SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES UNION, Applicant Union v. CANORA AMBULANCE CARE (1996) LTD., Respondent Employer

LRB File Nos. 026-14 & 039-14; June 2, 2014
Chairperson, Kenneth G. Love, Q.C.; Members: Greg Trew and Maurice Werezak

For the Applicant Union Ms. Crystal Norbeck
For the Respondent Employer: Mr. Scott Wickenden

Certification - At time of application the same owners owned two ambulance services under different corporate names – Certification application made by Union for one location – Following application being filed Employer advised employees that two corporations were being amalgamated into one corporation with the same name as the corporation for which the Union had applied to certify.

Certification – Employee vote – Following application for certification Board orders vote of employees at location where employees who wish to be certified are employed. Employer asserts that employees at other location should have right to vote because they will be amalgamated with the corporation which is the subject of the application for certification.

Certification Vote – Following the conduct of the vote, but prior to the hearing of the certification application new legislation is proclaimed to be in effect which may allow terminated employee to meet the definition of employee in new legislation and hence be entitled to vote. Board considers matter.

Eligibility to vote – Some employees from the ambulance business for which the union has not applied to be certified to represent employees work part time for business subject to certification – Eligibility to vote on certification – Board reviews their work history and finds that none of them have sufficient connection to the work place to be eligible to vote.

Sweeping In of employees of other business amalgamated into the business that the Union sought to be certified – Board determines that new corporation established on amalgamation which would be successor to businesses. Employees at the other location would be swept in to amalgamated successor company without any right to vote. Board resolves dilemma by restricting certification order to

municipal boundary of municipality which was where employees targeted by the certification application were employed.

Tabulation of vote – Board orders votes of eligible employees to be tabulated – Board reserves jurisdiction in the event that potential eligible employee's vote may be statistically significant.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Q.C., Chairperson:** The Saskatchewan Government and General Employees' Union, ("SGEU" or the "Union") applied to the Board to acquire bargaining rights for a unit of employees of Canora Ambulance Care (1996) Ltd. (the "Employer" or "Canora") by an application to the Board filed February 18, 2014.[1]

[2] In response to the Board's request for information in respect of the employees and invitation to reply on February 18, 2014, the Employer filed Reply and a Form 12, Statement of Employment, on February 28, 2014. The Form 12 contained an Appendix A. The Appendix was comprised of three (3) lists; one stating Canora Ambulance Full Time Staff (seven (7) full time including the operations manager), a second stating Canora Ambulance Part Time Staff (seven (7) part time including a part time operations manager) and the third stating Preeceville Ambulance Staff, (two (2) full time and (2) part time, no manager reference).

[3] The Board ordered a vote among employees of the Employer on February 21, 2014. The vote was to be conducted by mail-in ballot with ballots to be returned to the Board on or before March 24, 2014. The names of those considered eligible were the fourteen (14) persons, including the operations manager(s) detailed in the Form 12 filed by the Employer.

[4] Before the vote could be counted, the Employer filed an Objection to the Conduct of Vote on March 13, 2014.[2] In summary, both the Reply to LRB File No. 026-14 and the subsequent Objection to Conduct of the Vote allege that the Employer was, at that point in time, pursuing an amalgamation with another ambulance service, Preeceville Ambulance Care (1998)

[1] LRB File No. 026-14.
[2] LRB File No. 039-14. Objection to the conduct of the vote filed March 13, 2014.

Ltd. ("Preeceville"), which corporation had the same shareholders as the Employer. The amalgamation was to be completed on April 1, 2014. The Employer argued that the two (2) companies, when amalgamated, would operate as a single ambulance service. Accordingly, it argued that the employees of Preeceville should be included within the proposed bargaining unit, and should, therefore, be permitted to vote in respect of the proposed certification application.

[5] At the outset of the hearing, the parties advised that they did not intend to deal with the Unfair Labour Practice applications[3] which had been filed by the Union regarding Mr. Trevor Van Wert. The parties also advised that they withdrew any objection to the exclusion of Carla Steciuk and Mark Bourassa from the 14 names contained in the Notice of Vote, given their role as operations managers.

[6] This application deals only with the Union's application for certification and the Employer's Objection to the conduct of the Vote.

Facts:

[7] Mr. Wally Huebert, who owns both Canora and Preeceville businesses with his wife, testified as to the operation of the ambulance businesses at both centres. He testified that he and his wife purchased Canora in 1996. At the time he purchased the business, the employees were represented by the Canadian Union of Public Employees. That Union lost its representation rights for those employees about one (1) year after the purchase by Mr. Huebert and his wife. The Hueberts then purchased the ambulance business in Preeceville in 1998.

[8] Mr Huebert testified that he began the process of amalgamating the two businesses as early as December, 2013. During that time, he had preliminary discussions with the Sunrise Health Region about having a new contract with the Health Region for the combined services.

[9] He provided a copy of the amalgamation agreement between the two companies which was effective on March 31, 2014 at 12:01 p.m. C.S.T. This agreement amalgamated the two companies under the name Canora Ambulance Care (1996) Ltd.

[3] LRB File Nos. 027-14, 028-14 & 029-14.

[10] He testified that employees of Canora and Preeceville operated as a unit both before and after the amalgamation. He provided documents to support his testimony that employees from Canora routinely covered for employees in Preeceville and *vice versa*. These documents included a schedule of Preeceville staff working in Canora for the years 2012 and 2013, T-4 slips for various employees, and work schedules for 2012, 2013 and part of 2014.

[11] In cross-examination, Mr. Huebert confirmed that he did not advise any of the employees in either Canora or Preeceville of the proposed amalgamation until mid April, 2014.

[12] Mr. Jason Wardle also testified on behalf of the Employer. He testified that he worked as a full time primary care Paramedic in Preeceville, but also worked a couple of times a year in Canora. In cross-examination, he admitted that he had worked one shift in 2014 as relief so that the Canora staff could engage in a staff party. He testified he has also worked one shift in relief of a sick staff member from Canora. In his full time position in Preeceville, he testified that he normally worked 16 – 18 shifts per month.

[13] Mr. Ben White testified for the Union. He testified that he worked full time at Canora, which was 12-14 shifts per month.[4] He advised that when the other advanced care paramedic, Carla Steciuk worked shifts in Preeceville, he would fill in for her in Canora. Carla Stuciuk was the manager in Canora.

[14] Mr. White testified concerning some employees from Preeceville who worked occasionally in Canora. He noted as follows:

1. Melissa Wright – She was a part – time staff member in Canora who worked occasionally as required. She was a full time employee in Lac LaRonge, Saskatchewan

2. Eric Drader – He was a full – time staff member in Preeceville who had done a few shifts in Canora.

3. Perry Drayton – He was a full – time staff member in Preeceville who worked occasionally in Canora. He is currently a nursing student at the University of Saskatchewan and works, when available.

4. Jason Wardle – He was a full – time staff member in Preeceville who worked occasionally in Canora.

[4] The shift schedules in Canora and Preeceville were different which was the reason for the different number of shifts worked per month in each location.

5. Aylnn Mebreg – She was a full – time staff member in Preeceville who was on maternity leave during the time the application for bargaining rights was filed.

[15] Mr. Trevor Van Wert also testified for the Union. He had been terminated from his employment as an intermediate care paramedic with Canora on February 13, 2014. He had originally been hired full time in Preeceville, but was able to obtain a full time position in Canora in April of 2007. He testified that when he worked in Canora that he had only worked in Preeceville to cover staff parties and possibly one other shift.

[16] Documents provide which showed shift schedules for the employees in both Canora and Preeceville showed the following with respect to those employees and their involvement with Canora.

Employee	**Permanent Employment Location**	**Shifts worked in Canora in 3 months prior to filing date**	**Shifts worked in Canora in 6 months prior to filing date**
Daniel Andrew	Canora*		
Mathew Tourand	Canora*		
Ben White	Canora*		
Blake Cairns	Canora*		
Kyle Kerr	Canora*		
Josh Humeniuk	Canora*		
Trevor Van Wert	Canora**		
Melissa Wright	La Ronge, Sask.***	1	2
Eric Drader	Preeceville	0	1
Perry Dayton	Saskatoon, Sask****	0	0
Jason Wardle	Preeceville	1	1
Alynn Mebreg	Preeceville*****	0	0
Brien Hamelin	Preeceville	0	1
George Kidder	Preeceville	0	0
Sherry Joanette	Preeceville	0	0
Bev Forshner	Part-time Preeceville	0	0
Ashely Carlson	Part-time Preeceville	0	0

** No objection was taken to the qualification of these employees to vote.*

*** This employee was terminated prior to the filing of the certification application*

**** This employee worked full-time in La Ronge, Saskatchewan and worked part-time in Canora when available.*

***** This employee is taking nursing training in Saskatoon, Saskatchewan and works part-time in Canora when available.*

****** This employee regularly worked full-time in Preeceville, but was on maternity leave for most of the relevant time frame. She returned to work only after the application for certification had been filed.*

[17] Where employees from Preeceville had worked in Canora it was primarily to relieve those employees so that they could attend annual parties. A further review of the documents provided show that only Melissa Wright regularly took shifts in Canora when she was not working in La Ronge.

Relevant statutory provision:

[18] Relevant statutory provisions are as follows:

> *The Saskatchewan Employment Act*
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> ***Acquisition of bargaining rights***
> *6-9(1) A union may, at any time, apply to the board to be certified as bargaining agent for a unit of employees appropriate for collective bargaining if a certification order has not been issued for all or a portion of that unit.*
>
> *(2) When applying pursuant to subsection (1), a union shall:*
>
> *(a) establish that 45% or more of the employees in the unit have within the 90 days preceding the date of the application indicated that the applicant union is their choice of bargaining agent; and*
>
> *(b) file with the board evidence of each employee's support that meets the prescribed requirements.*
>
> . . .
>
> *The Saskatchewan Employment (Labour Relations Board) Regulations*
>
> ***Conduct of votes***
> *23(11) An employer, other person or union directly affected by the vote that intends to object to the conduct of the vote or the results from the counting of the ballots shall file an application in Form 23 (Objection to Conduct of the Vote) within three business days after the conduct of the vote or the counting of the ballots, as the case may be.*

Employer's arguments:

[19] The Employer argued that there were three (3) groups of employees. These were the full time employees at Canora, all of whom should be eligible to vote. There was also a group of five (5) part time employees at Canora (all of whom were full time in Preeceville) who should also be eligible to vote. Additionally, all of the Preeceville employees, the Employer argued, had a connection to the workplace in Canora by virtue of the amalgamation on April 1, 2014 which would entitle them to vote.

[20] The Employer also noted that there was no dispute with respect to Melissa Wright's entitlement to vote.

Union's arguments:

[21] The Union argued that the unit of employees for which bargaining rights were sought was an appropriate unit of employees. It noted that the only basis for challenge of the appropriateness of the unit was the Employer's amalgamation which occurred after the application for acquisition of bargaining rights was filed. They argued that the Board should restrict itself to the facts as they were on the date of the application (February 18, 2014).

[22] The Union argued that only seven (7) employees should be eligible to vote, being Ben White, Josh Humeniuk, Daniel Andrew, Blake Cairn, Matthew Tourand, Kyle Kerr and Melissa Wright. None of the other employees, including those Preeceville employees who worked part time in Canora, they argued, has a substantial connection to the workplace for which bargaining rights are sought. It argued that the eligibility to vote should also be determined as of the date of application for bargaining rights.

Analysis:

Should the Board disregard evidence of events occurring after February 18, 2014?

[23] During the period between the filing of the application for certification by the Union and the hearing of this application, *The Saskatchewan Employment Act*[5] (the *"Act"*) was proclaimed in effect as at April 29, 2014. Both counsel were in agreement that the provisions of the new *Act* should govern this application.

[24] Under section 6-107 of the *Act*, the Board is permitted to, in its absolute discretion, "reject any evidence or information tendered or submitted to it concerning any fact, matter or thing transpiring or occurring after the date on which that application is filed with the Board". The Union argued that evidence concerning the amalgamation which occurred following the date of application should not be regarded by the Board. In doing so, the Union relied upon the Board's decision in *Re: Impact Products*.[6] The Union argued that the provision in the former *Trade Union Act*[7] was similar in scope and language to the current provision in the *Act.*

[5] S.S. 2013 c. S – 15.1.
[6] [1996] S.L.R.B.D. No. 57.
[7] R.S.S. 1978 c. T-17.

[25] The Employer did not expressly raise this issue in its Brief of Law, but took the position in its Brief that the events which occurred after the application was filed (the Amalgamation of the two (2) companies) should be considered by the Board.

[26] With respect, we agree with the position taken by the Union in this regard. As pointed out by the Board in *Impact Printing,*[8] it has been a long standing practice of the Board to reject evidence concerning events that occur after the date of a certification application is filed.

[27] As noted in *Impact Printing* the logic for this practice is to "prevent manipulation of support, either for or against the trade union, after an application has been made". While we do not doubt the business rationale for the amalgamation of the two companies and that it had been planned for some time, there is no doubt that the effect of the consideration of evidence which occurred after the date of application would have precisely the impact warned against in *Impact Printing*.

[28] While the Employer argued that the proposed amalgamation had been in process for some time, he did not advise the employees of that fact until after the application for certification had been filed. Had the employees been aware of the pending amalgamation, they or the union involved, may have taken other steps. They were not aware and proceeded to file their application based upon the facts, as they knew them, at the date of the application.

[29] In *United Food and Commercial Workers Union, Local 1400 v. The North West Company LP carrying on business as Giant Tiger,*[9] the Court found the decision of this Board to reconsider a certification Order made by the Board based upon evidence which occurred after the date of the application to be unreasonable. In so doing, the Court endorsed the Board's long standing practice of disregarding post application evidence.

[30] The provisions of the former *Trade Union Act* and the new provisions in the *Act* are restricted to evidence tendered in certification applications such as this. No reason was advanced by either party which would justify the Board exercising its discretion to deviate from its usual and expected practice when dealing with certification applications. The onus of

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[8] *Supra* Note 7, at paragraphs 4 & 5.
[9] [2011] SKCA 100.

showing such exceptional circumstances fell to the Employer and, in our opinion, the Employer has failed to prove such exceptional circumstances.[10]

[31] Furthermore, the Employer, even after the certification application was filed, and presumably with full knowledge of the potential consequences, proceeded to complete the amalgamation. The amalgamation agreement was made effective on March 31, 2014, which was almost six (6) weeks following the filing of the application. Accordingly, we will disregard evidence of events which occurred after February 18, 2014, including the evidence of the amalgamation which subsequently occurred on March 31, 2014.

What is the appropriate unit of Employees?

[32] At the time of the application, there were employees of Canora and employees of Preeceville. The application was only by the employees of Canora to have the Union represent them for the purposes of collective bargaining. The application was made with respect to a unit of employees as follows:

> *All in-scope employees whom are licensed with the Saskatchewan College of Paramedics and are practicing Emergency Medical Technicians (all levels) employed at Canora Ambulance Care LTD with the exclusion of the supervising manager and the owner s [sic]*

[33] The test for determination of what constitutes an appropriate unit of employees was described under the provisions of *The Trade Union Act* by the Board in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. O.K. Economy Stores (a division of Westfair Foods Ltd.*[11] the Board described the test for determining the appropriateness of a unit as follows:

> *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*

[10] *Re: Barrich Farms (1994) Ltd.*[2008] S.L.R.B.D. No. 23 at paragraph 56.
[11] [1990] Fall Sask. Labour Rep. 64, LRB File No. 264-89.

> *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.*

[34] The *Act* has not imposed any new rules or procedures for the Board to determine what should be an appropriate unit for collective bargaining. This is appropriate, given the touchstone provision of Part VI of the *Act*, section 6-4, that confirms that "[E]mployees have the right to organize in and to form, join or assist unions and to engage in collective bargaining". It is often necessary for the Board to have to choose between competing interests of the right of employees to organize in and to form, join or assist unions and the need for stable collective bargaining structures. [12]

[35] A similar unit of employees, that being the employees of Canora, was previously certified with the Canadian Union of Public Employees. As such, the unit proposed by the Union has, in the past satisfied the criteria necessary to be an appropriate unit of employees for the purposes of collective bargaining. We agree. While not the most appropriate unit, the wishes of the employees employed in Canora must be given priority over the choice of what might be a more appropriate unit of employees. This was the case as well in the Board's decision in *Saskatchewan Union of Nurses v. The Board of Education of the Regina School Division No. 4*.

[36] As at February 18, 2014, there were two (2) distinct units of employees, notwithstanding that they were under common ownership and operated under similar rules and procedures. The unit of employees in Canora constitute an appropriate unit for collective bargaining purposes.

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[12] See the comments of the Board and the excerpts from various decisions contained in *Saskatchewan Union of Nurses v. Board of Education of the Regina School Division No. 4* [2009] CanLII 53733.

Who should be eligible to vote?

[37] There was no dispute between the parties that Daniel Andrew, Matthew Tourand, Ben White, Blake Cairns, Kyle Kerr, Josh Humeniuk and Melissa Wright should be eligible to vote with respect to the application. These employees were all of the full-time employees in Canora, and included Melissa Wright who was regularly scheduled to work in Canora, notwithstanding that she had a full-time position in La Ronge, Saskatchewan.

[38] The dispute centres on those employees that had full time positions in Preeceville, who also worked from time to time in Canora. Also included in this group was Perry Dayton, who was a nursing student in Saskatoon, Saskatchewan who also worked casually in Canora when his schedule permitted and his services were required.

[39] The parties agree that the test to be applied in these circumstances was as described by the Board in numerous decisions, that is, whether or not the employee has a sufficiently substantial employment relationship both in terms of connection to the workplace and a monetary interest in the matter. In *Canadian Union of Public Employees, Local 3077 v. Lakeland Regional Library Board*, the necessary relationship was described as follows:

> *…the Board has also applied the principle that before anyone will be considered to be an "employee", that person must have a reasonably tangible employment relationship with the employer. If it were otherwise, regular full-time employees would have their legitimate aspirations with respect to collective bargaining unfairly affected by persons with little real connection to the employer and little, if any, monetary interest in the matter.*

[40] None of the employees from Preeceville have a sufficiently substantial relationship to the workplace in Canora to justify their participation in the certification vote. While some of them did, from time to time, work a shift or two in Canora, it was not a regular intermingling of employees. For the most part, the shifts worked were worked in order to relieve employees in Canora (and the same occurred in Preeceville) to attend staff social functions. There was, except in isolated instances, no regular exchange of employees between the two centres. Covering off for social functions and isolated shifts worked between the two centres do not, in our opinion, show a sufficient connection to the workplace or financial stake in the outcome.

[41] In *Re: Vision Security and Investigation Inc.*[13] the Board considered that an employee who had worked 35 hours in a fourteen (14) week period had a sufficient connection to the workplace. No-one in the group of employees in question approached this criteria. They were all employed full-time in Preeceville, which was their primary workplace connection and financial concern. An incidental shift or two in Canora, when they were already fully engaged, would be more of a burden than an advantage.

What is the effect of the change in the definition of "Employee" in the *Act?*

[42] With the proclamation of the *Act*, some changes were enacted by the legislature with respect to the definition of "Employee" for the purposes of the *Act*. Under *The Trade Union Act*, the definition of "Employee" was:

> *2 In this Act:*
>
> *(f) "employee" means:*
>
> *(i) a person in the employ of an employer except:*
>
> *(A) a person whose primary responsibility is to actually exercise authority and actually perform functions that are of a managerial character; or*
> *(B) a person who is regularly acting in a confidential capacity with respect to the industrial relations of his or her employer;*
>
> *(i.1) a person engaged by another person to perform services if, in the opinion of the board, the relationship between those persons is such that the terms of the contract between them can be the subject of collective bargaining.*

[43] The definition of "Employee" in the *Act* provides for additional exclusions in that definition which reads as follows:

> *6-1(1)In this Part:*
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> *. . .*
>
> *(h)"employee" means:*
>
> *(i) a person employed by an employer other than:*
>
> *(A) a person whose primary responsibility is to exercise authority and perform functions that are of a managerial character; or*
>
> *(B) a person whose primary duties include activities that are of a confidential*

[13] [2000] S.L.R.B.D. No. 1.

> *nature in relation to any of the following and that have a direct impact on the bargaining unit the person would be included in as an employee but for this paragraph:*
>
> *(I) labour relations;*
>
> *(II) business strategic planning;*
>
> *(III) policy advice;*
>
> *(IV) budget implementation or planning;*
>
> *(ii)a person engaged by another person to perform services if, in the opinion of the board, the relationship between those persons is such that the terms of the contract between them can be the subject of collective bargaining; and*
>
> *(iii)any person designated by the board as an employee for the purposes of this Part notwithstanding that, for the purpose of determining whether or not the person to whom he or she provides services is vicariously liable for his or her acts or omissions, he or she may be held to be an independent contractor;*
>
> *and includes:*
>
> *(iv)a person on strike or locked out in a current labour-management dispute who has not secured permanent employment elsewhere; and*
>
> *(v)a person dismissed from his or her employment whose dismissal is the subject of any proceedings before the board or subject to grievance or arbitration in accordance with Subdivision 3 of Division 9;*

[44] The parties raised no arguments regarding the impact of the new provisions and additional exclusions on the proposed bargaining unit and provided no evidence upon which an exclusion order could be made. However, the Board has received an application[14] alleging that Trevor Van Wert was terminated from his employment on February 13, 2014 due to his involvement in the organizing campaign by the Union. Those applications were placed in abeyance at the hearing of this matter and have not been dealt with.

[45] Nevertheless, Section 6-1(1)(h)(v) includes within the definition of "Employee", "a person dismissed from his or her employment whose dismissal is the subject of any proceedings before the Board. That is the case with Mr. Van Wert. Accordingly, he must be considered an "Employee" for the purposes of this application.

[46] However, Mr. Van Wert was not permitted to vote since the vote was conducted[15] under the provisions of *The Trade Union Act.* The Notice of Vote issued by the Board directed

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[14] LRB File Nos. 027-14, 028-14, & 029-14.

[15] The vote was conducted by mail, with the ballots required to be returned to the Board by March 24, 2014, which was prior to the proclamation of the *Act*.

that eligibility to vote was restricted to those employees employed as of the date of the application for certification. Mr. Van Wert was terminated on February 13, 2014.

[47] Arguably, with the proclamation of the *Act,* Mr. Van Wert became entitled to vote with respect to the application, since he was, prior to his termination, a full-time employee in Canora. However, his participation in the vote may not be necessary, depending on the vote result. Accordingly, we reserve our decision regarding his entitlement to vote. Should his vote be statistically significant, we will remain seized of this issue, and call upon the parties for submissions regarding his eligibility to impact the outcome, if the vote is statistically significant.

Should the Preeceville employees be swept in to the Unit?

[48] Given our determination that the unit of employees of Canora (as at February 18, 2014 is an appropriate unit of employees for the purposes of collective bargaining, an issue arises with respect to the employees in Preeceville who, effective March 31, 2014 became a part of the amalgamated Canora Ambulance Care (1996) Ltd. and Preeceville Ambulance Care (1998) Ltd. These two companies were amalgamated under the name Canora Ambulance Care (1996) Ltd.

[49] The Union has requested in their application, a unit description for an "all employee unit" of paramedics "employed at Canora Ambulance Care Ltd". That request was for the unit of employees of Canora Ambulance Care (1996) Ltd. as at February 18, 2014.

[50] The effect of the amalgamation of the two corporations is that the two previous corporations are dissolved and the business carries on, or is continued,[16] by the amalgamated corporation, which in this case took the same name as one of the previous corporations. That new corporation becomes a successor to the old corporation. Section 180(e) of *The Business Corporations Act* permits that "a civil, criminal, or administrative action or proceeding pending by or against an amalgamating corporation may be continued to be prosecuted by or against the amalgamated corporation".

[16] See section 180 of *The Business Corporations Act* RSS 1978 c. B-10.

[51] The Board has been vigilant to insure that when a successorship occurs that employees who were not previously represented are not "swept in" to a bargaining relationship without their choice, to be represented or not be represented, being observed.[17]

[52] The Employer argued that the employees in Preeceville should be given the opportunity to vote with respect to the representation question. With respect, we believe that there are two possible solutions to this issue. The first would be to conduct a vote among the employees in Preeceville to determine if they wish to be represented. The second would be to confine the order sought by the Union to the geographic boundaries of the Town of Canora. We believe the second option to be preferable. This is what the Union originally sought in its application and also respects the rights of the employees in Preeceville to make their choice as to representation.

Decision

[53] For the reasons outlined above, the application by the Employer objecting to the conduct of the vote is dismissed. The Board further orders:

> 1. The votes cast by Daniel Andrew, Matthew Tourand, Ben White, Blake Cairns, Kyle Kerr, Josh Humeniuk and Melissa Wright shall forthwith be tabulated in accordance with the Board's usual practice for such tabulations, and the results of that tabulation shall be provided to an *in camera* panel of the Board for an appropriate order based upon the results of the tabulation.
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> 2. Should the vote of Trevor Van Wert be statistically significant to the result of the vote, this panel will remain seized of the issue of whether or not he should be permitted to vote.

[17] See *Canadian Union of Public Employees, Local 5506 v. Prairie South School Division No. 210* [2008] CanLII 47033 and *United Food and Commercial Workers Union, Local 1400 v. Affinity Credit Union* [2010] CanLII 13388.

3. The Application by the Employer with respect to the Objection to the Conduct of the Vote is dismissed.

DATED at Regina, Saskatchewan, this 2nd day of June, 2014.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson