary focus of the position and are sufficiently distinguishable from that of in scope supervisors.

[65] In addition, the Board notes that the ILDC appears to play an important role in administering a condition of employment for faculty members. The evidence indicated that completion of the Faculty Certificate Program was a requirement for new instructors and

negotiations were taking place between the Employer and the Union as to the application of this Program to existing academic members. In these circumstances, where mandatory courses are taught by instructors/staff of the ILDC (who are members of the bargaining unit), there logically and practically needs to be a person in the Centre for the resolution of disputes with faculty members (students) taking the ILDC's programs as a condition of employment. In the Board's opinion, the reasonable and practical person to perform this function would be the Director and the resolution of such disputes is a managerial function placing the Director into an insoluble conflict with other members of the bargaining unit.

[66] In our opinion, the combination of these two (2) aspects of this disputed position is sufficient that it properly ought to be placed outside the scope of the bargaining units.

Recruitment and Retention Analyst and Representative Workforce Consultant

[67] The Employer argued that both of these disputed positions regularly act in a confidential capacity with respect to the industrial relations of the workplace; noted that both positions were located in the Human Resources Division; and observed that the function of the Human Resources Division was to assist the Employer in making informed and rational decisions regarding labour relations in the workplace, including preparation for and the conduct of collective bargaining. The Employer argued that, for these positions to function properly, they need to be out of scope so that they may fully participate in the communications that take place within this senior management in an atmosphere of candour and confidence.

[68] The Employer noted that the Recruitment and Retention Analyst had appeared before the Senior Management Committee of SIAST to brief the Employer on trends, to provide forecasts, and to provide advice on best practices and potential responses to observed trends. Specifically, the Employer noted that the research of this disputed position could turn up practices and trends that the Employer may not be able to afford to implement. In addition, the position may be asked to compile and analyze potentially negative information about the Employer.

[69] With respect to the Representative Workforce Consultant, the Employer noted that this position was created in specific response to SIAST's desire to increase the percentage of its aboriginal employees; a goal that the Employer argued could only be implemented by

implementing major changes in labour relations in the workplace (the suspension of seniority rules for posting and staffing of positions).

[70] In arguing for the exclusion of these two (2) positions, the Employer relied upon the decisions of the Ontario Labour Relations Board in *York University Staff Association v. York University* [1994] OLRB Rep. January 96; and *Wellington Separate Support Staff Association*, [1993] O.L.R.D. No. 3368.

[71] The Union argued that there was no conflict, certainly no insoluble conflict, between the duties and responsibilities of either the Recruitment and Retention Analyst or the Representative Workforce Consultant on behalf of the Employer and the interests of other members of the bargaining units. The Union noted that other in scope employees, such as Budget Analysts, have access to confidential financial information concerning matters such as general wage increases, program cuts and overall budget projections. The Union also noted that it has been the practice at this workplace to permit in scope staff to have access to confidential information, including confidential information related to labour relations, with the understanding that this information will not be shared with other members of the bargaining units and/or the Union. The Union argued that the information collected by the Recruitment and Retention Analyst was no more confidential than the information made available to other in scope staff. Simply put, the Union took the position that, in this workplace, access to sensitive information did not preclude union membership because its members were professional enough to recognize confidential information and knew that it was not proper to share this information with the Union.

[72] With respect to the Representative Workforce Consultant, the Union saw the primary responsibilities of this position as being promotion of aboriginal awareness, building relationships within the aboriginal community, and educating management and staff of SIAST with respect to the agreed goal of increasing the proportion of aboriginal employees in the work place. The Union saw no reason why this position could not remain within the scope of the Professional Services Unit, given the maturity and sophistication of the bargaining relationship between the Union and the Employer. The Union pointed to the Letters of Understanding that had been negotiated as examples of its approval and contribution toward the Representative Workforce Strategy and saw no conflict in the disputed position's promotion of the goals of this Program (*i.e.*: because it had been agreed to by the Union). With respect to collective bargaining, the Union disputed the Employer's assertions as to the incumbent's role (lead or

otherwise) in the negotiations between the Employer and the Unions with respect to changes to the Letters of Understanding (re: Aboriginal Representation). The Union indicated that it had not observed the level of involvement indicated by the Employer.

[73] Simply put, the Union saw no reason that the incumbents of these two (2) disputed position should lose the benefits of collective bargaining based on the duties and responsibilities they performed; particularly, in a work place where confidential information is routinely shared with in scope staff.

[74] In the Board's opinion both the Recruitment and Retention Analyst and the Representative Workforce Consultant are properly outside of the scope of the bargaining units; not because they have sufficient managerial responsibilities; but because they represent the kind of internal resources that are necessary and desirable to enable the Employer to make informed and relational decisions regarding industrial relations with the Union. These positions were located in the Employer's Human Resources Division, together with numerous other topic specialists, advisors, and clerical resources; and that the *raison d'être* of this Division is to assist the Employer in making informed and rational decisions regarding its relations with the Union and, through the Union, its employees. The purpose of the statutory exemption is to advance and promote collective bargaining and, it does so, by ensuring that the Employer has access to appropriate internal resources, including topic specialists on matters affecting labour relations in the workplace. Notwithstanding the safeguards that the Union has incorporated to permit its members to have access to sensitive information, employees can only provide their advice with the kind of candour, and the Employer can only have the atmosphere of confidence, anticipated by the *Act* in circumstances of undivided loyalties.

[75] Even if the Board accepts the Union's argument that it ought to be guided by scope decisions that have been negotiated by the parties; for example, decisions that permits in scope staff (for example, Budget Analysts) to have access to sensitive information on the understanding that information related to labour relations will not be shared with the Union, the duties and responsibilities of the Recruitment and Retention Analyst are distinguishable. For topic specialists, it is not so much the confidential or sensitive nature of the information which the disputed position has access to, it is the uses to which that information is being put that places the disputed position within the confident exemption. This position mines a broad range of data (some of which is confidential, some of which is sensitive, and some of which is public) based on

the specific research requirements of the Employer, which requirements regularly related to the labour relations of the workplace. The mere fact that Mr. Paydli is researching a particular topic may be sensitive from a labour relations perspective; let alone his findings and conclusions. In the Board's opinion, placing the Recruitment and Retention Analyst within the scope of the bargaining unit would place the incumbent into the very type of insoluble conflict that the statutory exemption is intended to avoid.

[76] With respect to the Representative Workforce Consultant, the Board is also satisfied that this position regularly provides information, advice and recommendations to the Employer on a topic that has already found its way to the bargaining table. It was apparent from the evidence that the goal of obtaining a representative workforce can not be achieved without affecting one of the most basic elements of labour relations in the workplace; the Employer's hiring practices. Irrespective of the Union's support for this initiative and the cooperation that has been demonstrated by the various Letters of Understanding, the essence of the work being performed by the disputed position is to assist the Employer in altering its industrial relations with the Union. In the Board's opinion, it matters not that aboriginal employees, once hired, enjoy the same benefits as other members of the bargaining units, the relevant fact is that the goal of obtaining a representative workforce is being pursued by suspending the existing rights of members of the bargaining unit. As a consequence, it is our opinion that the duties and responsibilities of this position would place the incumbent in an insoluble conflict if it were included within the scope of the bargaining units.

Manager, Accounting and Operations Support

[77] The Employer argued that it was very important that this disputed position have undivided loyalties because of the incumbent's role in both managing and protecting SIAST's capital assets; because of the impact on staff associated with his recommendations regarding the allocation of SIAST's scarce capital dollars; and his role in providing strategic advice to senior management and leading other employees in enterprise-wide projects. In support of this position, the Employer relied upon the decision of the Manitoba Labour Relations Board in *Employees Supporting Education Services v. University of Manitoba*, (unreported) Case No. 394/05/LRA, and the decision of the Alberta Labour Relations Board in *United Nurses of Alberta, Local 151*, [1986] Alta. L.R.B.R. 610.

[78] The Union, while recognizing the incumbent's accounting expertise, saw the Manager of Accounting and Operations Support as a supervisor and team leader but not as a Manager. The Union argued that the incumbent spends most of his time as a professional accountant and that, while he may be independent, self-motivated and self-directed in the exercising his duties, the Union saw no conflict, certainly no insoluble conflict, in this position being located within the bargaining unit. The Union acknowledged that the incumbent, as a lead in the Banner Financial System, had access to SIAST's corporate information, including confidential and sensitive information; but noted that at SIAST this was not particularly unusual, with many in scope and out of scope staff having access to such information.

[79] The Union argued that this disputed position was an example of a position that, in a smaller less mature bargaining unit, might be seen as beyond the scope of the bargaining unit. However, the Union argued that, at this particular workplace, with its mature bargaining relationship, with the considerable degree of power sharing granted to in scope managers and with its highly professional workforce, the Manager of Accounting and Operations Support could fully and effectively discharge his duties and responsibilities as a member of the Professional Services Unit, just as many other in scope professionals do.

[80] With respect to the Manager of Accounting and Operation Support's position, the eclectic nature of the duties and responsibilities assigned to this position make it difficult to evaluate. The position has a mix of accounting and project management responsibilities, with the incumbent working with various levels of management. Ms. Gilchrist testified that his duties were previously performed by out of scope staff before the position was created. Furthermore, the incumbent had held a variety of management positions with SIAST, most outside the scope of either bargaining unit. However, the question for the Board is whether or not the duties and responsibilities of **this position** are sufficient to attract either of the exclusions provided for in the *Act*. In doing so, we are mindful of the factual context in which this determination arises, including the maturity of the bargaining relationship and the considerable degree of power sharing provided to in scope supervisors in this workplace.

[81] After examining the evidence, the Board is not satisfied that a sufficient conflict of interest exists for this position to be excluded from the bargaining unit. The incumbent's direct supervisory responsibilities were limited and insufficient to attract the managerial exclusion, particularly so in this kind of sophisticated work environment, with the level of human resource

support provided to in scope supervisors and the degree of specificity provided for in the Union's collective agreements.

[82] While the Manger of Accounting and Operations Support has very high level access to SIAST's corporate information, including confidential and sensitive information, this access alone is not sufficient to attract the confidential exclusion because, in the Board's opinion, the reason the incumbent has access to such information, and the uses to which it is puts by the incumbent, does not have a sufficient impact on the labour or industrial relations of the workplace. We agree with the Union that, while the incumbent appears to operate with a considerable degree of independent, provides valuable professional services and advice to the Employer, and is capable of leading both in scope and out of scope in major corporate projects, the essence of the position (the actual duties and responsibilities) is not sufficient to be excluded from the bargaining unit; particularly so in this particular workplace. In the Board's opinion, the Manager of Accounting and Operations Support ought properly to be a member of the Professional Services Unit.

Executive Assistants to Campus Directors

[83] The Employer observed that the Campus Director is the most senior manager on each of the campus with responsibilities for the overall operation of those facilities. The Employer argued that the Executive Assistant's duties, in coordinating the activities of Campus Director's office, necessarily invoked the confidential capacity exemption, providing the kind of administrative and clerical support necessary by senior managers in the performance of their duties. In addition, the Employer argued that the Executive Assistants had their own managerial responsibilities over their own direct reports.

[84] The Union, on the other hand, argued that there was no need for the Executive Assistants to be out of scope. Firstly, the Union argued that any supervisory responsibilities exercised by the incumbents were routinely performed by in scope supervisors and not sufficient to attract the managerial exemption. With respect to the confidential exemptions, the Union disputed the extent of the Executive Assistant's duties in relation to confidential (with respect to labour relations matters) and suggested that the Human Resources Division could carry out any necessary duties related to confidential or sensitive information. The Union pointed to a number of in scope positions, such as the Administrative Assistant to the Academic Director of the Virtual Campus and the Administrative Assistant to the Registrar that worked closely with out of scope

managers, that handled sensitive and confidential communications, that prepared documents for meetings of senior management, and that the Union believed were similar to the disputed positions.

[85] With respect to the Executive Assistants to the four (4) Campus Directors, the Board has concluded that these positions should be outside the scope of the bargaining units. While the Board was not satisfied that these positions attracted the managerial exemption, we were satisfied that they did invoke the confidential exemption. If left to collective bargaining, it is entirely possible that the parties may negotiate these positions to fall within the scope of the Professional Services Unit. Certainly, it appears that the parties have negotiated the inclusion of other position; positions for which the Board may have found one or both of the statutory exemptions to apply. However, as previously stated, while the Board is mindful of the scope decisions that have been made by the parties in defining the line between management and employees, the Board must be guided by the *Act* and our jurisprudence with respect to the purpose for which the exemptions were created.

[86] The evidence established that the Executive Assistants provided clerical and administrative support to the most senior representatives of management on each of the respective campuses. Their regular duties involve organizing and the general supervision of the functioning of the Campus Director's office, including that person's role in managing labour relations issues in the workplace. The purpose of the confidential exemption is to ensure that management has the necessary internal resources (including clerical and administrative resources) it needs in dealing with industrial relations within the workplace.

[87] The Union's objection to the exclusion of these positions appeared to be based on its observation that, with SIAST's corporate evolutions and its move to centralized management, the influence (from a labour relations perspective) of the individual campus had also been relocated. While there is merit to this argument, the evidence established that approximately 300 staff members worked out of the Woodland Campus and presumably similar numbers work out of the other campuses. Even if the Board accepts that the influence of the Campus Directors has been reduced, the Campus Director is still the most senior management representative on site for a relatively large workforce. In this regard, the Board notes that it saw no evidence of an imbalance in the number of out of scope positions sought by the Employer. Considering the size and complexity of the workplace, the total number of out of scope position was modest. By way

of example, at the Woodland Campus, only nine (9) positions (included the disputed position) were out of scope, with a workforce of 300.

[88] Simply put, given the modest proportion of positions falling outside the scope of the bargaining unit, the Board was satisfied that the Employer's request that these disputed positions should fall outside the scope of the bargaining units was reasonable and consistent with the purpose for which the statutory exemption was created.

Conclusion:

[89] For the foregoing reasons, we have concluded:

1. that the positions of:
 - a) Academic Director, Instructional and Leadership Development Centre,
 - b) Recruitment and Retention Analyst,
 - c) Representative Workforce Consultant, and
 - d) Executive Assistants to Campus Directors

shall be excluded from the bargaining units;
2. that the position of the Manager of Accounting and Operations Support shall be within the scope of the Professional Services Unit;
3. that the parties shall have a period of ninety (90) days from the date of these Reasons for Decision to negotiate with respect to the scope of the position of Manager, Business Intelligence and to file a list of exclusion which have been agreed to by the parties for the bargaining units;
4. that, in the event the parties are unable to agree on the scope of the Manager, Business Intelligence, the parties shall have leave to return to the Board for a determination with respect to that position for a period of one (1) year following the date of these Reasons for Decision; and

5. that in the event the parties return to the Board for a determination with respect to the scope of the Manager, Business Intelligence, this panel of the Board shall remain seized with respect to that determination.

DATED at Regina, Saskatchewan, this **22nd** day of **December, 2009**.

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson