

**The Labour Relations Board  
Saskatchewan**

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

LRB File No. 010-11 to 016-11; May 17, 2011

Chairperson, Kenneth G. Love, Q.C.; Members: Elma Shoulak and John McCormick

For the Applicant Union:

Ms. Heather Jensen

For the Respondent Employer:

Mr. W.R. Waller

**Appropriate Unit – Union applies for six (6) individual branches out of eleven (11) branches of Employer Credit Union – Employer argues that unit (individual branch locations) is not an appropriate unit – Board considers past practice in organization of credit unions in Province – Determines that individual branch locations are appropriate unit for collective bargaining.**

**Appropriate Unit – Board considers criteria for determination of appropriate unit – Based upon its consideration of those criteria, Board determines that individual branches of Employer Credit Union have sufficient Community of Interest and Viability, notwithstanding such units may be under-inclusive units.**

**REASONS FOR DECISION**

**Background:**

[1] United Food and Commercial Workers Union, Local No. 1400, (the “Union” or “UFCW”) applied to the Board to be certified as the bargaining agent for seven (7) branches of the Plainsview Credit Union (the “Employer” or the “Credit Union”) by applications filed January 14, 2011.

[2] The applications were in respect of the following branches of the Credit Union which it operates in:

- Emerald Park, Saskatchewan
- Indian Head, Saskatchewan
- Odessa, Saskatchewan
- Qu’Appelle, Saskatchewan
- Riceton, Saskatchewan
- Sintaluta, Saskatchewan
- Vibank, Saskatchewan

(which branches are collectively referred to as the “Western Region”).

[3] In addition to these branches, the Employer also operates branches of the Credit Union at:

- Arcola, Saskatchewan
- Glenavon, Saskatchewan
- Kennedy, Saskatchewan
- Kipling, Saskatchewan
- Montmartre, Saskatchewan

(which branches are collectively referred to as the “Eastern Region”).

[4] In its applications, the Union applied for the following unit of employees at each location:

*All employees of the Plainsview Credit Union at its [Eastern Region locations as outlined above] except: CEO, CFO, Vice President(s), Managers, Senior Specialists, those above the rank of Senior Specialists and the Executive Assistant (Confidential Secretary).*

[5] In its Reply, the Employer questioned the appropriateness of the unit(s) applied for. A hearing in respect of the applications was heard by the Board in Regina on April 6, 2011.

**Facts:**

[6] The Credit Union operates branches in twelve (12) locations as outlined above. In the Eastern Region, the Credit Union employed 22 employees at the time of the application. Two (2) positions were vacant at the time the certification vote was conducted by the Board on February 3, 2011. One (1) of those positions, the Wealth Management Specialist in Qu’Appelle was employed on the date of the certification application, but was not employed by the Credit Union at the time the vote was conducted by the Board. It was agreed by the Union that the vote cast by Kerry Swann, who had been in the position, should not be counted by the Board.

[7] The Union called three (3) witnesses in respect of its application, Mr. Glenn Stewart, Mr. Darren Piper and Mr. Kerry Swann. The Employer called Mr. Robert Bauche as a witness.

[8] Mr. Stewart testified that he had been a service representative and an organizer for the Union. He began his employment with the Union in 1993. He testified that his responsibilities included various employers, primarily in Regina, including employees of the Hill Avenue Branch of the Affinity Credit Union in Regina.

**[9]** Mr. Stewart testified that the Hill Avenue branch had been certified by the Board as a single branch unit. He further testified that this branch, along with other Affinity Credit Union branches in Regina had been the subject of an organizing campaign by the Union. Following representation votes conducted by the Board, only the Hill Avenue branch was certified by the Board.

**[10]** Mr. Stewart testified that other Credit Unions in Saskatchewan were also organized and certified on a branch by branch basis. In support, he provided the Board with several of its Orders certifying various credit union branches in the province.

**[11]** Mr. Stewart testified that the Union had not concerns concerning the viability of the bargaining units applied for seven (7) on a branch by branch basis.

**[12]** He testified that he visited a web site which provided quick facts regarding credit unions in Saskatchewan. That site showed that there were 61 credit unions in Saskatchewan in 304 service locations. He testified that only four (4) of the 61 credit unions were unionized.

**[13]** Mr. Darren Piper, an organizer co-ordinator with the Union, testified concerning the organizing campaign related to credit unions in Saskatchewan in which the Union was engaged. His testimony was that financial institutions, like credit unions, are difficult to organize. He testified that in his experience, these campaigns took longer because the employees were intelligent people who asked a lot of questions concerning union membership. He testified that they often wanted to consider their options and “think about it”. Mr. Piper testified that such employees may not return a support card, but usually wanted to “stay in touch”. He testified that these employees were usually a “close knit” group of employees who stayed in touch with each other.

**[14]** Mr. Piper further testified that he was directly involved in the organizing campaign for this Employer. He testified that they were organized on a branch by branch basis based upon Board Orders which were granted on this basis. Mr. Piper also testified that the Union wanted to organize all of the employees of the Employer, but proceeded on a branch by branch basis as noted above.

**[15]** He testified that the Western Region of the Credit Union was targeted because they had a service representative who provided service to the area covering these branches. Mr. Piper testified that another service representative had responsibility for the area in which the Eastern Region branches are located.

**[16]** Mr. Piper noted that the Union may try to organize the Eastern Region branches in the future. He also testified that the Union was still trying to organize other Affinity Credit Union branches in the Province.

**[17]** In cross-examination, Mr. Piper testified that while he had visited all twelve (12) locations of the Credit Union as a part of his organizing campaign, that the Union had only applied for the seven (7) Western Region branches as they did not have sufficient support in the other branches.

**[18]** Mr. Kerry Swann, a former employee of the Credit Union, also testified under subpoena for the Union. He had been employed with the Credit Union as a Wealth Management Specialist at the time of the application for certification, but left that position as of January 24, 2011.

**[19]** Mr. Swann described his duties as a Wealth Management Specialist which involved travel from his home location in Qu'Appelle, Saskatchewan to all of the other branches operated by the Credit Union. He testified that the Credit Union was organized into two (2) regions, the Eastern Region and the Western Region. He testified that the Western Region was headquartered in Emerald Park, Saskatchewan and the Eastern Region was headquartered in Kipling, Saskatchewan.

**[20]** Mr. Swann testified that most employees did not travel between branches. He testified that for the most part travel between branches was usually within the Region where the employee had his or her home branch. He also testified that on occasion full time staff might "fill in" at other branches but, more typically, casual employees were used for that purpose.

**[21]** Mr. Robert Bauche, the CEO of the Credit Union testified on behalf of the Employer. He described the organization of the Credit Union into regions as noted above. He

testified the Credit Union had its head office in Kipling, Saskatchewan and operated in twelve (12) other municipalities in the Province.

[22] Mr. Bauche provided considerable detail as to the branch operations of the Credit Union and the interaction of various employees at each of the branches. He also provided job descriptions for each of the positions at the Credit Union.

[23] Mr. Bauche provided a detailed listing of Casual Staff Hours<sup>1</sup> which showed where and for how many hours various casual employees worked in the various branches of the Credit Union.

[24] Mr. Bauche testified that all employees, including casual employees,<sup>2</sup> have a home branch from which they work, although he testified that some employees could be located in any of the twelve (12) branches. In cross-examination, he testified that, other than casual employees, most employees worked out of their home location.

[25] Mr. Bauche testified that the regional breakdown between the Eastern Region and the Western Region was determined based upon the assets under administration at each of the branches. In establishing the regions, he testified that the Credit Union tried to equalize the amount of assets administered in each region.

**Relevant Statutory Provisions:**

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

2 *In this Act:*

(g) "employer" means:

(i) an employer who employs three or more employees;

(ii) an employer who employs less than three employees if at least one of the employees is a member of a trade union that includes among its membership employees of more than one employer;

(iii) in respect of any employees of a contractor who supplies the services of the employees for or on behalf of a principal pursuant to the terms of any contract entered into by the contractor or principal, the

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<sup>1</sup> See Exhibit E-24

<sup>2</sup> See Exhibits E-2 and E-24

*contractor or principal as the board may in its discretion determine for the purposes of this UUA<sup>3</sup>;*

*and includes Her Majesty in the right of the Province of Saskatchewan*

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;*

### **Union's arguments:**

[27] The Union filed a written argument and book of authorities which the Board appreciated and which it reviewed. In its argument, the Union argued that certification on a branch by branch basis was appropriate. It argued that a branch unit was both appropriate and that the Board had, in other similar situations, determined that a branch of a credit union was an appropriate unit. In support of its position, the Union cited numerous decisions of the Board.<sup>3</sup>

[28] The Union argued that in accordance with the factors identified by the Board regarding appropriateness of units, that a unit comprised of a single branch was not under-

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<sup>3</sup> *Re: Regina School Division No. 4*, [2009] 172 C.L.R.B.R. (2d) 307, [2009] CanLII 53733, LRB. File No. 062-09; *Re: Ranch Ehrlo Society*, [2008] Sask. L.R.B.R. 836, LRB File No. 108-07 and decision cited therein; *Re: Affinity Credit Union and UFCW, Local 1400*, [2010] CanLII 13388, LRB File No. 135-09.

inclusive<sup>4</sup>. The Union also argued that even at branches where there was only one employee, that section 2(g)(ii) of the *Act* would apply to allow such a unit to be appropriate.

**[29]** The Union also argued that the proposed units were appropriate insofar as there was no discrete skill or other boundary surrounding the proposed unit. It also argued that there was limited intermingling of staff and that there was no lack of bargaining strength in the proposed unit.

**[30]** The Union acknowledged that there could be a more appropriate unit of employees (i.e.: an “all employee unit”), nevertheless, the units applied for were appropriate units, which the Board had certified in the past.

**[31]** The Union also made argument concerning both the Qu’Appelle branch and the Riceton branch certification votes conducted by the Board. The Union noted that the Statement of Employment identified two (2) employees at each of these branches. At the Qu’Appelle branch, the Union acknowledged that Mr. Swann, one (1) of the two (2) employees, was ineligible to vote as he was not employed on the date of the vote being conducted. At the Riceton branch, there were two (2) employees in the branch, only one (1) of whom had voted, which gave rise to a quorum issue under s. 8 of the *Act*. The Union argued in respect of the Riceton vote that the Board should, in the circumstances, order a second vote at that location.<sup>5</sup>

#### **Employer’s arguments:**

**[32]** Mr. Waller, on behalf of the Employer, also filed a written argument and case authorities which is appreciated and has been reviewed.

**[33]** The Employer argued that the proposed single branch units were inappropriate for the purposes of collective bargaining. The Employer argued that its business operations have been structured so that employees are a part of the overall organization and that those

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<sup>4</sup> See *Regina School Division No. 4*, *supra*, note 3; *Graphic Communication International Union, Local 75M v. Sterling Newspapers Group, a division of Hollinger Inc.*, [1998] Sask. L.R.B.R. 770, LRB File No. 174-98; *Re: Canadian Office and Profession Employees Union, Local 342 v CUPE*, [2006] Sask. L.R.B.R. 1, LRB File No. 095-05; *CUPE, Local 3990 v. Core Community Group Inc.*, [2000] Sask. L.R.B.R. 617, LRB File No. 015-00; *CUPE, Local 5004 v. Saskatoon Housing Authority*, [2010] CanLII 42667, LRB File No. 048-10.

<sup>5</sup> See *Oil, Chemical & Atomic Workers International Union v. Potash Corporation of Saskatchewan Mining Limited, Rocanville Division and United Steelworkers of America*, [unreported] LRB File No. 138-78.

employees are interchangeable between branches. They argued that there was frequent intermingling and cross-filling of positions between branches.

[34] The Employer also relied upon the Board's decisions cited by the Union in *Regina School Division No. 4, Saskatoon Housing Authority and Ranch Ehrlo Society, supra*. It argued that the units applied for were under inclusive, that the Credit Union's organizational structure promoted staff intermingling and lateral mobility between branches.

[35] The Employer also argued that there would be a lack of strength in the bargaining units with respect to the two (2) proposed single employee bargaining units (Riceton and Qu'Appelle). Furthermore, the Employer submitted that the bargaining unit description, if a single-person unit was found to be appropriate should be limited to the position employed at those branches, rather than an "all employee unit" as sought by the Union.

[36] The Employer argued that the Union had failed to provide any evidence necessary to show that the requirements of s. 2(g)(ii), particularly that the Union had failed to provide any evidence to show that "at least one of the employees is a member of a trade union that includes among its membership employees of more than one employer."

[37] The Employer suggested that the evidence provided to the Board from Mr. Bauche showed that there was a high degree of intermingling of staff and cross-over between staff which made the units applied for inappropriate.

### **Analysis and Decision:**

#### **Under-inclusive Unit**

[38] While it is likely beyond dispute that the most inclusive and therefore *most appropriate unit* would be an all employee unit of all employees of the Credit Union, that is simply not the test on an application for certification. The Board is not to choose the most ideal or more appropriate unit, but rather determine whether the unit applied for is an *appropriate* one. In *Canadian Union of Public Employees v. The Board of Education of the Northern Lakes School Division No. 64*<sup>6</sup>, involving a union's application for the amendment of its certification Order to include bus drivers in its support staff bargaining unit, the Board stated at 116-117:

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<sup>6</sup> [1996] Sask. L.R.B.R. 115, LRB File No. 332-95.

*The basic question which arises for determination in this context is, in our view, the issue of whether an appropriate bargaining unit would be created if the application of the Union were to be granted. As we have often pointed out, this issue must be distinguished from the question of what would be the most appropriate bargaining unit.*

*The Board has always been reluctant to deny groups of employees access to collective bargaining on the grounds that there are bargaining units which might be created, other than the one which is proposed, which would be more ideal from the point of view of collective bargaining policy. The Board has generally been more interested in assessing whether the bargaining unit which is proposed stands a good chance of forming a sound basis for a collective bargaining relationship than in speculating about what might be an ideal configuration.*

**[39]** The test for determining if an under-inclusive bargaining unit is an “appropriate bargaining unit” was set out in *Graphic Communication International Union, Local 75M v. Sterling Newspapers Group, A Division of Hollinger Inc.*<sup>7</sup>, as follows:

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

**[40]** In *Re: Saskatoon Housing Authority*<sup>8</sup>, which was cited by both parties, Vice-Chairperson Schiefner was faced with a similar situation as here, involving an under-inclusive unit. He made the following comments in that case, which are applicable here as well:

*[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.*

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<sup>7</sup> [1998] Sask. L.R.B.R. 770, LRB File No. 174-98 at 780

<sup>8</sup> *Supra* Note 4

[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.

[41] In *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. O.K. Economy Stores (a division of the Westfair Foods Ltd.)*<sup>9</sup>, the Board summarized the test for determining the appropriateness of a bargaining unit in the following terms:

*This does not mean that large is synonymous with appropriate. Whenever the appropriateness of a unit is in issue, whether large or small, the Board must examine a number of factors assigning weight to each as circumstances require. There is no single test that can be applied. Those factors include among others: whether the proposed unit of employees will be able to carry on a viable collective bargaining relationship with the employer; the community of interest shared by the employees in the proposed unit; organizational difficulties in particular industries; the promotion of industrial stability; the wishes or agreement of the parties; the organizational structure of the employer and the effect that the proposed unit will have upon the employer's operations; and the historical patterns of organization in the industry.*

*The Board recognizes that there may be a number of different units of employees which are appropriate for collective bargaining in any particular industry. As a result, on initial certification applications a bargaining unit containing only one store may be found appropriate. That finding does not rule out the existence of other appropriate units and, accordingly, on a consolidation application, a larger unit may be found appropriate. There is no inconsistency between the initial determination of a single store unit with a municipal geographic boundary and a subsequent determination that a larger unit is appropriate.*

[42] The difficulty with assessing the appropriateness of under-inclusive units lies in the conflict of two competing interests: employees' right to organize and join unions of their choosing vs. the desire to have stable bargaining structures. This conflict was aptly described by the Board in the *Graphic Communications International Union, Local 75M v. Sterling Newspapers Group, A Division of Hollinger Inc.*, *supra*, decision, in the context of an application for certification of employees in the press room at a newspaper company, at 776:

*The Board is faced in this instance with choosing between the rights of employees to organize and the need for stable collective bargaining structures that will endure the test of time. It is clear from the decisions in other jurisdictions that the "most" appropriate bargaining units in this industry consist either of wall-to-wall units or two bargaining units, one consisting of the front end employees, including office, administration and editorial, and one consisting of the production workers, including pressmen. Such a configuration would likely result in stable and effective labour relations, in the sense that the Union would have a significant constituency within the workplace to bargain effectively with the Employer. The ultimate viability of smaller, less inclusive, bargaining units is, in our experience, and certainly in the past experience with this Employer, more tenuous over the long run. The proposed unit can be described in this sense as an under-inclusive unit.*

*The Board faced a similar dilemma in Hotel Employees & Restaurant Employees Union Local 767 v. Regina Exhibition Association Ltd., [1986] Oct. Sask. Labour Rep. 43, LRB File No. 015-86, where the applicant, which had previously unsuccessfully applied to represent all employees in the food services department of the employer, applied a second time to represent only the concessions department of the food services department. On the second application, the Board held as follows, at 45:*

*The fundamental purpose of The Trade Union Act is to recognize and protect the right of employees to bargain collectively through a trade union of their choice, and an unbending policy in favour of larger units may not always be appropriate in industries where trade union representation is struggling to establish itself. It would make little sense for the Board to require optimum long term bargaining structures if the immediate effect is to completely prevent the organization of employees. In effect, the Board is compelled to choose between two competing policy objectives; the policy of facilitating collective bargaining, and the policy of nurturing industrial stability by avoiding a multiplicity of bargaining units. Where the Board is of the view that an all employee unit is beyond the organizational reach of the employees it is willing to relax its preference for all employee units and to approve a smaller unit.*

*This does not mean, however, that the Board will certify proposed bargaining units based merely on the extent of organizing. Every unit must be viable for collective bargaining purposes and be one around which a rational and defensible boundary can be drawn.*

**[43]** Applying the factors set out in *O.K. Economy, supra*, for the reasons that follow, lead the Board to its decision that the group of employees applied for by the Applicant is an appropriate unit for collective bargaining.

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<sup>9</sup> [1990] Fall Sask. Labour Rep. 64, LRB File No. 264-89.

**Community of interest**

[44] The parties disagreed regarding the community of interest element. The Employer asserted that there was an “organization wide” community of interest and employees could work at any branch in the organization and often did. The Union argued that the community of interest was much more narrow and was insular within a particular branch of the organization. Contrary to the Employer’s position, they suggested that employees principally worked in their home branch and that there was little interaction between the branches except for positions, like the one held by Mr. Swann, but by its nature required him to attend at the various branches of the organization.

[45] Exhibit E-24 supports the Union’s contention regarding employee interaction. This Exhibit provided information regarding casual staff branch hours. That Exhibit is telling insofar as there is a clear division between the two regions. No casual employee from the Eastern Region worked in the Western Region and no casual employee from the Western Region worked within the Eastern Region. While casual employees worked interchangeably within the two regions, they did not cross regional lines.

[46] The Board in *UFCW v. Affinity Credit Union*<sup>10</sup> determined, following a vote conducted by the Board in various branches of Affinity Credit Union, that it was appropriate to not only conduct the votes on a branch by branch basis (in some instances), but also to exclude from the bargaining unit certain successor branches based upon the expressed wishes of the employees.

[47] Similarly, in other recent decisions,<sup>11</sup> the Board has certified individual branches of Affinity Credit Union in Hague (LRB File No. 043-10) and a branch of the Affinity Credit Union in Regina on Hill Avenue (LRB File No. 079-09). In the latter case, the Union had applied for certification for two branches of Affinity Credit Union in Regina, but as a result of the vote conducted by the Board, only the employees of the Hill Avenue branch chose to be represented by the Union.

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<sup>10</sup> [2010] CanLII 13388, LRB File No. 135-09.

<sup>11</sup> See *UFCW, Local 1400 v. Affinity Credit Union*, LRB File No. 043-10 and *UFCW, Local 1400 v. Affinity Credit Union*, LRB 079-10.

[48] This demonstrates that there is a community of interest at the branch level of credit unions as demonstrated by the choice of one branch to seek representation and the other to decline to be represented. Similarly in the *Saskatoon Housing Authority* case<sup>12</sup>, *supra*, while the units were sub-optimal, the employee's choice prevailed.

[49] It is also interesting to note that while the Board was prepared to grant certification to a sub-optimal unit in *Re: Saskatoon Housing Authority*<sup>13</sup> upon the votes being tabulated, the employees chose not to have CUPE represent them for the purposes of collective bargaining.

[50] While employee choice is an important consideration, as noted above in paragraph [42], there is usually a competition between the rights of employees to choose a bargaining agent and the need to have a stable bargaining structure.

### **Viability**

[51] While it is near impossible for us to determine whether the proposed bargaining units are viable in the long-term, it is apparent that such smaller units have proven viable in the past, including the one person units referenced by the Union. In his testimony, Mr. Piper stated that the Union was prepared to do whatever was necessary to ensure the viability of the units and would engage in bargaining on behalf of all of the certified units regardless of their size.

[52] Furthermore, we take notice of the fact that UFCW, Local 1400 is a large and experienced local of a large and experienced international labour organization which certainly has the resources to ensure the viability of these units.

[53] As for bargaining strength, while it could be argued that branch units do not have any bargaining strength due to limited numbers of employees, by contrast, in a single employee unit, that bargaining strength, in the event of a strike could result in the closure (during the currency of the strike) as there are no management employees available at the branch to maintain services. However, in the past, the Board has not determined that single employee branches would not be viable for collective bargaining.

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<sup>12</sup> *Supra* Note 11

<sup>13</sup> *Supra* Note 8

**Respondent's organizational structure**

**[54]** The evidence of Mr. Bauche was that the Credit Union was organized to be as flexible as possible concerning inter-branch transferability of skills and resources. His testimony pointed towards individual branches not being appropriate as bargaining units due to intermingling between the proposed bargaining units and other employees who would not be in the bargaining unit.

**[55]** As noted above, while it may be more desirable to have a more inclusive unit of employees, the wishes of the Respondent in this regard cannot prevail over the wishes of the employees and the evidence of support which has been filed in respect of this application. The right of employees "to organize in and to form, join or assist trade unions and to bargain collectively through a trade union of their own choosing", is set out in s. 3 of the *Act*.

**[56]** In its argument to the Board, counsel for the Employer referenced the criteria referenced by the Board in *Sterling Newspapers*<sup>14</sup>. Based upon the above analysis, we have the following comments on each of these criteria.

**[57]** There is a discrete boundary and community of interest among both the employees at a branch level as determined previously by this Board. That boundary can be either the branch itself or, on a broader level, the Western Region of the Credit Union.

**[58]** There is limited intermingling between the various employees, especially on the regional level. Even casual employees remained within their own region when working in the various branches. This level of intermingling, even at the branch level, was not a deterrent to the Board certifying one branch in Regina operated by Affinity Credit Union (Hill Avenue Branch) and denying certification respecting another Regina branch.

**[59]** As noted above, the Union has sufficient resources and has indicated its desire to ensure the units remain viable and enjoy bargaining strength.

**[60]** In its argument, counsel for the Union referenced an article in the *Osgoode Hall Law Journal* by Elizabeth J. Shilton Lennon<sup>15</sup>. That article spoke to the difficulties encountered

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<sup>14</sup> *Supra* Note 4

<sup>15</sup> August 1980 Volume 18, No. 2 at 177 et seq.

in organizing financial institutions. At p. 187, in speaking to the issue of appropriate unit, Ms. Lennon says:

*The Board's decision in Victory Square<sup>16</sup> to allow unions to organize banks on a branch-by-branch basis represents a very precarious resolution of some profound conflicts in public policy. ... Generally speaking, there had been a shift in public policy in Canada over the preceding few years in favour of large bargaining units. The competing considerations are succinctly by the British Columbia Labour Relations Board in Insurance Corporation of British Columbia<sup>17</sup>:*

*[T]here is a tension between the two uses of the bargaining unit. On the one hand, the scope of the unit is the key to securing trade union representation and collective bargaining rights for the employees. Since this is the fundamental purpose of the Code, the Board's definition must be such as to facilitate organization of the employees. On the other hand, that unit sets the framework for actual bargaining for a long time into the future. A structure is needed which is conducive to voluntary settlements without strikes and will minimize the disruptive effects of the latter when they do occur. Unfortunately, the lesson of experience is that these two objectives often point in different directions.*

**[61]** In her thesis, Ms. Lennon noted that this decision by the Canada Labour Relations Board was a breakthrough which permitted organization on a branch by branch basis notwithstanding the Board's preference for larger, all inclusive units. Nevertheless, as she noted in her treatise, there remains uncertainty and no absolute answers. Many questions remain to be determined.

**[62]** While the determination of an appropriate unit and its stability or bargaining strength will continue to be an issue to be determined by the facts of every case, the Board is confident that these units can and will be stable, viable and will enjoy sufficient bargaining strength.

**[63]** The most compelling arguments made by the Employer are that the Union could have organized and applied for a larger unit (i.e.: the Western Region) or for all of the employees of the Credit Union, but did not do so. The testimony from Mr. Piper was that he visited all branches, but could not achieve sufficient support in the other branches to make an application to the Board. Secondly, there is a more inclusive choice of the whole of the Western Region as distinct from the individual branches for which certification is sought.

<sup>16</sup> The actual case name was *Canadian Imperial Bank of Commerce*, [1977] 2 Can. L.R.B.R. 99, 77 C.L.L.C. 16,089

<sup>17</sup> [1974] 1 Can. L.R.B.R. 403 at 407, 75 C.L.L.C. 16,146

**[64]** These arguments do not, however, give proper consideration to the rights granted by employees to choose bargaining agents of their own choosing. Similarly, with the community of interest being defined as a branch level, as the Board has done on other occasions, the fundamental rights of choice of bargaining agent by employees must supersede. As noted above, an appropriate unit need not be the most appropriate unit, it must simply be appropriate.

**[65]** The units applied for are each an appropriate unit for collective bargaining. The Board previously directed that a vote be held in accordance with s. 6(1) of the *Act* to determine if there is sufficient support within the appropriate units of employees for the Applicant's application. Those votes may now be counted by the Board Agent, with the ballot of Kerry Swann excluded and the ballot of Janice King included. Scrutineers for the parties may be present at the counting of the vote by the Board Agent. Following the tabulation of the vote, the results shall be forwarded to the Board for consideration of an *in camera* panel of the Board and appropriate Orders resultant therefrom.

**DATED** at Regina, Saskatchewan, this **17th** day of **May, 2011**.

**LABOUR RELATIONS BOARD**

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Kenneth G. Love, Q.C.  
Chairperson