

**The Labour Relations Board  
Saskatchewan**

**PRINCE ALBERT FIREFIGHTERS ASSOCIATION, IAFF LOCAL 510, Applicant v. CITY OF PRINCE ALBERT, Respondent**

LRB File No. 192-10; December 5, 2011

Vice-Chairperson, Steven Schiefner; Members: Mr. Maurice Werezak and Mr. Clare Gitzel

For Applicant Union: Mr. Sean McManus  
For Respondent Employer: Mr. Mitchell J. Holash

**Employee – Exclusion from Bargaining Unit – Union makes application to have Battalion Chiefs and Fire Inspection/Prevention Officers brought within scope of bargaining unit – Board reviews considerations for managerial and confidential exemptions – Board concludes that a material change in circumstances had occurred since Board’s last certification Order – Board concludes that Battalion Chiefs continue to be primarily responsible for performing managerial functions – Board concludes that Fire Inspection/Prevention Officers no longer perform sufficient duties to justify exclusion from bargaining unit – Board determines that Union’s certification Order ought to be amended to remove exclusion for Fire Inspection/Prevention Officers but maintains exclusion for Battalion Chiefs – Board maintains jurisdiction in event parties are unable to agree on process for integration of Fire Inspection/Prevention Officers into bargaining unit.**

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

**REASONS FOR DECISION**

**Background:**

**[1] Steven D. Schiefner, Vice-Chairperson:** The City of Prince Albert, the Respondent in these proceedings, operates a professional firefighting department that provides fire protection services for the City of Prince Albert and surrounding area. The Prince Albert Firefighters Association (the “Association”) is a local of the International Association of Firefighters and was certified by the Saskatchewan Labour Relations Board (the “Board) on April 24, 1991<sup>1</sup> to represent the following unit of employees:

*All employees of the City of Prince Albert employed in its fire department, except the fire Chief, Deputy Fire Chiefs, Battalion Chiefs, Maintenance Supervisor, Fire Inspection Officer and Secretary.*

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<sup>1</sup> See: LRB File No. 166-90.

[2] On November 30, 2010, the Association made application to the Board pursuant to s. 5(m) of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the “Act”) for a determination as to whether or not the duties and responsibilities of the positions of Battalion Chiefs and Fire Inspection/Prevention Officers<sup>2</sup> have changed sufficiently that these positions have become “employees” within the meaning of s. 2(f) of the Act and, if so, for an Order to amend the scope of its bargaining unit to remove the exclusion for these positions.

[3] The Association’s application was heard in Saskatoon, Saskatchewan on April 20 and 21, 2011, on August 26, 2011 and on October 6, 2011.

[4] The Association called Mr. Kris Olsen, the Association’s Vice-President; Mr. Barry Hayden, a Battalion Chief (“BC Hayden”); and Mr. Quinton Rowland, a Fire Inspection/Prevention Officer (“FPO Rowland”). The Employer called Mr. Les Karpluk, the Chief of the Prince Albert Fire Department (“Chief Karpluk”).

**Facts:**

[5] The City of Prince Albert has operated a fire protection service for decades. The historic focus of a fire protection service has been the suppression of fires, the rescue and extraction of persons under exigent circumstances, and the general protection of persons and property from the risks associated with fire or similar dangers. The Prince Albert Fire Department provides fire protection services on a twenty-four (24) hour basis. To do so, the department utilizes four (4) platoons of professional firefighters.

[6] To perform their assigned tasks, firefighters are purpose trained and operate under a “paramilitary structure”; meaning that each firefighter has a clearly-defined rank and that, during firefighting activities and when responding to emergencies (aka “incidents” or “deployment”), firefighters maintain and operate under a strict chain of command. Over the years and through experience, the Prince Albert Fire Department has developed and/or adopted Standard Operating Procedures (“SOPs”). SOPs guide firefighters in combating fires, in performing search, rescue and extraction functions, and in the general performance of their

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<sup>2</sup> The disputed position was referred to as a “Fire Inspection Officer” in the Board’s 1991 certification Order. However, the current nomenclature of the parties was to refer to the position as “Fire Inspection/Prevention Officer”. No significance was attached to the change in name by the parties. For sake of consistency, we have referred to this position as “Fire Inspection/Prevention Officer” in the Reasons for Decision.

duties; many of which duties are performed under dangerous circumstances. To the extent possible, SOPs are developed to cover most scenarios that a firefighter will encounter when deployed in the field. Because of the exigent circumstances under which firefighters are expected to perform their duties, ongoing training is the norm with particular emphasis being placed on understanding and compliance with the Department's SOPs. When responding to a fire or other deployment, firefighters adopt an incident command mode; wherein a senior officer becomes the "incident commander"; the chain of command is enforced for communication between officers; and firefighters are expected to perform in compliance with the Department's SOPs. As BC Hayden put it "*In an emergency, you need to know what everyone else is going to do ... there can be no freelancing. If people do stuff you don't expect, people get hurt!*"

[7] Overall responsibility for the Prince Albert Fire Department rests with the Fire Chief, who (together with other senior administrators with the City of Prince Albert) ultimately reports to City Council (i.e.: to the City's elected officials).

[8] The organizational structure of the Prince Albert Fire Department is hierarchical, with the Fire Chief being the most senior officer in the Department. At the time of hearing, there were two (2) divisions within the Department; the largest division being "Operations"; and the other division being "Training and Prevention". At the time of hearing, a Deputy Chief had been assigned to each of these divisions. However, such has not always been the case. For example, in 1991, at the time the most recent certification Order for this bargaining unit, the Prince Albert Fire Department did not have any Deputy Chiefs. Rather, the senior managerial duties of the Department were divided between the then Fire Chief, a Fire Inspector (who functioned as an Acting Fire Chief from time to time) and four (4) Battalion Chiefs. Starting in 2002, the Prince Albert Fire Department experienced growth in its management ranks. In 2002, the Department received funding and appointed a Deputy Fire Chief to aid the then Fire Chief in his duties. In 2006, a second Deputy Fire Chief position was funded and a member appointed to this position. In 2008, a second Fire Inspector was funded and a member was appointed to this position. At the time of hearing, the management component (i.e.: the out-of-scope positions) consisted of nine (9) positions; the Fire Chief, two (2) Deputy Fire Chiefs, four (4) Battalion Chiefs, and two (2) Fire Inspection/Prevention Officers.<sup>3</sup>

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<sup>3</sup> At some point in time, the nomenclature in the workplace for these positions changed from "Fire Inspector" to "Fire Inspection/Prevention Officer".

[9] Within the Operations division, there were four (4) platoons of firefighters working a pattern of shifts to ensure fire protection services on a twenty-four (24) hour basis. A Battalion Chief was assigned to each platoon. Reporting to each Battalion Chief were two (2) Captains, each typically responsible for a piece of firefighting equipment (i.e.: fire truck, ladder truck, etc.) and the firefighters assigned to the operation of that apparatus. Usually, four (4) firefighters were assigned to each piece of equipment, resulting in a platoon strength of ten (10) firefighters and a Battalion Chief. At the time of hearing, the members of the bargaining unit consisted of approximately forty (40) firefighters of varying ranks ranging up to and including officers with a rank of Captain.

[10] As this application involved the status of the Battalion Chiefs and the Fire Inspection/Prevention Officers, considerable evidence was tendered regarding the history and job duties of these positions. At the time of application, both of these positions were excluded from the bargaining unit pursuant to this Board's 1991 certification Order.

[11] As indicated, a Battalion Chief is assigned to a particular platoon of firefighters and is the most senior officer on that platoon. Generally speaking, the Battalion Chief on duty becomes the incident commander during a deployment and, when not deployed in the field, is responsible for directing the day-to-day activities of the members of his/her platoon. As indicated, in the Prince Albert Fire Department, a platoon generally consists of a Battalion Chief and ten (10) members; two (2) officers with the rank of Captain; and eight (8) firefighters. It should, however, be noted that the assignment of officers to the platoons has changed over the years. For example, BC Hayden testified that, when he joined the Prince Albert Fire Department in the late 1970s, the most senior officer on a shift (i.e.: on a platoon) was an out-of-scope manager. However, by the mid 1980s, the most senior officer on a shift was an in-scope supervisor. BC Hayden testified that during the 1990s, the Department moved back to having "*management on the shifts*", with an out-of-scope Battalion Chief assigned to each platoon. This latter configuration is reflected in the current certification Order.

[12] The most recent job description for a Battalion Chief (dated September of 2010) indicated that an officer assigned to this position has supervisory, administrative and operational responsibilities. The operational responsibilities of this position generally relate to the duties of a Battalion Chief in responding to a fire alarm and his/her role as an incident commander. The

balance of the duties and responsibilities are either administrative or supervisory. The job description provides in part as follows:

*The position is responsible for the supervision of a Platoon of Fire Fighters which includes assigning duties, scheduling training activities, assisting with hiring of employees, evaluating the performance of Platoon members, implementing discipline procedures and making recommendations to the Fire chief on the overall operation of the Fire Department.*

**Illustrative Examples of Work**

- *Responsible for the efficient direction and supervision of a platoon of Fire Fighters which includes shift schedules, vacation schedules, the calling back of off duty Fire Fighters to maintain minimum manning requirements.*
- *Responds to fire alarms and other emergency calls as required and acts as the Incident Commander.*
- *Enforces departmental rules and regulations, and offers recommendations on the development and implementation of policies and procedures for the Fire Department.*
- *Participates in employee selection panels; evaluates the performance of Platoon members; enforces discipline as required; prepares written reports including recommendations to the Fire Chief on all grievances involving employees on his shift.*
- *Assists with the development of annual Department operation budgets and provides recommendations on the purchase of fire apparatus.*
- *Supervises, schedules and monitors training programs, assigns staff for training exercises, fire prevention activities, inspections and other fire department related activities.*
- *Performs other duties as assigned.*

**[13]** There was no question that the Battalion Chiefs were supervisors on their shift. However, the focus in these proceedings was the managerial functions performed by the incumbents. For example, the role of a Battalion Chief in hiring (in the traditional sense) was somewhat limited. Generally speaking, Battalion Chiefs do not hire anyone; rather the Department as a whole recruits prospective firefighters. Candidates are interviewed by a panel of senior officers (which would typically include one or more Battalion Chiefs); and who are put through fitness testing (during which Battalion Chiefs would routinely be present). While Battalion Chiefs have a voice in the selection of candidates, BC Hayden testified that the Fire Chief and the Deputy Chiefs made the final determinations in the last round of hiring, when five (5) new recruits were hired by the Department.

**[14]** Similarly, Battalion Chiefs play a role in the promotion and advancement of firefighters within a particular platoon. However, promotions are, for the most part, based on

completion of prerequisite training and/or years of service. Training for all firefighters in the Department is initially a decision of the Deputy Chief of Training and Prevention. However, BC Hayden testified that he had authority to adjust the training delivered to his platoon to meet the needs of individual members to ensure they satisfied his expectations of his platoon members. Firefighters are required to take both the training assigned by the Deputy Chief and by that member's Battalion Chief.

**[15]** Battalion Chiefs perform annual evaluations of all firefighters within their platoon and these performance evaluations are placed on the personnel file for the particular member being evaluated. These evaluations, if unsatisfactory, can affect promotions.

**[16]** With respect to discipline, BC Hayden testified that he was responsible for discipline (at least initial discipline) of firefighters within his platoon. BC Hayden testified that he, as the senior officer on a shift, was responsible for enforcing the policies and procedures of the department on his Platoon and for dealing with inappropriate conduct and substandard performance. Battalion Chiefs are expected to dispense initial discipline for infractions and BC Hayden testified to a number of examples where he imposed discipline on members for a variety of infractions ranging from repeatedly being late for shift to interpersonal conflicts between firefighters. BC Hayden investigated the circumstances of each infraction and imposed initial discipline, including verbally placing the subject members on leave without pay. BC Hayden did, however, confirm that in each case, the formal letter of discipline was signed by the Fire Chief, who made the final decision regarding the appropriate penalty for impugned conduct. While the Fire Chief's determinations are based upon the investigation and the recommendations of the Battalion Chief, BC Hayden confirmed that the Fire Chief had, on at least one (1) occasion, reduced the penalty that he had recommended for a disciplinary infraction.

**[17]** As indicated, the Prince Albert Fire Department relies heavily on SOPs to guide the conduct of firefighters and SOPs had been written to cover most scenarios that a firefighter could expect to encounter when deployed on a fire or when responding to other emergencies. SOPs are also written to cover purely administrative matters. The Board saw evidence of SOPs and policy documents on topics ranging from attendance management and imposition of discipline to the procedures for writing and adopting SOPs. Battalion Chiefs are expected to assist in the writing or revision of the Department's SOPs. BC Hayden provided examples of SOPs that he had been involved in writing or rewriting. Finally, Battalion Chiefs are also involved

in the Department's regular senior management and labour/managements meetings. BC Hayden testified that, while he attempted to attend these meetings if he was available, doing so was not always possible because of the hours worked by Platoon members.

**[18]** BC Hayden testified that, for many years following this Board's 1991 certification Order, the Prince Albert Fire Department did not have any Deputy Fire Chiefs. At that time, the management of the Operations division consisted of the Fire Chief and the four (4) Battalion Chiefs. However, in the intervening years, two (2) Deputy Fire Chiefs were appointed. BC Hayden testified that not much changed in his duties as a Battalion Chief following the appointment of the Deputy Chiefs, other than he no longer reported to the Fire Chief. BC Hayden testified that he continued to be responsible for the day-to-day operations of his platoon and was expected to deal with any "*problems*" that arose from within his platoon. BC Hayden testified that the volume of work for all senior managers, including the Fire Chief, the Deputy Chiefs and the Battalion Chiefs had grown dramatically over the years. In BC Hayden's opinion, the function of the Deputy Chiefs was more to aid the Fire Chief in the performance of his duties than it was to assist the Battalion Chiefs in the performance of their duties.

**[19]** Within the Training and Prevention Division, two (2) officers were assigned as Fire Inspection/Prevention Officers, reporting to the Deputy Chief responsible for that division. Fire Inspection/Prevention Officers, as the name would imply, are responsible for the delivery of fire safety and prevention programs. However, Fire Inspection/Prevention Officers are also involved in other activities, including public relations, fire investigation, and bylaw enforcement. For example, Fire Inspection/Prevention Officers inspect public, commercial and industrial occupancies to ensure compliance with applicable fire safety regulations and are authorized to lay charges in the event of a violation. After a fire has been extinguished, Fire Inspection/Prevention Officers are responsible for investigating the causes and/or origins of the fire. Their reports are used for both prosecutorial and insurance purposes.

**[20]** The most recent job discretion for Fire Inspection/Prevention Officers was dated June of 2008 and provided, in part, as follows:

*This is a senior out of scope position where specialized technical, investigative and educational knowledge is required in the application and enforcement of Municipal, Provincial and Federal Fire Prevention Bylaws, Regulations and Codes. The position involves inspection of all types of public and private buildings and structures to ensure compliance with fire prevention regulations.*

*An inspector is involved in delivering fire safety and fire prevention programs for public, commercial and industrial occupancies. Duties are carried out within defined procedures but independence of judgement and action are exercised in day to day activities. Difficult problems and controversial decisions are referred to the Fire Prevention Officer.*

*The Fire Inspection / Prevention Officer will participate in labour relations and maintain a supervisory role within the department. On-call periods will be required from time to time. Performance will be evaluated on the basis of soundness of approach and judgement, conformance with established procedures and ability to deal effectively with the public.*

**ILLUSTRATIVE EXAMPLES OF WORK:**

- *Inspects all types of public and private buildings and structures to ensure compliance with regulations;*
- *Participates in difficult or contentious re-inspections as required;*
- *Provides assistance in difficult fire investigations as required;*
- *In consultation with Fire Chief, issues orders to require compliance with regulations;*
- *Recommends the laying of charges for violations of Municipal bylaws or Provincial regulations;*
- *Carries out unscheduled inspections in response to complaints concerning hazardous conditions;*
- *Advises property owners or operators of safe operating procedures and methods in eliminating fire hazards.*
- *Assists in delivering effective public education programs on fire prevention and safety; prepares and delivers talks, seminars and demonstrations to groups and the public as required.*
- *Makes inspections as required and prepares written reports and correspondence as required.*
- *Makes recommendations to the Fire Chief regarding the issuance of orders to remedy.*
- *Prepares and maintains all required records, reports, statistics, correspondence and other material related to operations of the Fire Prevention Division.*
- *The Fire Prevention Officer will work with the media during emergency and non emergency duties;*
- *Will be required to manage a budget;*
- *Performs related work as required.*



**[21]** Fire Inspection/Prevention Officers have historically been part of the duty roster for senior management within the Prince Albert Fire Department; as such, they were authorized to act on behalf of the Fire Chief in the event called upon to do so (i.e.: in the event of the Fire Chief's absence). Prior to the appointment of the Deputy Chiefs, the duty roster was smaller and thus Fire Inspection/Prevention Officers tended to act more often in the capacity of acting Fire Chief. At the time of hearing, Fire Inspection/Prevention Officers continued to serve, from time to time, in the capacity as acting Fire Chief.

**[22]** FPO Rowland, who has been a Fire Inspection/Prevention Officer since September of 2008, testified that his involvement with hiring was similar to BC Hayden in that he had been part of the panel interviewing and evaluating new recruits. However, as with the Battalion Chiefs, Fire Inspection/Prevention Officers do not have the individual authority to hire staff.

**[23]** FPO Rowland testified that he was not involved in the annual performance assessments of firefighters, or in their promotion, demotion or supervision, except in one (1) respect. Because of their subject expertise in fire investigation and determining the cause and origins of fire and their understanding of the informational requirements of other parties (i.e.: Fire Commissioners Office, police department, etc.), Fire Inspection/Prevention Officer play a supervisory and quality assurance role in all fire or incident reports prepared by members of the Prince Albert Fire Department. To do so, Fire Inspection/Prevention Officers reviewed all fire or incident reports prepared by firefighters to ensure that they satisfied the Department's reporting standards and obligations.

**[24]** FPO Rowland testified that, because the Department's fire reports could be used by the police, or in court proceedings, they had to be "*accurate*" and all reports went "*across his desk*" to ensure that they were properly prepared. If they weren't, he would send the reports back to the author, with direction as to the deficiencies therein. Firefighters were expected to prepare their reports in the form and to the quality expected by the Fire Inspection/Prevention Officers. Because of the uses to which fire and incident reports could be put, including use by the public and media, FPO Rowland speculated that the quality of the Department's fire and incident reports tended to be viewed as indicative of the quality of the Department as a whole.

[25] Fire Inspection/Prevention Officers are also involved in the preparation or redrafting of the Department's SOPs. FPO Rowland provided examples of SOPs that he had been involved in writing (or, at least, wrote the gist of the document). In addition, FPO Rowland testified that part of his responsibilities included monitoring firefighters in the performance of their duties to ensure that they were following the procedures set forth in the Department's SOPs.

[26] Finally, Fire Inspection/Prevention Officers are also involved in the Department's regular senior management and labour/managements meetings. FPO Rowland testified that his role in these meetings tended to be that of a "note taker", but that he was free to provide his input during the meetings. FPO Rowland testified that the volume of senior management meetings had increased in recent years and that a reoccurring topic of these meetings has been improving labour relations with the Association.

[27] Chief Karpluk, BC Hayden and FPO Rowland all testified that the volume of matters in issues between management and the Association had grown over the years; with the labour relations environment at the Prince Albert Fire Department generally becoming more "heated". In response, the Department began holding various all day meetings, including an "intensive series" of meetings that lasted several days in November and December of 2010, to discuss labour relations in general and the Department's strategies for dealing with what was described as an "acrimonious" relations with the Association. Chief Karpluk, BC Hayden and FPO Rowland each testified that they were involved in these meetings and that a considerable amount of all senior managers' time and attention had been pre-occupied in recent years with labour relations issues involving the Association.

[28] The status of the disputed positions was an example of an unresolved labour relations issue between the parties, with this issue dating back a number of years. For example, in 2005, the parties engaged in discussions involving the potential of replacing the Department's Battalion Chiefs with Platoon Chiefs. The difference being that the Platoon Chiefs model was that Platoon Chiefs were to be in-scope. Chief Karpluk testified that the Fire Department had received a mandate from City Council to explore with the Association any operational scenario that would result in a reduction of the number of paid officers on each platoon from three (3) to two (2). On the other hand, the Association was interested in any discussions that would lead to in-scope supervisors replacing out-of-scope managers on the shifts. Discussions ensued between the parties during collective bargaining toward the 2004-2006 Collective Agreement that

culminated in a language that was incorporated into a Letter of Understanding by the parties. The relevant portion of the Letter of Understanding provided as follows:

*The Following is for the Memorandum of Agreement Only (not to form part of the collective agreement)*

*Platoon Chiefs*

*The Association agrees to the restructuring of the shift configurations and the creation of Platoon Chiefs at 127% and 130% when qualified. Captains would be set at 125%. Effective two years from the date of signing of this collective agreement, any Associating member promoted to Platoon Chief will be required to have successfully completed the Fire Officer Level II training and any other qualifications as determined by the Labour Management Committee. The implementation of Platoon Chiefs will commence when the last Battalion Chief retires, leaves the City, is permanently assigned to other duties, or earlier if mutually agreed upon with the Association.*

*Clarification Wording added on August 8, 2006 – When a Battalion Chief leaves a shift, the City would fill this spot with a new recruit and that only when the last Battalion Chief has left the shift and assuming that processes to deal with the new configuration are in place, then the new model would be effective. Recognize that some processes may need to be developed once the new arrangement is in place as it is very difficult to anticipate every scenario in advance.*

. . .

*THE PARTIES AGREE TO RECOMMEND THIS AGREEMENT TO THE COUNCIL AND MEMBERSHIP.*

**[29]** During the term of the 2004-2006 Collective Agreement, the parties began negotiations regarding a “new configuration” for this new model. Chief Karpluk testified that the Department’s concept was to move from three (3) officers on shift to just two (2). To do so, subject to certain pre-conditions, the Department was willing to move from an out-of-scope Battalion Chief and two (2) in-scope Captains to a Platoon Chief and a Captain, both in-scope, on each platoon. In the interim, during the period when the parties were discussing implementation of this new model, the Fire Department did not appoint any new Battalion Chiefs (to replace vacancies). Rather, acting Battalion Chiefs were appointed on a temporary basis. The “acting” Battalion Chiefs appointed during this period continued to be members of the bargaining unit, with the incumbents having some, but not all, of the managerial duties of a Battalion Chief.

**[30]** Chief Karpluk testified that the new model was never fully implemented during the term of the 2004-2006 Collective Agreement or thereafter. A significant pre-condition to the new

model, at least from the City's perspective, was the development of operational processes to deal with the absence of out-of-scope management on the platoons. However, these processes were never developed and by July of 2010, the Association advised management that it wished to maintain a three (3) officer model. Chief Karpluk testified that the Association's position (i.e.: maintaining three officers on each platoon) fell outside his mandate and both parties agree to revert to the original language in the Collective Agreement. By this point in time, three (3) members had been appointed as acting Battalion Chiefs. Thereafter, the Prince Albert Fire Department advertised and filled these positions on a permanent basis as Battalion Chiefs (out-of-scope) and the Association filed the within application seeking direction from this Board.

**Argument of the Parties:**

[31] The Association argued that there had been a change in circumstances at the Prince Albert Fire Department since this Board's 1991 certification Order and took the position that the circumstances at that workplace no longer justified the exclusion of the Battalion Chiefs and the Fire Inspection/Prevention Officers from the bargaining unit.

[32] The Association relied upon this Board's decision in *University of Saskatchewan v. Administrative and Supervisory Personnel Association*, [2007] Sask. L.R.B.R. 154, 137 C.L.R.B.R. (2d) 1, 2007 CanLII 68769, LRB File No. 057-05, for defining the test for determining the application of the managerial exclusion. The Association pointed to a number of decisions of this Board as standing for the proposition that the managerial exclusion should be applied as narrowly as possible and that the Board must be very careful when examining middle managers to ensure that the position they occupy have a sufficient degree of decision-making authority and actually perform functions that could affect the economic lives of the employees they supervise. See: *Saskatchewan Government Employees' Union v. Saskatchewan Liquor and Gaming Corporation, et. al.*, [1997] Sask. L.R.B.R. 836, 43 C.L.R.B.R. (2d) 251, LRB File Nos. 037-95 & 349-96; *Newspaper Guild Canada/Communication Workers of America v. Sterling Newspaper Group*, [1999] Sask. L.R.B.R. 5, LRB File No. 187-98; and *Canadian Union of Public Employees, Local 3990 v. Core Community Group Inc.*, [2000] Sask. L.R.B.R. 617, 67 C.L.R.B.R. (2d) 247, LRB File No. 015-00.

[33] With respect to exclusions based on "confidentiality", the Association relied upon this Board's decisions in *Canadian Union of Public Employees, Local 882 v. City of Prince Albert*, [1996] Sask. L.R.B.R. 680, LRB File No. 095-96, and *Hillcrest Farms Ltd. v. Grain Services*

*Union*, [1997] Sask. L.R.B.R. 591, LRB File No. 145-97, to define the rationale and purpose of the exclusion of employees who act in a confidential capacity with respect to labour relations. The Association also cited this Board's decision in *Canadian Union of Public Employees, Local 4438 v. Town of Canora*, [2001] Sask. L.R.B.R. 559, LRB File No. 070-01, as standing for the proposition that confidential exclusions ought to only be granted by the Board for "good and compelling reasons" as exclusion from the bargaining unit denies occupants of the subject positions from union representation and could weaken the bargaining unit.

**[34]** The Association noted that this Board has only considered the issue of exclusions from a bargaining unit in the context of a professional fire department on one (1) previous occasion; that being *City of Regina v. Regina Professional Fire Fighters Association*, [1994] 2<sup>nd</sup> Quarter Sask. Labour Rep. 73, LRB File Nos. 255-93 & 268-93. The Association distinguished this case on the basis that it was decided prior to the 1994 amendment<sup>4</sup> to s. 2(f)(i) of *The Trade Union Act* and that, in light of subsequent decisions of this Board, including *Saskatchewan Liquor and Gaming Corporation, supra*, *Sterling Newspaper Group, supra*, and *Core Community Group, supra*, the Association argued that it would have been decided differently today.

**[35]** The Association noted that three (3) other jurisdictions in Canada have previously considered the appropriateness of managerial exclusions in the context of a professional fire department. The Association argued that the disputed positions before the Alberta Labour Relations Board in *International Association of Fire Fighters, Local 255 v. The City of Calgary*, [2000] Alta. L.R.B.R. 550, 68 C.L.R.B.R. (2d) 199, performed functions similar to Battalion Chiefs<sup>5</sup> and that, in that case, the Alberta Board concluded that these positions were not exercising managerial functions and should not be excluded from the firefighters' bargaining unit. The Association also pointed to a decision from the Ontario Labour Relations Board that concluded in 2001 that Platoon Chiefs did not exercise managerial functions and should not be excluded from the bargaining unit. See: *City of Brantford v. Brantford Professional Fire Fighters Association*, [2001] O.L.R.D. No. 1992. Finally, the Association pointed to a 2004 decision of the British Columbia Labour Relations Board that concluded that the Manager of Fire Protection, a position responsible for the supervision of Fire Prevention Officers, did not make "effective determinations in the key areas of discipline, hiring and labour relations input" sufficient to justify

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<sup>4</sup> S.S. 1994, ch. 47, S.3.

<sup>5</sup> The positions before the Alberta Labour Relations Board in the Calgary Fire Department were described as "Deputy Chiefs". However, in their decision, the Alberta Board found that these positions "are primarily performing functions as the chief officer of the platoons".

the exclusion of that position from the bargaining unit. See: *City of New Westminster v. City Fire Fighters' Union, Local 256*, [2004] B.C.L.R.B.D. No. 234.

**[36]** The Association acknowledged that it bore the burden of proof in this application. To which end, the Association argued that the evidence clearly established that, in the intervening years since this Board's certification Order was issued, the organization structure of the Prince Albert Fire Department has changed; in particular the Association noted that two (2) Deputy Chiefs have been hired. The Association argued that these two (2) new positions now perform the management duties that would have previously justified the exclusion of both the Battalion Chiefs and Fire Inspection/Prevention Officers. The Association argued that the Battalion Chiefs are left with merely a "sprinkling" of managerial duties and that these duties are insufficient to justify the continued exclusion of these positions from the bargaining unit. In this regard, the Association argued that given the paramilitary structure under which the Fire Department operates, the extensive reliance upon SOPs to guide the operations of a platoon, and the limited role the Battalion Chiefs play in hiring, promotions, and discipline, the incumbents of these positions do not possess a sufficient degree of decision-making authority in relation to matters which affect the terms, conditions or tenure of employment of other members of the bargaining unit to justify their continued exclusion.

**[37]** With respect to the Fire Inspection/Prevention Officers, the Association argued that these positions no longer perform functions of a managerial character to justify the managerial exclusion and that the incumbents do not provide technical advice nor clerical support with respect to the industrial relations of the Fire Department to justify the confidential exclusion. The Association argued that the historic duties and responsibilities which these positions may have had to justify the exclusion in 1991 were assumed and/or transferred over time to the Deputy Chiefs.

**[38]** For the foregoing reasons, the Association asked this Board to amend its 1991 certification Order to remove the exclusion for Battalion Chiefs and Fire Inspection/Prevention Officers<sup>6</sup>. In the event the Board was inclined to remove the exclusion for both or either of these positions, the Association asked the Board to reserve jurisdiction in the event the parties were unable to agree on the process to be following in the integration of the incumbents of these positions into their ranks.

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<sup>6</sup> Referred to as "*Fire Inspection Officers*" in the Certification Order of this Board dated April 24, 1991.

[39] The Employer argued that the Association's application ought to be dismissed.

[40] Firstly, the Employer took the position that the relief being requested by the Association would result in this Board interfering with the agreements of the parties on scope issues. The Employer noted that the parties had agreed in the three (3) most recent collective agreements that the positions of the Battalion Chiefs and Fire Inspection/Prevention Officers were outside of the scope of the Association's bargaining unit. With respect to the Battalion Chiefs, the Employer argued that, following the breakdown of discussions between the parties in 2010, the parties had "agreed" to revert to the existing language in the collective agreement. The Employer relied upon this Board decision in *University of Regina, supra* as articulating reluctance on the part of the Board to interfere with the agreements reached by parties on scope issues. The Employer argued that, where the parties have engaged in collective bargaining with respect to the scope of the bargaining unit, this Board should refuse to entertain applications that could impose upon either party a unilateral change on a scope issue.

[41] Secondly, the Employer argued that the Association had failed to discharge the onus on it to demonstrate a material change in circumstances sufficient to justify this Board considering the Association's application to amend the scope determinations of this Board in our 1991 certification Order. The Employer argued that the introduction of the two (2) Deputy Fire Chiefs did not affect the duties and responsibilities of either the Battalion Chiefs or the Fire Inspection/Prevention Officers. Rather, the Employer argued that these new positions were intended to aid the Fire Chief in the expanding duties and responsibilities of that position.

[42] Finally, the Employer argued that the evidence established that both of the disputed positions continue to perform duties of a kind and to a sufficient degree to justify their exclusion from the Association's bargaining unit.

**Relevant Statutory Provisions:**

[43] The relevant provisions of *The Trade Union Act* are as follows:

2 *In this Act:*

(f) "employee" means:

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

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

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

...

5 The board may make orders:

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

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

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

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

...

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

### **Analysis:**

[44] In this application, the Association bears the onus. Firstly, as the applicant, the Association must demonstrate that there has been a change in circumstances since this Board's 1991 certification Order affecting the duties and responsibilities of the disputed positions. Secondly, as the disputed positions are presently excluded from the bargaining unit, the Association also bears the onus of demonstrating that the disputed positions no longer justify that exclusion. See: *Canadian Union of Public Employees, Local 4777 v. Prince Albert Parkland Regional Health Authority, et. al.*, 169 C.L.R.B.R. (2d) 293, (2009) CanLII 38609, LRB File No. 011-09.



**[45]** The Association asked this Board to remove the exclusion previously provided to both the Battalion Chiefs and the Fire Inspection/Prevention Officers and took the position that, by demonstrating a change in circumstances, it satisfied the prerequisites of making such an application. The Employer, on the other hand, argued that this Board should not entertain the Association's application because the description of the bargaining unit, including the exclusions therefrom, was more properly the subject of collective bargaining. The Employer relied upon the fact that these exclusions had been incorporated into the most recent collective agreements between the parties and that the parties had specifically agreed to revert to that language as recently as July of 2010. The Employer argued that, in light of these facts, the Board should not impose any scope changes on the Employer outside of the context of collective bargaining. The Employer argued that intervention by the Board would see a change in the relationship between the parties "*without an exchange of value*".

**[46]** We are not persuaded by the Employer's argument. In *United Food and Commercial Workers Union, Local 1400 v. Sobeys's Capital Inc.*, [2006] Sask. L.R.B.R. 115, 127 C.L.R.B.R. (2d) 42, 2006 CanLII 62961, LRB File No. 016-05, this Board canvassed in some detail the rights of certified employers and trade unions to return to the Board to seek a change or amendments to a certification Order. In this decision, the Board noted that either party may seek to amend an existing certification Order and may do so either pursuant to s. 5(j)(ii), in the case of applications filed outside of the open period, or pursuant s. 5(k), in the case of applications filed during the open period. In this decision, the Board concluded that, in both types of applications, the applicant bore the onus of demonstrating that a material change in circumstance had occurred to justify the desired amendment. The difference between the two (2) applications was that applications filed outside of the open period pursuant to s. 5(j)(ii) ought to be limited to more pressing circumstances where the applicant could establish, not only that a material change in circumstances had occurred, but that the amendment was "necessary"; meaning that the parties could not wait for the open period and that time was of the essence in resolving the matters in issue in the amendment. In either event, the parties to a collective agreement have the right to return to the Board by way of application and seek determinations on matters over which this Board has jurisdiction. The scope of the bargaining unit (i.e.: who is and who is not an "employee") is an issue over which this Board has jurisdiction. See: *Retail, Wholesale and Department Store Union v. Kindersley Co-operative Association Limited*, [1995] 2<sup>nd</sup> Quarter Sask. Labour Rep. 278, LRB File No. 034-95. See also: *City of Regina v. Canadian*

*Union of Public Employees, Local 21 & Regina Civic Middle Management Association*, [1995] 3<sup>rd</sup> Quarter Sask. Labour Rep. 153, LRB File No. 268-94.

[47] In the present case, the parties have done little more than agreed to disagree on the status of the disputed positions. In our opinion, the agreement of the Employer and the Association to “*revert to current language*” in 2010 is not the kind of agreement to which this Board has shown deference. With all due respect, it is a stretch to refer to this as an agreement in the first place. Rather, it was merely the necessary consequence of the parties being unable to reach an agreement (i.e.: as to the scope of the disputed decisions). Absent an agreement on the implementation on the “*Platoon Chief*” model, the only option available to the parties was to revert to the current language in the collective agreement. Similarly, the fact that past collective agreements between the parties contained a scope clause that mirrored the language in this Board’s certification Order is not indicative of an “agreement” between the parties as to scope and certainly not to the extent that we would decline to exercise our discretion in the present application. While this Board has historically been respectful of the scope decisions of parties, if the parties are unable to agree on such issues, as has been the case in the present application, the Board has authority to entertain such applications and retains jurisdiction to make determinations on these matters. See: *Kindersley Co-operative Association Limited*, *supra*; and *Regina Civic Middle Management Association*, *supra*.

[48] We are satisfied that the Association filed its application during the open period. Furthermore, we are also satisfied that a material change in circumstances has occurred in the past twenty (20) years since this Board issued its 1991 certification Order. Of particular significance, we noted that two (2) Deputy Fire Chiefs have been added to the ranks of senior management in the Prince Albert Fire Department. While these positions were anticipated in the Board’s 1991 certification Order, they were neither funded nor staffed at that time. In the intervening years, the Prince Albert Fire Department has received funding to staff these positions and the Department has been reorganized into two (2) divisions around these new positions. We are satisfied that these changes (i.e.: the reorganization and the new positions) have affected the duties and responsibility of the disputed positions.

[49] We now turn to the issue of whether or not the disputed positions continue to justify their exclusion from the bargaining unit.

[50] The rationale for distinguishing those positions that fall inside and those that fall outside the scope of a bargaining unit through application of the statutory exclusions has been discussed in many cases by this Board. Several of these decisions were brought forward by the parties in support of their respective positions in this case. A review of this Board's jurisprudence illustrates the many difficulties faced by the Board in making scope determinations. On the other hand, these cases also provide helpful criterion and a supple framework for the exercise of our discretion.

[51] In *City of Regina v. Canadian Union of Public Employees, Local 21 & Regina Civic Middle Management Association*, [1995] 3<sup>rd</sup> Quarter Sask. Labour Rep. 153, LRB File No. 268-94, the Board summarized our traditional scope analysis as follows at p. 158:

*At the heart of the decision the Board must make is the question whether in any particular case the duties which are attached to a position are of a kind and extent which would create an insoluble conflict between the responsibility which someone performing managerial functions owes to an employer, and the interests of that person and his or her colleagues as members of a bargaining unit. Because such a conflict is in many cases a matter of degree, it is impossible to state any one test which can be used to determine whether a particular person falls on one side of the line or the other.*

[52] In *Saskatchewan Government Employees' Union v. Saskatchewan Liquor and Gaming Authority*, [1997] Sask. L.R.B.R. 836, LRB File Nos. 037-95 & 349-96, the Board adopted the following criteria for assessing the managerial nature of a position:

*The job functions which the Board considers central to the finding of managerial status includes the power to discipline and discharge, the ability to influence labour relations, and to a lesser extent, the power to hire, promote and demote. Other job functions, such as directing the workforce, training staff, assigning work, approving leaves, scheduling of work and the like are more indicative of supervisory functions which do not, in themselves, give rise to conflicts that would undermine the relationship between management and union by placing a person too closely identified with management in a bargaining unit.*

*In assessing managerial authority, the Board considers the actual authority assigned to a position and the use of that authority in the workplace. Section 2(f)(i) of the Act excludes only persons "whose primary responsibility is to actually exercise authority and actually perform functions that are of a managerial character" from the right to be represented by a trade union. As noted in past Board decisions, managerial functions that are claimed to justify exclusion from a bargaining unit must be genuine, not merely paper, powers. In this sense, the Board looks to the actual performance of work by the person whose status is in question to determine what managerial functions are actually performed. In Service Employees International Union, Local 333 v. North Central District Health Board and Nirvana*

*Pioneer Villa*, [1995] 4th Quarter Sask. Labour Rep. 124, LRB File No. 224-95, the Board indicated its preference to hearing direct evidence from an incumbent as to the actual performance of managerial duties, as opposed to documentary evidence of a job description. In this instance, the Board had the benefit of hearing from managers at all levels of the system.

The authority bestowed on a managerial employee must also be an effective authority; it is not sufficient if the person can make recommendations, but has no further input into the decision-making process. In this regard, the Board recognizes that in most modern corporations managerial powers are no longer centralized in the executive suite. Generally, such powers are spread over several layers of management. Decisions related to labour relations are often made by a manager after consultation with her superiors, human resources personnel and on some occasions, legal counsel. Despite the trend to disperse managerial functions among different levels of management, it is not uncommon for an employer to require that certain decisions, such as the termination of an employee, be approved by senior management before being implemented by the person whose status is in question. However, this multi-layered approach to decision-making does not detract from the managerial status of the person in question if it can be demonstrated that the individual has an ability to make an effective determination. In the *Cowichan Home* decision, *supra*, the British Columbia Board explained the term "effective determination" as follows, at 149:

*In our view, effective determination in the context of discipline means that at least in the majority of cases the sanction imposed by the person whose status is in question must be substantially the ultimate discipline imposed. We recognize that the grievance procedure itself inevitably leads to changes in the actual amount of discipline imposed - typically from negotiation and compromise which are essential elements of the grievance process. That is different from changes made by more senior persons, or where the person whose status is in issue merely has input into the decision-making process. In such circumstances, it cannot be said discipline was "effectively determined" by the original author of the sanction.*

[53] In *Saskatchewan Institute of Applied Science and Technology v. The Saskatchewan Government and General Employees' Union*, 2009 CanLII 72366, LRB File No. 077-06, this Board was called upon to determine whether or not certain disputed positions ought to be excluded from the bargaining unit either on the basis of the managerial exception (i.e.: where the primary responsibilities of a position involved the actual exercise of authority, and the actual performance of functions, that are of a managerial character) or on the basis of the confidential exception (i.e.: because a position regularly acts in a confidential capacity with respect to industrial relations of the workplace) or some sufficient combination of both. The Board restated the established principles relative to such determination as follows:

[55] *The Board has on many occasions articulated helpful criterion for the making of such determinations but has also concluded that there is no definitive test for determining which side of the line a position falls (i.e.: within or outside the scope of the bargaining unit). Simply put, the Board's practice has been to be sensitive to both the factual context in which the determination arises and the*

purpose for which the exclusions have been prescribed in the Act. The Board tends to look beyond titles and position descriptions in an effort to ascertain the true role which a position plays in the organization. See: Grain Service Union (ILWU Canadian Area) v. AgPro Grain Inc., [1995] 1<sup>st</sup> Quarter Sask. Labour Rep. 243, LRB File No. 257-94; Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Remai Investments Corporation, [1997] Sask. L.R.B.R. 335, LRB File Nos. 014-97 & 019-97; and University of Saskatchewan v. Administrative and Supervisory Personnel Association [2008] Sask. L.R.B.R. 154, LRB File No. 057-05.

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

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

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

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

*genesis for our determinations must be The Trade Union Act and the jurisprudence of the Board in interpreting that statute.*

[54] Having reviewed the evidence in these proceedings and having considered the arguments of the parties, we have concluded that, while the Battalion Chiefs continue to justify their exclusion from the bargaining unit, the same can not be said for the Fire Inspection/Prevention Officers.

[55] With respect to the Battalion Chiefs, we are satisfied that these positions continue to be primarily responsible for the performance of duties of a managerial character. As is typically the case, the circumstances under which the Battalion Chiefs exercise their duties and perform their responsibilities are essential to understanding this determination. Certainly, we noted factors that tended to indicate that the Battalion Chiefs could have been included within the scope of the bargaining unit without creating an insoluble conflict between the incumbents of those positions and other members of the bargaining unit. Such factors included the limited role that Battalion Chiefs played in hiring of new recruits; the reliance of Battalion Chief's on standardized procedures (i.e.: the SOPs) to guide their operational, administrative and managerial decisions; and the fact that Battalion Chiefs functioned in many respects as middle managers, with limited independent discretion on many matters, including promotions.

[56] On the other hand (and, in our opinion, tipping the balance the other way), we are satisfied that Battalion Chiefs are responsible for the day-to-day management of their respective platoons; as BC Hayden put it "*we are expected to deal with any problems that arise on our shifts*". In coming to this conclusion, we are satisfied that the role of a Battalion Chief is more than to just administer prescribed procedures, to investigate infractions, and to funnel human resource issues to the appropriate person in authority. Battalion Chiefs have independent authority to impose temporary discipline for infractions and make effective recommendations to the Fire Chief regarding labour relations issues affecting their respective platoons. For example, in matters of discipline, the evidence tended to indicate that, in the majority of cases, the sanction ultimately imposed was that recommended by the Battalion Chief. The Battalion Chiefs were the front line managers of their respective platoons and it was apparent that they played non-trivial roles in shaping the Employer's strategic planning on various issues, including labour relations.

**[57]** The Association argued that Battalion Chiefs bore many similarities to the store managers whom this Board determined were “employees” in *Saskatchewan Liquor and Gaming Authority, supra*. The Association argued that the paramilitary structure and the Department’s use of SOPs minimized the managerial character of the functions performed by the Battalion Chiefs. With all due respect, we were not persuaded by this argument.

**[58]** The paramilitary structure does not mean that the Prince Albert Fire Department is immune from labour relations issues or infractions by members of the bargaining unit. To the contrary, the Board heard evidence of a number of difficult labour relations issues to which BC Hayden was called upon to respond. Also we noted that, unlike the disputed store managers before the Board in *Saskatchewan Liquor and Gaming Authority, supra*, Battalion Chief’s played an important role in writing the very standard operating procedures that guided their day-to-day decisions. In doing so, Battalion Chiefs have the capacity to influence the labour relations of the Employer as the authors of the Department’s SOPs. Furthermore, the Department’s reliance on standard operating procedures doesn’t necessarily mean that the Battalion Chiefs were not called upon to exercise independent discretion. Standard operating procedures may well aid in and guide the performance of their management functions. However, for much of the day (potentially for the whole of a shift), a Battalion Chief is the only representative of management on duty. Unlike the store managers in *Saskatchewan Liquor and Gaming Authority, supra*, Battalion Chiefs don’t necessarily have the benefit of an available human resource professional from whom to seek advice nor can they easily seek direction from a Deputy Chief for much of the day. In our opinion, under these circumstances, the primary responsibilities of Battalion Chiefs are to exercise authority and perform functions of a managerial character.

**[59]** Because the Prince Albert Fire Department operates on a twenty-four (24) hour basis, to place these positions within the scope of the bargaining unit would mean that, for most of the day, the Employer would have no management on duty. While the Association saw little difficulty in this scenario, we did. If an issue occurred during an evening shift that required a response from management, the Fire Chief or Deputy Fire Chief would have to be disturbed while off duty to attend to the matter. The practical result would leave an in-scope Battalion Chief in the unenviable position of having to either wake their supervisor at an unsociable hour or deal with problems themselves. The latter would risk the very insoluble conflict that this Board attempts to avoid in its determinations. The former would be impractical and inefficient and could have undesirable consequences for a Battalion Chief who called for assistance too often.

**[60]** In coming to this determination, we note that other Labour Relations Boards, including the Boards in Ontario and Alberta, have come to different conclusions. While the scope decisions of other Labour Relations Boards involving similar positions can be persuasive, in the end each jurisdiction must come to its own determinations; as has been the case in the past. For example, we note that in the case before the Ontario Board in *City of Brantford, supra* and before the Alberta Board in *City of Calgary, supra*, the disputed positions had historically been in-scope; whereas in the present case, the Battalion Chiefs have historically been out-of-scope. In our opinion, the Battalion Chiefs in the Prince Albert Fire Department have more than a “*sprinkling of occasional management duties*”, as was found by the Alberta Board. This may well be because the duties and responsibilities of these positions have evolved differently over the years. In any event, we are satisfied on the facts before us that Battalion Chiefs are primarily responsible for and actually perform functions of a managerial character.

**[61]** In our opinion, Battalion Chiefs exercise sufficient independent authority over the working conditions of the firefighters in their respective platoons to justify their exclusion. Having considered the evidence, we believe that including the Battalion Chiefs within the scope of the bargaining unit would blur the lines between management and members of the bargaining unit, would represent a management deficit in the operation of the department for the Employer, and would risk creating the kind of insoluble conflicts we generally seek to avoid.

**[62]** With respect to the Fire Inspection/Prevention Officers, the Employer argued that these positions continued to exercise certain responsibilities of a managerial character and that they also regularly acted in a confidential capacity. In other words, the Employer argued that these positions ought to be excluded through a combination of the managerial and confidential exclusions. The Employer noted that the Fire Inspection/Prevention Officers are responsible for reviewing and maintaining the quality of fire and incident reports prepared by firefighters and that, in doing so, they have the independent authority to direct that the author (who would be a member of the bargaining unit) to rewrite or modify his/her report. The Employer argued that this was of a managerial function they performed. With respect to the confidential exclusion, the Employer noted that Fire Inspection/Prevention Officers have been part of the management structure for many years; that they exercised discretion and autonomy in dealing with their own duties; that they have aided senior management in shaping the Employer’s labour relations with



the Association; and that to now include these positions within the scope of the bargaining unit would unavoidably place them in a conflict with other members.

**[63]** We acknowledge that the Fire Inspection/Prevention Officers have certain duties of a managerial character and that they have been part of the Employer's management structure for many years. However, having reviewed the evidence, we were not satisfied that these positions continued to justify exclusion from the bargaining unit. Their responsibilities in relation to fire and incident reports, while clearly important, are more professional than managerial and are insufficient to justify exclusion from the bargaining unit. It is difficult to imagine that the kind of conflicts that could reasonably be expected to arise between other members of the bargaining unit and the Fire Inspection/Prevention Officers could not be resolved within the normal functioning of the Association. While Fire Inspection/Prevention Officers were involved in the writing and re-writing of SOPs, this function alone is also not sufficient to attract the managerial exclusion.

**[64]** The role of Fire Inspection/Prevention Officers in the management of the Fire Department would appear to be more of a relic from the evolution of the Department than it would appear to be based upon the particular expertise of the incumbents in labour relations matters involving the Association. The evidence indicated that, prior to the staffing of the Deputy Fire Chiefs, the previous Fire Inspector (aka "Fire Inspection Officer") was a *de facto* Deputy Fire Chief. However, such is no longer an accurate characterization of these disputed positions. Rather, these positions have evolved into subject matter experts in the field of fire investigation and prevention. While undoubtedly performing a vital role in the Department and providing an invaluable service to the community, an examination of their current duties and responsibilities does not indicate the kind of influence on labour relations matters necessary to justify exclusion from the bargaining unit.

**[65]** The Employer argued that we should give particular consideration to the acrimonious relations between the parties, together with the current high volume of unresolved labour relations disputes. The Employer argued that it needed all of its managerial resources, including all of its Battalion Chiefs and Fire Inspection/Protection Officers, to respond to the high number of labour relations matters in issue between the parties.

[66] *The Trade Union Act* anticipates and this Board recognizes that management requires a certain depth of resources (both managerial and confidential) to conduct labour relations with its employees and to allow the collective bargaining system to function as intended. The jurisprudence of this Board indicates that we must use care to avoid employers being hobbled by a lack of resources, while at the same time ensuring that trade unions are not undermined and that employees are not denied the right of representation by an overly expansive application of exclusion. It is within the bounds of this framework that we are called upon to exercise discretion and the exercise of that discretion involves an evaluation of all relevant factors. However, with due respect to the obvious concerns of the Employer regarding the loss of available resources, we do not believe that we ought to place too much weight on either the volume of disputes or the characterization of the relationship between the parties. Doing as the Employer suggests could undermine the consistency in this Board's determinations and would see the parties returning to the Board for scope adjustments with the changes in the tide in their relationship.

[67] The evidence indicates that the parties have a long history of collective bargaining and have concluded many successful collective agreements. In our opinion, the inclusion of the Fire Inspection/Prevention Officers within the bargaining unit, while obviously reducing the complement of management personnel available, leaves the Department with a sufficient depth of resources to reasonably conduct labour relations with its employees and to participate in collective bargaining as anticipated by the *Act*. While the current state of labour relations is unfortunate, we are not persuaded that it justifies a departure from this Board's traditional scope analysis.

**Conclusion:**

[68] For the foregoing reasons, we have concluded that a material change in circumstances had occurred; that the position of Fire Inspection/Prevention Officer no longer justifies exclusion from the Association's bargaining unit; and that this Board's 1991 certification Order ought to be amended to remove the exclusion for "*Fire Inspection Officer*".

**[69]** We make no direction with respect to the integration of the incumbents into the bargaining unit and ask the parties to bargain with respect to these matters. Either party may return to the Board for direction in the event the parties are unable to agree on matters related to the integration of these positions into the bargaining unit.

**DATED** at Regina, Saskatchewan, this **5th** day of **December, 2011**.

**LABOUR RELATIONS BOARD**

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Steven D. Schiefner,  
Vice-Chairperson