

**The Labour Relations Board
Saskatchewan**

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 5004, Applicant v. SASKATOON HOUSING AUTHORITY, Respondent

LRB File No. 048-10; July 21, 2010

Vice-Chairperson, Steven Schiefner; Members: Bruce McDonald and Ken Ahl

For the Applicant Union: Ms. Crystal L. Norbeck
For the Respondent Employer: Ms. Leah Schatz

Bargaining unit – Appropriate bargaining unit – Union seeks certification of under-inclusive bargaining unit – Board notes that proposed unit includes all employees working at the employer’s maintenance shop – Board satisfied that where employees work provides rationale and defensible boundary to define bargaining unit – Little intermingling with other employees - Board satisfied that proposed unit is appropriate.

The Trade Union Act, ss. 2(a) and (b), 3, 5(a), (b) and (c).

REASONS FOR DECISION

Background:

[1] Steven D. Schiefner, Vice-Chairperson: On April 29, 2010, the Canadian Union of Public Employees, Local 5004 (the “Union”) applied to the Saskatchewan Labour Relations Board (the “Board”) to be designated as the certified bargaining agent for a group of employees employed by the Saskatoon Housing Authority (the “Employer”).

[2] In its Reply, the Employer took the position that the bargaining unit proposed by the Union was not an appropriate bargaining unit.¹

[3] The application was heard on June 22, 2010, in Regina, Saskatchewan. The Union relied upon the material filed with their application. The Employer called Mr. Raymond Neale, the Operations Manager for the Saskatoon Housing Authority.

Facts:

[4] The evidence relevant to these proceedings was not in dispute.

¹ In its Reply, the Employer identified another issue related to the scope of the bargaining unit. However, that issue was resolved by agreement of the parties prior to the date of hearing.

[5] The Saskatoon Housing Authority manages and provides residential property services to approximately 2,600 housing units in Saskatoon. These units are intended for persons or families with low or moderate income, with rents subsidized commensurate with the income of tenants. The majority of these units are located in thirty (30) concentrated complexes, which involve apartment-style buildings, row housing complexes, or some combination thereof. In addition to these concentrated residential complexes, the Employer also manages and provides residential property services to approximately 360 scattered houses and/or duplexes located throughout the City of Saskatoon.

[6] The Saskatoon Housing Authority is organized into three (3) primary departments; being, the Tenant Services Department, the Finance Department and the Maintenance Department. In total, the Employer has approximately fifty-eight (58) employees.

[7] The Employer's main office is located at 525 – 24th Street East. However, the Employer also has a maintenance shop located at 1025 Avenue P South, where certain employees in the Maintenance Department are located.

[8] The Union applied for certification of a unit consisting of all maintenance employees, including but not limited to, the maintenance supervisor, maintenance office coordinator, vacancy coordinator, maintenance technicians, service technicians mechanical coordinators, maintenance engineer coordinator and seasonal employees, except for the maintenance services manager.² The unit proposed by the Union included twelve (12) employees in the Employer's Maintenance Department, all working out of the Employer's maintenance shop located on Avenue P (south). On the Employer's organizational chart (and in the Employer's Statement of Employment), the positions within the proposed unit were described as the Maintenance Supervisor, two (2) Maintenance Office Coordinators, a Vacancy Coordinator, two (2) Maintenance Mechanical Coordinators and six (6) Maintenance Technicians. Although the parties utilized slightly different nomenclature for describing the affected positions, the parties were in agreement that the unit proposed for certification by the Union involved all of the Employer's non managerial employees working at the Employer's maintenance shop.

² The Union had originally sought exclusion of the "maintenance supervisor". However, it was agreed by the parties that this position should be included within the scope of the proposed bargaining unit.

[9] All of the affected employees worked in the Employer's Maintenance Department. While there are other employees working in that department, the other employees do not work directly out of the maintenance shop. For example, the Employer employed approximately twenty-eight (28) other individuals, generally referred to as "*Site Managers*", who had various titles and provided a range of maintenance and property management services to the concentrated housing complexes operated by the Employer. These positions included "*Resident Managers*", who reside at a particular residential complex, manage and provide maintenance services to that residential complex; "*Assistant Resident Managers*", who do not necessarily reside at a particular residential complex but are assigned to work at that complex, along with the Resident Manager, providing maintenance and property management services; "*Off-site Managers*", who manage and provide maintenance services to a particular residential complex but do not live at that complex; and "*Field Services Support Technicians*", who (as the name would imply) provide field services support for the Site Managers. Although all of the Site Managers had regular contact with staff in the maintenance shop, none of these individuals (including the Resident Managers, Assistant Resident Managers, Off-site Managers, and Field Services Support Technicians) worked out of the maintenance shop. Rather, these individuals were assigned to work at one or more of the Employer's concentrated residential complexes, with some residing at the workplace and some working from home.

[10] Much of the evidence tendered during the hearing centered around the relative differences and similarities between the duties and responsibilities of the Maintenance Technicians (who were included within the Union's proposed bargaining unit) and of the Site Managers (who were not included within the proposed bargaining unit), as well as the working relationship(s) between the employees proposed to be included within the bargaining unit and the other employees of the Employer's Maintenance Department.

[11] Mr. Neale testified as to the primary purposes of the respective positions, the nature of the work performed by the incumbents, and the qualifications and competencies expected of employees in the performance of their assigned duties. Mr. Neale tendered as evidence, copies of the job profiles for the respective positions and was examined and cross-examined on these documents. This evidence disclosed that both the Maintenance Technicians and Site Managers are primarily employed to maintain and repair the Employer's housing units. The minimum requirements and competencies are very similar and the nature of the work

performed by both positions is general maintenance, with the specificities of duties determined by the nature of the facilities where their services are rendered.

[12] For example, because the concentrated complexes operated by the Employer have common areas requiring periodic cleaning, the Site Managers had responsibility for “janitorial” duties (i.e. cleaning and vacuuming of hallways and common areas). While Maintenance Technicians could be called upon to perform basic cleaning (removing garbage and debris in the event of a vacancy), they generally had no janitorial duties. Similarly, because Site Managers often lived on site, they generally had more direct contact with tenants than Maintenance Technicians (who generally do not have direct contact with tenants) and thus greater interpersonal/customer service competencies were required by Site Managers. The primary difference between the two (2) positions was that the Site Managers were assigned to and work at one or more of the Employer’s concentrated housing complexes; whereas, the Maintenance Technicians were not assigned to a particular housing unit. Rather, Maintenance Technicians worked out of the maintenance shop and were deployed to provide maintenance services, as needed, to the scattered housing complexes.

[13] While the Maintenance Technicians require a higher level of electrical and plumbing skills than Site Managers, both require, at least, basic knowledge in both of these areas.

[14] With respect to the working relationship between the employees working at (or out of) the maintenance shop (proposed to be within the bargaining unit) and other employees of the Maintenance Department (not in the proposed bargaining unit), Mr. Neale testified that periodically a Site Manager may require additional assistance at a concentrated complex and seek the assistance of a Maintenance Technician, who would be dispatched from the maintenance shop or would stop by when going to or returning from an assignment. On such occasion, a Site Manager and a Maintenance Technician would work together. However, Mr. Neale confirmed that such deployments were not part of a Maintenance Technician’s normal duties and that Site Managers and Maintenance Technicians did not work together on a regularly-scheduled basis. In cross-examination, Mr. Neale also confirmed that Site Managers would not be deployed to perform the duties of a Maintenance Technician (i.e. to perform maintenance on the scattered housing units).

[15] As to the day to day activities of the maintenance staff, Mr. Neale testified that both the Maintenance Technicians and the Site Managers operationally report to the Maintenance Supervisor and, through the Maintenance Supervisor, to the Maintenance Service Manager. Maintenance Technicians report to the maintenance shop each morning and are dispatched to perform required maintenance and/or services to the scattered housing units by the Maintenance Office Coordinator. The Employer utilizes a “work order” system for allocating and recording the work of Maintenance Technicians. Site Managers generally do not report to the Maintenance Office nor are they dispatched or otherwise assigned work by the Maintenance Office Coordinator. Rather, Site Managers are responsible for a particular concentrated residential complex and report directly to their respective workplaces, presumably organizing their own work as they deem appropriate.

[16] While generally, both Maintenance Technicians and Site Manager are required to have their own basic tools, the Employer does maintain a supply of tools (particularly larger or more specialized tools) at the maintenance shop and both Maintenance Technicians and Site Manager have the capacity to borrow (use) these tools. Doing so is arranged through the Maintenance Office Coordinators. In the case of tools booked by a Site Manager, the tool would either be dropped off by a Maintenance Technician or the Site Manager could come down to the maintenance shop to pick it up.

[17] Finally, Mr. Neale testified that there are approximately 270 housing authorities located in different communities throughout Saskatchewan. To Mr. Neale’s knowledge, five (5) of these housing authorities are certified; those being, the Regina Housing Authority³, the Moosomin Housing Authority⁴, the Moose Jaw Housing Authority⁵, the Melfort Housing Authority⁶, and the Yorkton Housing Authority⁷. A review of the concomitant Certification Orders of the Board would indicate that these are “all employee” units (with named exclusions) geographically confined by the boundaries of the community in which the respective employers are located.

³ See: LRB File No. 106-98.

⁴ See: LRB File No. 215-02.

⁵ See: LRB File No. 186-03.

⁶ See: LRB File No. 017-04.

⁷ See: LRB File No. 130-05.

Argument of the Parties:

[18] While the Union conceded that the unit that it was seeking to certify was not the ultimate, best or most appropriate unit for this workplace, the Union took the position that the proposed unit was nonetheless “appropriate” within the meaning ascribed to that term by this Board. Relying on this Board’s decision in *Service Employees International Union, Local 336 v. Board of Education of the Chinook School Division No. 211*, [2007] Sask. L.R.B.R. 719, 145 C.L.R.B.R. (2d) 189, 2007 CanLII 68762, LRB File Nos. 070-06, 095-06, 096-06, 097-06 & 098-06, the Union took the position that the members of the proposed unit had sufficiently discrete skills and/or responsibilities to distinguishing them from the Employer’s other employees and/or that a rational and defensible boundary existed so as to reasonably define the proposed unit; that there was no significant intermingling between members of the proposed unit and the Employer’s other employees; and that the proposed unit (if certified) would have a sound basis for collective bargaining with the Employer.

[19] The Union argued that the proposed unit was sufficiently distinct, with the members thereof being distinguished by two (2) factors; (i) where they work; and (ii) their specific job duties and skills. With respect to the first point, the Union noted that all of the members of the proposed bargaining unit worked in or out of the Employer’s maintenance shop on Avenue P. Furthermore, the Union noted that the proposed unit included all of the employees that worked at that location. As a consequence, the Union argued that the proposed unit had a specific boundary; that being, the Employer’s maintenance shop on Avenue P.

[20] While the Union acknowledged that a more appropriate unit may exist, relying on this Board’s decisions in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Regina Exhibition Association Ltd.*, [1992] Sask. Labour Report 4th 75, LRB File No. 182-92 and *Saskatchewan Union of Nurses v. Board of Education of the Regina School Division No. 4*, [2009] 172 C.L.R.B.R. (2d) 307, 2009 CanLII 53733, LRB. File No. 062-09, the Union took the position that it need not demonstrate that the unit of employees that they sought to represent was the “most” appropriate unit; only that it was “an” appropriate unit. The Union also relied on this Board’s decisions in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Custom Built Ag. Industries Ltd. (Trail Tech)*, [1998] Sask. L.R.B.R. 662, LRB File No. 112-98 and *Health Sciences Association of Saskatchewan v. Canadian Blood Services*, [2008] Sask. L.R.B.R. 221, 2008 CanLII 47047, LRB File No. 030-08, as examples of the Board certifying under-inclusive bargaining units.

[21] On the other hand, the Employer took the position that the proposed bargaining unit was not appropriate. Simply put, the Employer argued that all of the factors identified by the Board as circumstances where an under-inclusive bargaining unit would not be considered “appropriate” in *Graphic Communications International Union, Local 75M v. Sterling Newspaper Group, A Division of Hollinger Inc.* [1998] Sask. L.R.B.R. 770, LRB File No. 174-98, were present in the Union’s application.

[22] Firstly, the Employer argued that there was no discrete skill or other boundary surrounding the unit that separated it from its other employees. The Employer noted that the proposed bargaining unit included only twelve (12) of the Employer’s total complement of employees. Furthermore, the Employer noted that six (6) of the employees (i.e. the Maintenance Technicians) had minimum qualifications, skills, duties and responsibilities that were strikingly similar to employees not included within the proposed unit (i.e. the Site Managers).

[23] In addition, the Employer argued that there was intermingling between the employees proposed to be in the bargaining unit (i.e. Maintenance Technicians) and employees not in the bargaining unit, with Maintenance Technicians and Site Managers being called upon, from time to time, to work side by side. Finally, the Employer argued that the historic pattern of organization within provincial housing authorities in Saskatchewan suggested that there was a reasonable ability for the Union to organize a more inclusive unit, thus avoiding the potential for fragmentation of collective bargaining.

[24] The Employer cited several examples where this Board had refused to certify an under-inclusive bargaining unit in circumstances which the Employer argued were similar. See: *Hotel Employees and Restaurant Employees International Union, Local 767 v. Courtyard Inns Ltd.*, [1988] Winter Sask. Labour Rep 51, LRB File No. 116-88 (wherein the Board refused to certify a unit consisting of only the maintenance employees working in a hotel); *Saskatchewan Government Employees’ Union v. Gabriel Dumont Institute of Native Studies and Applied Research Inc.*, [1989] Winter Sask. Labour Rep. 68, LRB File No. 118-89 (wherein the Board refused to certify a unit consisting of only 1 division of the employer) and *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Saskatchewan Centre of the Arts*, [1995] 4th Quarter Sask. Labour Rep. 52, LRB File No. 175-95, (wherein the Board refused to certify a unit consisting only 4 of 7 operational departments of the Employer).

[25] The Employer asked the Board to find that the Union's proposed bargaining unit to be inappropriate.

Relevant Statutory Authority:

[26] Relevant statutory provisions include ss. 2(a) and (b), 3, and 5(a), (b) and (c) of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "Act"), which provide as follows:

2. *In this Act:*

(a) **"appropriate unit"** means a unit of employees appropriate for the purpose of bargaining collectively;

(b) **"bargaining collectively"** means negotiating in good faith with a view to the conclusion of a collective bargaining agreement, or a renewal or revision of a bargaining agreement, the embodiment in writing or writings of the terms of agreement arrived at in negotiations or required to be inserted in a collective agreement by this Act, the execution by or on behalf of the parties of such agreement, and negotiating from time to time for the settlement of disputes and grievances of employees covered by the agreement or represented by a trade union representing the majority of employees in an appropriate unit;

. . .

3. *Employees have the right to organize in and to form, join or assist trade unions and to bargain collectively through a trade union of their own choosing; and the trade union designated or selected for the purpose of bargaining collectively by the majority of the employees in a unit appropriate for that purpose shall be the exclusive representative of all employees in that unit for the purpose of bargaining collectively.*

. . .

5. *The board may make orders:*

(a) *determining whether the appropriate unit of employees for the purpose of bargaining collectively shall be an employer unit, craft unit, plant unit or a subdivision thereof or some other unit;*

(b) *determining what trade union, if any, represents a majority of employees in an appropriate unit of employees, but no order under this clause shall be made in respect of an application made within a period of six months from the date of the dismissal of an application for certification by the same trade union in respect of the same or a substantially similar unit of employees, unless the board, on the application of that trade union, considers it advisable to abridge that period;*

(c) *requiring an employer or a trade union representing the majority of employees in an appropriate unit to bargain collectively;*

Analysis and Decision:

[27] The primary issue for the Board to decide is whether or not the bargaining unit proposed by the Union is an appropriate unit for the purpose of bargaining collectively⁸. While the Union took the position that it is appropriate, the Employer took the position that it is not.

[28] The unit proposed by the Union is under-inclusive in that it represents only a portion of the Employer's total complement of employees and, in particular, it does not include a number of other employees in the Maintenance Department, such as Site Managers, who perform similar functions and provide similar services and with whom (the Employer argued) members of the proposed bargaining unit intermingle on a regular basis.

[29] It is trite to say that the Board prefers larger, more inclusive bargaining units. However, that preference alone does not lead to the automatic conclusion that the unit sought by the Union is inappropriate in the circumstances of this case. Rather, the Board is required to balance two (2) important policy considerations: (i) recognizing the right of employees to organize in and join a trade union of their choice, a right enshrined by s. 3 of the *Act*, and (ii) the need for viable and stable collective bargaining structures and the avoidance of fragmentation and a multiplicity of bargaining units. In balancing these two (2) considerations, the Board is mindful that the test in applications involving an initial certification of a workplace is not whether the unit sought by the Union is the "most appropriate" unit, but only whether or not it is "an appropriate" one.

[30] In *Sterling Newspapers Group, supra*, after reviewing the Board's jurisprudence, the Board outlined a number of examples of circumstances where an under-inclusive bargaining unit may not be appropriate (page 780):

From this review of cases, it would appear to the Board that under-inclusive bargaining units will not be considered to be appropriate in the following circumstances: (1) there is no discrete skill or other boundary surrounding the unit that easily separates it from other employees; (2) there is intermingling between the proposed unit and other employees; (3) there is a lack of bargaining strength in the proposed unit; (4) there is a realistic ability on the part of the Union to organize a more inclusive unit;

⁸ A second, arguably collateral, issue exists; that being, the proper description of the bargaining unit being that the parties utilized differing nomenclature for describing the positions affected by the Union's application.

or (5) there exists a more inclusive choice of bargaining units.

[31] While the above captioned list is neither exhaustive nor definitive, an examination of these factors provides a helpful lens through which to view the appropriateness of an under-inclusive bargaining unit. In the present case, there are factors weighing both for and against a finding of appropriateness. However, having carefully considered the evidence presented in this case and the thoughtful argument of counsel, we are satisfied that the bargaining unit proposed by the Union is appropriate.

[32] In coming to this conclusion, we agree with the Employer's position that there is little (if any) significant deference between the skills, duties and qualifications of the six (6) Maintenance Technicians (proposed to be included within the bargaining unit) and the twenty-eight (28) Site Managers (not included within the bargaining unit). Certainly, there are far more similarities than differences between the skills, duties and qualifications of the Maintenance Technicians, who maintain the Employer's scattered housing, and the Site Managers, who maintain the Employer's concentrated housing complexes. Nonetheless, we are satisfied that a discrete and defensible boundary does exist to define the bargaining unit; namely, where the employees work. The unit proposed by the Union includes all employees of the Employer working at its Maintenance Shop located on Avenue P in Saskatoon, Saskatchewan. While this Board's general practice (and preference) has been to use municipal boundaries for purposes of defining bargaining units, site-specific certifications have also been granted by the Board. See: *United Food and Commercial Workers, Local 1400 v Affinity Credit Union*, 170 C.L.R.B.R. (2d) 275, CANLII 45865, LRB File Nos. 078-09 & 079-09.

[33] To which end, we agree with the position advanced by the Union that, to satisfy the Board that the proposed bargaining unit is an appropriate unit, the Union need not establish both that the members thereof possess discrete skills and that a rational and defensible boundary exists to delineate the bargaining unit. Differentiating employees based on discrete skills is one means (often the primary means) of defining the boundaries of an appropriate bargaining unit. However, geographic boundaries, including municipal boundaries and/or worksites, are another rationale and defensible means of circumscribing a bargaining unit. The primary issue is whether or not the Board is satisfied that a rational and defensible boundary can be drawn to differentiate the members of the proposed bargaining unit. In the present case, we

are satisfied that where the members work (i.e. the Employer's maintenance shop on Avenue P) is a sufficiently rationale and defensible boundary to define the bargaining unit.

[34] In examination the degree of intermingling between the proposed bargaining unit and other employees, the Board examines the interchangeability of personnel, issues of lateral mobility and, to some extent, the effect of the formation of the proposed unit on the Employer's operations. As indicated, all of the employees included within the proposed unit work at or out of the Employer's maintenance shop. Mr. Neale testified that a Maintenance Technician may be called upon to assist a Site Manager to complete work at a concentrated complex and, in doing so, these two (2) positions would be called upon to work side by side. However, Mr. Neale also testified that, for the most part, these positions were responsible for performing separate work at different locations; with the Maintenance Technicians maintaining and servicing the scattered housing and the Site Managers maintaining and servicing the Employer's concentrated residential complexes. Mr. Neale also confirmed that a Site Manager would not be called upon to perform the duties of a Maintenance Technician.

[35] From the evidence, we are satisfied that, while there are interactions between all staff in the Employer's Maintenance Department, there does not appear to be the kind of interchangeability or cross-over of personnel nor issues of lateral mobility which this Board saw in *Saskatchewan Centre of the Arts, supra*. Nor did the Board observe the kind of functional integration of responsibilities that was present with the caseworkers in *United Food and Commercial Workers, Local 1400 v. Ranch Ehrlo Society*, [2008] Sask. L.R.B.R. 836, 2008 CanLII 65787, LRB File No. 108-07. The Board saw no evidence that the formation of the proposed unit would have a negative impact on the working group as a whole or the Employer's operations. For the most part, the employees in the proposed bargaining unit perform discrete functions within the Employer's Maintenance Department and, unlike other employees, do so based out of the Employer's maintenance shop on Avenue P. In our opinion, the balance of evidence on this factor tips in favour of appropriateness.

[36] In examining the remaining factors set forth by the Board in *Sterling Newspaper Group, supra*, being the relative bargaining strength of the proposed unit and the realistic ability on the part of the Union to organize a more inclusive unit, the Board is primarily concerned with examining the patterns of organization in the industry (including consideration for organizational difficulties that may exist in the sector), the viability of the proposed bargaining unit in the long

run and the impact that the proposed bargaining unit will have on labour relations at the workplace. In examining these factors, the aim of the Board is the avoidance of industrial instability.

[37] Certainly, any application to certify an under-inclusive bargaining unit involves the potential for fragmentation of collective bargaining in a workplace. However, as we indicated at the outset, the Board's examination of the appropriateness of the bargaining unit proposed by the Union must be tempered by respect for the right of employees to organize in and join a trade union of their choosing, a right protected by s. 3 of the *Act*. It would appear from the certification orders that have been issued by this Board for housing authorities that "all employee" bargaining units are the historic patterns (such that five (5) out of 270 is a pattern). On the other hand, although no evidence was lead as to the organization difficulties associated with this particular sector, the Board can infer from the fact that only five (5) out of 270 similar operations have been certified that a certain level of organization difficulty exists for trade unions in this sector.

[38] While it would be possible to speculate that the formation of the proposed unit could lead to an artificial disparity in wages, benefits and terms and conditions of employment (between employees who are included in the proposed unit and employees who are excluded), such speculation alone does not reasonably lead to a presumption that the proposed unit will not be viable in the long run or that it will unavoidably create instability in the workplace. Certainly, this Board has certified smaller, more vulnerable units in the past. While the Employer questioned the potential for fragmentation of industrial relations in the workplace associated with the proposed bargaining unit and expressed concern about potential difficulties in labour relations, the Board is unable to reasonably accept that these potential difficulties are unavoidable or insurmountable and thus sufficient to undermine the stated desire of this particular group of employees to be represented by the Union for the purposes of bargaining collective bargaining with their employer.

[39] As a consequence, and for the foregoing reasons, we are satisfied that the bargaining unit is appropriate; maybe not the optimal or best unit; but it is an appropriate one.

Conclusion:

[40] On the evidence presented, the Board finds that the appropriate unit of employees shall be as follows:

All maintenance employees, including but not necessarily limited to, the Maintenance Supervisor, the Maintenance Office Coordinators, the Maintenance Mechanical Coordinators, the Vacancy Coordinator and the Maintenance Technicians, but excluding the Maintenance Service Manager, of the Saskatoon Housing Authority employed at its Maintenance Shop located on Avenue P (south) in Saskatoon, Saskatchewan.

[41] The Board is satisfied that the vote of employees conducted on June 1, 2010 accurately encompassed the appropriate unit of employees. As a consequence, the Agent of the Board is hereby directed to proceed with the counting and tabulation of the ballots in accordance with the above captioned determination and to report the results therefrom to the Board and the parties in the ordinary course. For purposes of clarity, the ballot of the Maintenance Supervisor shall be counted in the said tabulation of votes.

DATED at Regina, Saskatchewan, this 21st day of **July, 2010**.

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson