

**The Labour Relations Board
Saskatchewan**

**UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant v. AFFINITY
CREDIT UNION, Respondent**

LRB File No. 135-09; March 16, 2010

Chairperson, Kenneth G. Love, Q.C.; Members: Joan White and Duane Siemens

For the Applicant: Union

Mr. Drew Plaxton

For the Respondent Employer:

Mr. John Beckman Q.C.

Successorship – Board discusses the meaning of the phrase “surrounding area” contained within certification Order which successorship rights are sought by applicant Union. Board determines the phrase be interpreted by considering words used, read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of the Board. Board determines area to be a geographic area surrounding the City of Saskatoon to the limit established by the reference in the certification Order.

Successorship - Determination of Appropriate Unit – Appropriate Unit need not be optimal unit. Board determines that several unit descriptions could be appropriate.

Successorship – Sweeping in of employees not previously represented. Board confirms that employees should not be swept in unless the number of employees is very small in relation to an overwhelming number of employees represented by the union. Board orders that wishes of Employees who would be swept in should have their wishes determined by secret ballot.

Amendment - Board orders a separate vote with respect to employees not covered by the original certification Order for which successor rights are sought, where the Union has applied to amend the original certification Order to include those employees within the open period described in s. 5(k) of the Act.

Votes – Board orders vote of employees pursuant to s. 18(v) and 37(2)(d) with respect to employees sought to be swept in to the bargaining unit notwithstanding that the Union has not provided evidence of support from 45% of those employees.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love Q.C., Chairperson:** By Order of the Saskatchewan Labour Relations Board (the “Board”) dated December 10, 2003, the United Food and Commercial

Workers, Local 1400, (the “Union”) was designated as the bargaining agent for a unit of employees of Saskatoon Credit Union Limited, Saskatoon Credit Union (2002), FirstSask Financial Group Inc., FirstSask Employee Services Inc., Canada Loan Administration Services Inc., and FirstSask Mortgage Inc. (the “Employer”) **“in their places of business located in Saskatoon, Saskatchewan and surrounding area.”** [Emphasis added]

[2] On January 18, 2008, the Union filed an application with the Board pursuant to sections 5(i), 5(k), 37, 37.3 & 42 of *The Trade Union Act*, R.S.S. 1978, c.T-17, (the “Act”) for a determination that certain Credit Unions which had amalgamated into the certified Credit Unions were successors to the certified Credit Unions, that various Credit Unions and other corporations were common employers, and for an amendment to reflect new job titles for positions formerly excluded and with respect to new positions created since the certification Order was made by the Board.

[3] By letter decision dated February 8, 2010, the Board granted interim Orders with respect to the issue of successorship and common employer, as well as ordering a vote of various employees of the successor, Affinity Credit Union. Those Orders were to remain in effect, pending these final Reasons for Decision.

[4] An earlier application had been made to the Board¹ for orders of the Board:

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

[5] Because the effective date of the collective agreement in place between the parties was January 1, 2007 this earlier application was premature as the Union’s application for amendment was not filed during the open period. The agreement of the Employer was required pursuant to s. 5(j)(i) of the *Act* for that application to succeed. As a result, the Board dismissed that application. This application was brought by the Union on November 19, 2008, which was within the open period.

¹ LRB File No. 018-08, CanLII 21216 (SK LRB), decision dated April 30, 2009

[6] In the current application, the parties were in agreement with respect to a number of matters, which are reflected in the Letter Reasons dated February 8, 2010. The principal area of disagreement was the effect of the certification Order on employees who were not previously covered by the certification Order who were now employed by Affinity Credit Union.

Facts:

[7] The relevant facts were not in dispute. The Union has been certified to a unit of employees of Saskatoon Credit Union for many years, with certification Orders filed with the Board dating back to 1996. The Union and the Employer have a mature and cooperative relationship.²

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

Saskatoon Credit Union Branches (as of 2006)

Broadway – 912 Broadway Avenue, Saskatoon

Eighth Street – 2201 8th Street East, Saskatoon

Fairhaven – 3315C Fairlight Drive, Saskatoon

Main - 309 22nd Street East, Saskatoon

River Heights, Bay 7 - #7 Assiniboine Drive, Saskatoon

Westview – 1624 33rd Street West, Saskatoon

Warman – 204 Central Street West, Warman, Saskatchewan

Commercial Services Centre – 300 310 20th Street East, Saskatoon

MemberTrust Office – 401A – 310 20th Street East, Saskatoon

FirstSask Mortgages – 234 21 Street East, Saskatoon

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

² I have borrowed the majority of this statement of facts from the decision of the Board dated April 30, 2009.

Langham Credit Union Branch (as of 2006):**Langham** – 302 Main Street, Langham, Saskatchewan**Martensville - #7** – 7 Centennial Drive, Martensville, Saskatchewan**Borden** – 107 Shepard Street, Borden, Saskatchewan**Dalmeny** – 115 3rd Street, Dalmeny, Saskatchewan**Hepburn** – 402 Main Street, Hepburn, Saskatchewan**Waldheim** – 3001 Central Avenue, Waldheim, Saskatchewan**Shellbrook Credit Union Branches** (as of 2006):**Canwood** – 561 Main Street, Canwood, Saskatchewan**Leask** – Main Street, Leask, Saskatchewan**Marcelin** – Marcelin, Saskatchewan**Shellbrook** – 31 Main Street, Shellbrook, Saskatchewan.

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

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

[12] The employees of the Langham Credit Union are recognized in the current collective agreement between the parties.³ The employees of the Shellbrook Credit Union are not. In this application, the Union sought to include only the employees of the Langham Credit Union under the certification order. It did not apply with respect to employees of the Shellbrook Credit Union.

³ See Letters of Agreement #14 & /315 dated November 14, 2006

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

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

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

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

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

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

City Centre – 130 1st Avenue North, Saskatoon, Saskatchewan
St. Mary’s – 1515 20th Street West, Saskatoon, Saskatchewan

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

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

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

[16] After the Board's decision on April 30, 2009, the Union sought to certify three (3) formerly uncertified Branches of the Employer. These Branches were the Hill Avenue Branch in Regina⁴, Saskatchewan, the Rochdale Avenue Branch in Regina⁵, Saskatchewan and the

⁴ LRB File No. 079-09

⁵ LRB File No. 078-09

Branch in Hague⁶, Saskatchewan. In accordance with the provisions of the *Act*, the Board conducted votes of the Employees employed at those Branches. As a result of the votes of the Employees, the Union's applications were denied in respect of the Rochdale Branch in Regina, and the Hague Branch. The Hill Avenue, Regina Branch was certified⁷ as an appropriate unit.

Relevant statutory provision:

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

5 *The board may make orders:*

(j) *amending an order of the board if:*

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

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

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

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

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

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

...

18. *The board has, for any matter before it, the power:*

...

(v) *to order, at any time before the proceedings has been finally disposed of by the board, that:*

(i) *a vote or an additional vote be taken among employees affected by the proceeding if the board considers that the taking of such a vote would assist the board to decide any question that has arisen or is likely to arise in the proceeding, whether or not such a vote is provided for elsewhere; and*

⁶ LRB File No. 093-09

⁷ An application is pending before the Board related to a challenge by the Employer to the conduct of the vote at this location. LRB File No. 098-09

- (ii) *the ballots cast in any vote ordered by the board pursuant to subclause (i) be sealed in ballot boxes and not counted except as directed by the board;*

...

37(1) *Where a business or part thereof is sold, leased, transferred or otherwise disposed of, the person acquiring the business or part thereof shall be bound by all orders of the board and all proceedings had and taken before the board before the acquisition, and the orders and proceedings shall continue as if the business or part thereof had not been disposed of, and, without limiting the generality of the foregoing, if before the disposal a trade union was determined by an order of the board as representing, for the purpose of bargaining collectively, any of the employees affected by the disposal or any collective bargaining agreement affecting any of such employees was in force the terms of that order or agreement, as the case may be, shall, unless the board otherwise orders, be deemed to apply to the person acquiring the business or part thereof to the same extent as if the order had originally applied to him or the agreement had been signed by him.*

37(2) *On the application of any trade union, employer or employee directly affected by a disposition described in this section, the board may make orders doing any of the following:*

- (a) *determining whether the disposition or proposed disposition relates to a business or part of it;*

- (b) *determining whether, on the completion of the disposition of a business, or of part of the business, the employees constitute one or more units appropriate for collective bargaining and whether the appropriate unit or units will be:*

- (i) *an employee unit;*
- (ii) *a craft unit;*
- (iii) *a plant unit;*
- (iv) *a subdivision of an employee unit, craft unit or plant unit;*
or
- (v) *some other unit;*

- (c) *determining what trade union, if any, represents a majority of employees in the unit determined to be an appropriate unit pursuant to clause (b);*

- (d) *directing a vote to be taken among all employees eligible to vote in a unit determined to be an appropriate unit pursuant to clause (b);*

- (e) *amending, to the extent that the board considers necessary or advisable, an order made pursuant to clause 5(a), (b) or (c) or the description of a unit contained in a collective bargaining agreement;*

- (f) *giving any directions that the board considers necessary or advisable as to the application of a collective bargaining agreement affecting the employees in a unit determined to be an appropriate unit pursuant to clause (b).*

...

37.3(1) On the application of an employer affected or a trade union affected, the board may declare more than one corporation, partnership, individual or association to be one employer for the purposes of this Act if, in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by or through those corporations, partnerships, individuals or associations.

...

42. *The board shall exercise such powers and perform such duties as are conferred or imposed on it by this Act, or as may be incidental to the attainment of the objects of this Act including, without limiting the generality of the foregoing, the making of orders requiring compliance with the provisions of this Act, with any regulations made under this Act or with any decision in respect of any matter before the board.*

Arguments:

[18] Both parties agreed that the issue for the Board to determine was the nature of the unit which would be appropriate for collective bargaining. This determination is to be made by the Board pursuant to subsection 37(2)(b) of the *Act*. However, the parties disagreed as to the interpretation the Board should put upon the wording of the current Order, the nature of the appropriate unit and the employees who should be entitled to vote to determine majority support for the union within that appropriate unit.

[19] The Union argued that the current certification Order was “geographic” in scope and that the appropriate unit of employees to be covered by the successorship should be all employees within the City of Saskatoon and the surrounding area. This description would include employees in the former Affinity Credit Union, St. Mary’s Branch and the City Centre Branch. The Union also argued that the “surrounding area” should encompass the former Langham Credit Union Branches. Furthermore, they argued that based upon the wording of subsection 37(2)(d), that were all employees within that geographic area, including the formerly certified employees of the Saskatoon Credit Union, should be entitled to vote.

[20] The Employer argued that the current certification Order was “branch specific” because the former Order used the words “**in their places of business**”⁸ in Saskatoon, Saskatchewan and surrounding area” rather than the words “in the City of Saskatoon and surrounding area.” They further argued that the Union had adopted a program of branch certifications, as demonstrated by their recent applications for certification in Regina and at

⁸ Emphasis added to highlight the words in issue.

Hague, which they argued showed that an individual branch could be an appropriate unit of employees for collective bargaining. They also argued that only those employees who would be added into the bargaining unit resultant from the amalgamations should be entitled to vote. Those employees would be those identified by the Union with the exception of the currently certified employees of the former Saskatoon Credit Union.

[21] The Union provided evidence to the Board that there had been intermingling of employees at the various certified and non-certified Branches of Affinity. They also lead evidence regarding practical difficulties which had been experienced by former unionized employees whose work had been transferred to a non-union location within the Affinity organization. The Employer countered that while there had been some transfer of employees, that was not unusual and that they had been able to reach agreement with the Union regarding transfer of employees of the Langham Credit Union, who were not covered by the certification Order. They argued that employees at each Branch should be given the opportunity to join or not join the Union. In her evidence, Ms. Lolita Humm, the Human Resources Manager for Affinity Credit Union, acknowledged that they were prepared to bargain as many collective agreements as would be necessary to permit individual Branch choice.

[22] The Union argued that a fragmentation of units as proposed by the Employer was undesirable and that larger, more inclusive, bargaining units were more desirable. The Union argued that there was no need for a vote to be held and cited numerous authorities for that position.⁹ In the alternative, they argued that if a vote is to be held that the vote should include all employees within the bargaining unit.¹⁰ The Union argued that the number of employees impacted was very small, but in any event, they placed reliance upon option #4 outlined in the Horizon School decision of the Board.

[23] The Union argued that a “checkerboard” approach as suggested by the Employer did not make labour relations sense. They suggested that the unit which they had proposed

⁹ *International Brotherhood of Electrical Workers, Local 2067 v. Luscar Ltd.*, [2001] Sask. L.R.B.R. 352, LRB File No. 269-00; *C.E.P. v. Saskatchewan Watershed Authority*, LRB File No. 141-02, *SGEU v. Saskatchewan Liquor and Gaming Authority*, [2001] Sask. L.R.B.R. 152, LRB File No. 037-95, *Estevan Coal Corporation et al. and United Mine Workers of America, Local 7606 et al.*, [1998] Sask. L.R.B.R. 709, LRB File No. 186-98; *Energy and Chemical Workers Union, Local 911 and Microdata*, [1992] 1st Quarter Sask. Labour. Rep. 35, LRB File No. 172-90; *SGEU and Headway Ski Corporation*, [1997] Aug. Sask. Labour Rep. 48, LRB File No. 396-86; and *SEIU, Local 333, and Fairhaven Long-term Care Centre*, LRB File No. 212-86, Reasons for Decision dated October 22, 1986.

allowed for mobility of workers, similarity and ease of industrial relations, ease of collective bargaining, and made business sense.

[24] The Union relied primarily upon the Board's decisions in *Canadian Union of Public Employees., Local 4799 v. Board of Education of Horizon School Division No. 205*¹¹ ("Horizon") and *Canadian Union of Public Employees., Local 5506 v. Prairie South School Division No. 210*¹² ("Prairie South") as support for its position that the legacy union members should be included among those employees who should be entitled to vote in respect of the proposed bargaining unit.

[25] The Employer relied principally upon *University of Saskatchewan v. Canadian Union of Public Employees.*¹³ ("University of Sask"), *Prince Albert v. Retail Wholesale and Department Store Union*¹⁴ ("Prince Albert") and *Retail, Wholesale and Department Store Union v. Sunnyland Poultry Products Ltd.*¹⁵ ("Sunnyland"), in support of its position that only those employees who are to be added to the unit should be entitled to vote as to their preference for representation for collective bargaining.

Analysis:

What is the Appropriate Unit for Collective Bargaining?

[26] Having dealt with some of the issues with respect to this matter by virtue of the Board's letter decision of February 8, 2010, the Board need only deal with the following issues with respect to this application:

1. What is an appropriate bargaining unit of employees? and
2. Whether the Board should accept the evidence of support filed as evidence of support for the bargaining unit determined to be appropriate by the Board?

¹⁰ It cited in support of that position subsection 37(2)(d) of the Act, *CUPE, Local 4799 v. Board of Education of Horizon School Division No. 205*, LRB File No. 053-06 and *CUPE, Local 5506 v. Prairie South School Division No. 210*, LRB File No. 149-07.

¹¹ [2007] CanLII 68761

¹² [2008] CanLII 47033

¹³ [1978] 2 S.C.R.834

¹⁴ [1982] 20 Sask. R. 314 (C.A.)

¹⁵ [1993] 2nd Quarter Sask. Labour Rep. 213, LRB File No. 001-92

[27] The Board has previously dealt with a similar issue in *Canadian Union of Public Employees, Local 5506 v. Prairie South School Division No. 210*.¹⁶ That case, like the *Horizon* case¹⁷, *supra*, dealt with a compulsory amalgamation of School Divisions by the Provincial Government. However, unlike in the *Horizon* case, *supra*, but as was done in this case, the Applicant Union filed evidence of support from current members of the Union as well as from some of the employees which it did not, as yet, represent. Also, as is the case here, the only issue for determination by the Board was the definition of the appropriate unit as well as the nature of support that would be acceptable to the Board.

[28] The Board concluded in its *Prairie South* decision, *supra*, that while there is a preference for larger more-inclusive bargaining units that a sub-optimal unit is often necessary for practical purposes. At paragraph [31] of that decision, the Board says:

The Union, in its argument, provided numerous reasons why a “all employee” unit was preferable for collective bargaining than the various employee groups which had been certified as an appropriate bargaining units by the Board under the existing certification orders. While we concur, in principle, with the Union’s arguments in this regard, an appropriate unit of employees need not be an optimal one for the purposes of collective bargaining.

[29] This rationale also applies in this case. By its application, the Union did not seek to have the Board declare as appropriate, the optimal unit which would have been all of the employees of Affinity Credit Union within the Province of Saskatchewan. Nor did its application request that the legacy Shellbrook Credit Union Employees be included in the bargaining unit. Furthermore, the union did apply for, and was successful in obtaining certification for one sub-optimal unit, being the Rochdale Branch of the Employer in Regina, which supports the conclusion that suboptimal units may be appropriate units for collective bargaining.

[30] The facts in this case are also clouded somewhat by the history of the attempted voluntary recognition undertaken by the parties which was dealt with by the Board in its decision in LRB File No. 010-08, insofar as that process resulted in a voluntary recognition of the former Langham Credit Union Branches, but excluded the former Shellbrook Credit Union Branches. The Application which was made for successorship recognizes this voluntary result with the

¹⁶ [2008] CanLII 47033, LRB File No. 149-07

¹⁷ *Supra*, at note 11.

application asking to include the former Langham Credit Union Branches, but not the Shellbrook Credit Union Branches.

[31] There is also some concern about the geographic scope of the Board's former Order, that is what is the extent of the "surrounding area" referenced in the Board's December 10, 2003 Order. At the time that Order was made, the certified Employer had one Branch location at Warman, Saskatchewan. Warman, Saskatchewan is located some 24 kilometers from Saskatoon, Saskatchewan. If that distance were considered to be the extent of the "surrounding area", then only the former Dalmeny and Martensville, Saskatchewan branches of the former Langham Credit Union would fall within the "surrounding area."

[32] What comprises the "surrounding area" might also be determined from such external sources as the historical trading area, the service area, or by virtue of a historical boundary or division. However, to do so would not give proper deference to the use of the word "surrounding" in the Order, which when defined means to "enclose" or, in the sense of environs, means the "neighbouring district"¹⁸, which points us to an area of land surrounding the City of Saskatoon.

[33] However, in a labour relations context, the "surrounding area" could mean an area where a community of interest existed among employees of a common Employer. Attempting to define such a community of interest is as problematic as trying to define a geographic scope "surrounding area."

[34] The Board has, however, normally referenced geographic areas in its Orders such as "The City of ___", "South of the 51st parallel", or geographic boundaries such as a school division or hospital district. For that reason, and by considering the words used, read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of the Board.¹⁹ In the 2003 Order, we have concluded that the "surrounding area" was meant to include the area surrounding the City of Saskatoon to the limit of the existing Branch at Warman, Saskatchewan. By that definition, however, the Langham, Borden, Hepburn and Waldheim Branches of the former Langham Credit Union would fall outside the geographic limits of the unit determined to be appropriate by the 2003 Order.

¹⁸ Oxford University Dictionary 4th Ed.

¹⁹ *ReRizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at 41

[35] It was for this reason, presumably, that the Union sought not only an Order under the provisions of s. 37 of the *Act* (successorship), but also sought to have the 2003 Order amended pursuant to s. 5(i) and (k) of the *Act* since to include the Branches not previously covered by the 2003 certification Order would require the Board to amend the 2003 certification to include those additional Branches.

Who Should be Entitled to Vote?

[36] The Union provided the Board with evidence of support with respect to this application which satisfies the Board that it has sufficient support within the Langham, Borden, Hepburn and Waldheim Branches that the Board is required to order a vote of those employees to determine if they wish to be represented by the Union for collective bargaining.

[37] This then leaves the issue of the Branches which the Union seeks to “sweep in” to the bargaining unit by virtue of its application for successorship, that is the two Bin Saskatoon which the Union does not currently represent, the St. Mary’s Branch and the City Centre Branch. Also, there are the two rural Branches to consider which are the Martensville Branch and the Dalmeny Branch which would fall within the definition of “surrounding area” as outlined above.

[38] On this issue, the parties took diametrically opposing views. The Union, took the view that no vote should be necessary as the support which it demonstrated should be sufficient to permit the Board to amend the bargaining unit without the necessity of a vote. In the alternative, the Union argued that the Board’s decisions in *Horizon*²⁰ and *Prairie South*²¹ that a vote should be held among all of the affected employees, including those within the former certified bargaining unit.

[39] The Employer argued that the employees should be allowed to vote on a Branch by Branch basis insofar as the Union had recognized individual Branches (by its recent applications to represent employees in the Hague, Saskatchewan Branch, as well as the Hill Avenue and Rochdale Boulevard Branches in Regina, Saskatchewan.

²⁰ Supra, note 11

²¹ Supra, note 12

[40] While the *Horizon* decision, *supra*, provides some support for the Union's position that the existing unit should participate in any vote, the *Prairie South* decision, *supra*, modified that decision. In the *Prairie South* decision, the Board discussed the *Horizon* decision and discussed each of the options presented in *Horizon* as to how a Union might seek to represent previously unrepresented employees and include them into a more optimal unit. In that decision, at paragraphs 39 – 48:

[39] *Option #1 in Horizon School Division, supra, is the filing of support from those employees who are currently unrepresented. In that case, the Union files support from those employees who were previously unrepresented and makes application to be certified as their bargaining agent.*

[40] *Option #2 in Horizon School Division, supra, is the filing of an application for successorship, as in this case. In that case, the Board was concerned with the resultant "sweeping in" of those employees who were previously unrepresented by virtue of the redefinition of the bargaining unit as an adjunct to the successorship application.*

[41] *Option #3 in Horizon School Division, supra, is for the Board to order a representation vote among those employees who are sought to be added to the bargaining unit pursuant to an application under s. 37 for successorship rights.*

[42] *Option #4 in Horizon School Division, supra, is for a vote to be ordered among all represented and unrepresented employees in the bargaining unit which the applicant union wishes to represent. Even in Horizon School Division, supra, the Board cautioned against this approach which could have the effect of causing a decertification of the bargaining rights of the applicant should the vote be lost.*

[43] *Based on the Board's comments in Horizon School Division, supra, quoted above, Option #1 would, we believe, be the preferred option with respect to a union seeking to represent previously unrepresented employees. It affords and provides those employees and their chosen bargaining agent with all of the rights and benefits normally afforded under s. 3 of the Act. There is no issue of "sweeping in" those employees who are free to choose to be represented in accordance with the Act. While it may involve greater effort on the part of the trade union which seeks to represent those employees, it provides certainty and security of choice for those employees.*

[44] *Option #2 is a less desirable option and would be available to be used only in the circumstances outlined in *Horizon* only "if the number of employees sought to be added were in an existing classification represented by the union and their numbers were very small in relation to an overwhelming number of employees represented by the union."*

[45] *This Board was urged by the Employer to order a vote among those unrepresented employees in accordance with option #3. In the case of Saskatchewan Union of Nurses v. Twin Rivers District Health Board, [1994] 3rd Quarter Sask. Labour Rep. 132, LRB File No. 109-94, the Board stated at 134 and 135:*

In our decision in Eastend Wolf Willow Health Centre v. Service Employees' International Union (1992) 3rd Quarter, Sask. Labour Rep. p. 93, the Board dealt with the concept of "intermingling." This term refers to a combination of groups of employees in a new entity which replaces the previous enterprises or institutions in which the employees have been employed. The concept is not specifically addressed in The Trade Union Act, as it has been in some jurisdictions.

Nonetheless, the Board held in that case, as well as in the case of Fairhaven Long-term Care Centre, LRB File No. 212-86, Reasons for Decision dated October 22, 1986, that the notion of intermingling has some application to the kind of situation which occurred in those two cases.

In both of those cases, the Board held that **the employees of the new entity should be given an opportunity to make the decision with respect to representation by a trade union**. The riddles posed by the configuration in the new institution could be solved neither by allowing one of the trade unions which represented a unit of employees in one of the merged entities to lay claim to all of the employees on the basis of its certification order, nor by trying to maintain two separate groups of employees within the new structure. [emphasis added]

[46] The Board remained seized in Horizon School Division, supra, with the option of ordering a representative vote should the parties so desire. The Board in this case will do the same.

[47] We have already dealt with option #4 as outlined above. While this option might be considered in some exceptional circumstances it would, we think, be unusual for, in effect, a possible decertification to result from an application for successorship. While, we cannot strictly rule out such a scenario, it is not a usual situation for the Board.

[48] Therefore, we answer the questions posed by the parties as follows:

1. While the creation of a unit of employees that represents as close to possible what would be an "all employee" unit, is preferable and desirable, those units of employees currently certified by the Board to bargain collectively are and continue to be appropriate units of employees for the purposes of collective bargaining.
2. Based on our analysis of the options presented in the Horizon School Division case, supra, as outlined above, this case does not meet the requirement for an exception to the usual practice which requires that evidence of support from those employees who are currently unrepresented and for whom representation is sought, must be provided to the Board. For that reason, evidence of support which does not establish support directly from those employees who are proposed to be added to the proposed bargaining unit cannot be accepted.

[41] In Prairie South, supra, the Board concluded at paragraph [48] that the currently certified group of employees constituted an appropriate unit of employees. It also concluded that

that case did “not meet the requirement for an exception to the usual practice which requires that evidence of support from those employees who are currently unrepresented and for whom representation is sought, must be provided to the Board. It should be noted, however, that the application in that case also predated the 2008 amendments to the *Act* which require the Board to order a vote if sufficient evidence of support is filed.

[42] This case is not markedly different from the *Prairie South* case. The major difference would be that the *Prairie South* case, and the other cases which dealt with reorganizations of school divisions (such as *Horizon*) were a reaction to a legislated restructuring of the boundaries of school divisions and as such, *Horizon* can be viewed as a reaction by the Board in attempting to deal with a situation where guidance had not been given to the parties such as was done in the reorganization of Health Districts. As such, *Horizon* and the other school district cases departed somewhat from the Board’s usual practices with respect to how swept in employees support should be determined in reaction to the unusual situation which resulted from the school district reorganizations.

[43] The *Act* was amended in 2008 to require that the Board must order a secret ballot vote of employees within an appropriate unit to determine if the applicant union enjoys majority support of those employees. Subsection 6(1.1) requires that the Board must have evidence of support from “at least 45% of the employees in the appropriate unit” to allow it to order a vote.

[44] The Union provided evidence of support from its current bargaining unit which would satisfy the requirement of subsection 6(1.1) if one looked at the whole of the bargaining unit, including the two unrepresented branches in the City of Saskatoon and in Martensville and Dalmeny. However, as noted in *Prairie South*, “evidence of support which does not establish support directly from those employees who are proposed to be added to the proposed bargaining unit cannot be accepted.

[45] The Union failed to provide sufficient evidence of support from among those employees who would be “swept in” to the bargaining unit which would satisfy the requirements of subsection 6(1.1) of the *Act*. However, the Board believes that that does not preclude a vote being ordered in this case, and that it should nevertheless order a vote among those affected employees pursuant to subsections 37(2)(d) and 18(v) of the *Act*.

[46] The Board is of the opinion that a vote under subsections 37(2)(d) and 18(v) of the *Act* should be ordered for a number of reasons. The Board believes that a bargaining unit which comprises all of the employees within the City of Saskatoon and surrounding area could be an appropriate unit of employees, as could a unit of employees which included all employees save those employed at “X” or “Y” Branch in the City of Saskatoon or surrounding area or it could be employees at various Branches of the Employer (such as the Hill Avenue Branch in Regina, Saskatchewan). The existing unit, given the amalgamations which have occurred, is less than optimal.

[47] First, the Union has acknowledged through its applications for individual Branches that an individual Branch is an appropriate unit and the Board has concurred in this by granting a certification for the Hill Avenue Branch in Regina, Saskatchewan.

[48] Also of note is the fact that the Union did not attempt to include the former Shellbrook Branches in its application, based upon the expression of the wishes of the employees of those Branches, not to be represented by the Union, which was determined as a part of the voluntary recognition program referenced above.

[49] Contrary to the wishes expressed by the former Shellbrook Credit Union employees, the former Langham Credit Union employees voted to have the Union represent them as a part of the voluntary recognition program. As a result of that voluntary recognition, the Union and the Employer negotiated a Letter of Understanding²² with respect to employees of those Branches.

[50] Those Letters of Understanding demonstrate that the Union and the Employer, who have a mature relationship, can, and will make arrangements to accommodate employees who are not represented by the Union, but who wish to transfer between unionized and non-unionized workplaces and to maintain seniority and other benefits resultant from the change in their representation. The parties both provided evidence with respect to a number of transfers and inter-mingling that had occurred within the workplaces. However, in fairness, they did not agree on the effects of those transfers on the affected employees.

²² See Letters of Understanding #14 & #15 appended to the Collective Bargaining Agreement expiring March 31, 2010 – Exhibit U-1 in these proceedings.

[51] It is also a reality that notwithstanding how this application is determined that there will be unionized and non-unionized workplaces within the Affinity Credit Union network that the parties are going to have to work together to rationalize.

Summary and Decision:

[52] In the Board's letter decision of February 8, 2010, the Board directed votes to be held to determine if majority support exists from the various affected employees. As a result of this decision, the following directions concerning those votes are appropriate:

1. With respect to the branches of the former Langham Credit Union which the Union seeks to include within the bargaining unit (Langham, Borden, Hepburn and Waldheim branches) by virtue of its application to amend the certification order, those votes shall be tallied together by the Board Agent and reported as such;
2. With respect to the Branches sought to be swept in to the bargaining unit (St. Mary's Branch and City Centre Branch, Saskatoon, and the Martensville and Dalmeny Branches), the votes at those Branches shall be tallied and reported separately by the Board Agent; and
3. The votes by the employees other than those noted above need not be considered by the Board.

[53] Upon receipt by the Board of the results of these votes, the Board will consider the results of these votes *in camera*, and will issue an Order defining the appropriate unit of employees for the purpose of bargaining collectively.

[54] This panel of the Board shall remain seized with the consideration of the voting results and the determination of the appropriate unit of employees for the purposes of bargaining collectively.

DATED at Regina, Saskatchewan, this **16th** day of **March, 2010**.

Kenneth G. Love, Q.C.
Chairperson