



UNIVERSITY OF REGINA, Applicant v. UNIVERSITY OF REGINA FACULTY ASSOCIATION, Respondent

LRB File No. 284-13; February 5, 2014

Vice-Chairperson, Steven D. Schiefner; Board Members: Don Ewart and Hugh Wagner

For the Applicant:

Ms. Erin M.S. Kleisinger

For the Respondent Union:

Mr. Perry D. Erhardt, Q.C.

Employees – Exclusion from bargaining unit – Employer seeking provisional determination as to whether newly created position of “Public Affairs Consultant” ought to be excluded from bargaining unit – Position created to be institutional spokesperson for Employer on variety of sensitive public issues, including human resource and labour relation matters – Employer intends position to have access to confidential human resource and labour relation information to better enable incumbent to speak publicly on behalf of the Employer – Board satisfied that confidential characteristics of position are sufficient to justify provisional exclusion from bargaining unit – Board satisfied that duties and responsibilities assigned to position were genuine and necessary - Board grants provisional Order excluding disputed position.

The Trade Union Act, ss. 2(f)(i), 5(m) & 5.2

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson:** The Applicant, the University of Regina (the “Employer”), seeks a provisional determination from the Saskatchewan Labour Relations Board (the “Board”) as to whether or not the newly created position of Public Affairs Consultant is (or will become) an employee within the meaning of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the “Act”). The Employer argues that the disputed position is expected to regularly act in a confidential capacity or that the position includes a sufficient combination of both managerial and confidential characteristics that it ought to be excluded. The Respondent, the University of Regina Faculty Association (the “Union”), disputes the Employer’s characterization of the duties and responsibilities that are anticipated to be performed by the new position and

argues that the Employer has failed to demonstrate that the position properly falls outside the scope of its bargaining unit.

[2] The Employer's application was heard by the Board on January 10, 2014 in Regina, Saskatchewan. In support of its application, the Employer called Ms. Kelly Kummerfield, the Employer's Associate Vice-President of Human Resources.

[3] Having considered the evidence and argument of the parties, the Board is satisfied that the Employer has demonstrated that a provisional exclusion of the disputed position of Public Affairs Consultant is justified and appropriate under the circumstances. Simply put, we are satisfied that the duties and responsibilities intended to be transferred to this position are incompatible with membership in the Union's bargaining unit. We are satisfied that these duties and responsibilities are genuine and that the performance of these duties and responsibilities would create an insoluble conflict for the incumbent if the position were to be included within the bargaining unit. Our reasons for these conclusions are set forth in these Reasons for Decision.

Facts:

[4] The Employer, the University of Regina, is located (as the name would imply) in Regina, Saskatchewan. It is home to ten (10) faculties and twenty-five (25) academic departments. It is a public research university with programs leading to bachelor's, master's and doctoral degrees. Together with its three (3) federated colleges (Campion College, First Nations University of Canada, and Luther College), it has approximately 13,000 full and part-time students. The university is also a major employer in the City of Regina, employing in excess of 4,000 faculty and staff. As with most educational institutions in Canada, the University of Regina is publicly funded.

[5] The Employer proposes to create a new position entitled "Public Affairs Consultant". This new position is intended to replicate the public affairs functions previously performed almost exclusively over the past ten (10) years by the University's previous Vice-President of External Relations, Ms. Barb Pollack. While other individuals at the University (including the President, other Vice-Presidents and the Director of External Relations) have performed public affairs functions for the Employer, for the most part, Ms. Pollack was the principle spokesperson for the University on most major issues having a public relations

dimension, including labour relations and personnel matters. Ms. Pollack retired from the University in May of 2013.

[6] Following Ms. Pollack's departure from the University, a number of things happened. Firstly, the President of the University, Ms. Timmons, determined that the Employer would not be filling the position of Vice-President of External Relations. Secondly, the Employer retained a consultant to review the University's public affairs needs. Thirdly, the public affairs function at the University has been handled on an *ad hoc* basis by either the President or one of the Vice-Presidents (or a senior administrator acting in that capacity).

[7] The feedback that the Employer received from the consultant it retained was that the University's executive team required advice from someone with expertise in public affairs and that the University required a permanent designated spokesperson. The University's Board of Governors agreed with these recommendations, as it was apparent to the Employer that the departure of Ms. Pollack had left both a gap in the advice available to the University's executive team and inconsistency in the University's ability to deliver its message to the public. Upon inward reflection, the Employer concluded that none of its current management team had the requisite training and/or experience to function as the University's chief spokesperson. As a consequence, the Employer created the position of Public Affairs Consultant to perform these functions.

[8] Ms. Kummerfield testified that over the past few years the Employer has dealt with a number of major issues for which public affairs advice was required by the University's executive team and for which some public level of public relations was involved. These issues included: (a) overtime issues discovered in the Faculty of Education; (b) concerns regarding the type of blood testing equipment used by the Faculty of Kinesiology; (c) concerns regarding construction projects at the University; (d) concerns regarding the University's procurement processes; and (e) concerns regarding the use of the University's research funds. Ms. Kummerfield testified that most of these matters had human resources or labour relations elements connected with them, including issues of conflict of interest, disciplinary, performance issues, and/or potential breaches of the University's policies.

[9] There can be little doubt that environment in which post-secondary institutions operate has changed in recent years. Ms. Kummerfield testified that the Employer is under

increased public scrutiny from students, their families and the media, all of whom have higher expectations with respect to transparency into the University's inner workings and immediacy in the flow of information from the University. Simply put, from the University's perspective, social media and technology have revolutionized its public affairs activities to the extent that public relations have become an integrated part of the University's strategic decision making processes.

[10] For example, Ms. Kummerfield noted that students and faculty are regular users of social media, including common and popular internet services, such as Twitter, Facebook and various other public comment forums (i.e.: blogs). The University tries to monitor this flow of information and periodically responds with information on a timely basis. Concomitant with these changes, the media's expectations of the University have also increased. Ms. Kummerfield testified that reporters now demand almost instantaneous information from the University on developing stories and often puts out reports that are updated on a minute-by-minute basis. The Employer feels it must be able to actively analyze communications and messages occurring in the media and respond with its own message when it believes it necessary and appropriate to do so. Simply put, the University wants the capacity to manage its message in the media.

[11] Ms. Kummerfield testified that, in general, the communications needs of the University have grown dramatically in recent years. To keep pace with this growth, the size of the University's communications department has also grown. Ms. Kummerfield estimated that the number of employees working in communications functions has doubled in the past ten (10) years.

[12] The position of "Public Affairs Consultant" will be located in the University's External Affairs Unit and will report to the Director of Communications, Marketing and Alumni Relations (the "Director"). At the present time, the Director is the only out-of-scope employee in the External Affairs Unit. There are currently other employees in the Unit who have varying levels of involvement in external communications activities, including the Manager of Public Affairs, the Manager of Strategic Communications and at least two (2) communications strategists. At the present time, these positions fall within the scope of the Union's bargaining unit. However, the Employer does not wish to use any of these positions, nor the Director, to perform the public affairs function. Ms. Kummerfield testified that the Employer believes that the

Director already has too many responsibilities to become the University's institutional spokesperson. The Employer is also not comfortable having the public affairs function performed by any of the in-scope communication positions in the Unit. Simply put, the Employer wants to replicate the kind of public relations function that it enjoyed with Ms. Pollack but not at the Vice-President level. Rather, the University wants to replicate this function through the disputed position and to place that position in the External Affairs Unit. While the incumbent will work as part of a team with other in-scope communications personnel, he/she will be the University's institutional spokesperson.

[13] In accordance with past practice, a description of the disputed position was prepared by the Employer and provided to the Union. The description of the position is as follows:

The University has determined a need for a position to serve as a Public Affairs Consultant, whose focus will be to serve as an institutional spokesperson. Specific responsibilities include:

1. *Acts as Institutional Spokesperson: Works with the Communications Unit, the President, Vice-Presidents and others within the University community to develop, promote and communicate messages within and outside of the University, including the media. Works with the Communication and Marketing Unit to proactively promote the image, vision and work of all aspects of the University.*
2. *Community and stakeholder representative: Attends various meetings and functions and serves as an institutional representative to help promote the University of Regina.*
3. *Institutional Resource: Serves as a communication resource for the Communication and Marketing Unit, President, Vice-Presidents and others within the university.*
4. *Strategic planning: Consults with others to develop and implement strategic plans related to stakeholder relations, promotion of the University and messaging.*
5. *Developing resources: Prepares background material, briefing notes, reports and other documents.*
6. *Developing and maintaining strong relationships: Works with internal and external stakeholders to proactively build strong working relationships that promote the vision and mandate of the University. Provides leadership on messaging, media and community relations, and helps plan and carry out event assignments as required.*
7. *Policy: Develops and recommends policy related to areas of responsibility. This includes researching, adapting and measuring impacts of best practices.*
8. *Education: Educates others in the University community on related policies, processes, practices and protocols.*

[14] The parties were unable to agree on whether or not the position ought to be excluded from the bargaining unit. As a result, the Employer made the within application seeking a provisional determination. The Employer seeks a provisional determination as the Employer was unwilling to staff the position without the Union's agreement or an Order of this Board.

Relevant statutory provision:

[15] 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:*

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

5.2(1) *On an application pursuant to clause 5(m), the board may make a provisional determination before the person who is the subject of the application is actually performing the duties of the position in question.*

(2) *A provisional determination made pursuant to subsection (1) becomes a final determination after the expiry of one year from the day on which the provisional determination is made unless, before that period expires, the employer or the trade union applies to the board for a variation of the determination.*

Employer's arguments:

[16] While not abandoning its position that the managerial exemption would apply to the disputed position, counsel on behalf of the Employer acknowledged during the hearing that the strength of the Employer's argument did not lie in the application of the managerial exemption. Rather, the gravitas of the Employer's argument was the application of the confidential employee exemption. To which end, counsel on behalf of the Employer argued that the duties and responsibilities of the disputed position are such that it would be inappropriate to

place the position within the scope of the Union's bargaining unit. The Employer takes the position that, as the institutional spokesperson for the University, the disputed position will interact with the President, the University's executive team, government officials, community stakeholders and legal counsel. The Employer sees the disputed position as being involved in all aspects of developing and delivering the University's key messages on important and strategic issues, including on issues of human resources and labour relations. The Employer argues that the incumbent will not only require access to confidential information to effectively carry out his/her assigned duties but will provide advice and help develop the University's communication strategies on major, sensitive public relations issues. The Employer argues that the incumbent of the position will be required to attend meetings of the University's executive team when issues having a public affairs component are discussed and, by doing so, will become privy to confidential information of the University, including strategic information related to labour relations. In fact, the Employer argues that the incumbent of the disputed position will require knowledge of all relevant background, including strategic information, labour relations plans, and human resource implications, in order to effectively function as the University's institutional spokesperson for any particular issue.

[17] The Employer argues that, if the position remains within the scope of the Union's bargaining unit, the University's executive team will be reluctant to provide sensitive information to the incumbent that could affect labour relations and that, without all relevant and necessary background information, the incumbent will make a poor institutional spokesperson.

[18] Counsel on behalf of the Employer noted that the Public Affairs Consultant is similar to two (2) positions (i.e.: a Communications Officer and a Communications Specialist) that were determined by the British Columbia Labour Relations Board to be out-of scope on the basis of the confidential exclusion in *Legal Services Society v. B.C. Government & Services Employee's Union*, 2006 CanLII 8842 (BC LRB) and *Telecommunications Workers' Union v. Canadian Office and Professional Employees Union, Local 15*, 2010 CanLII 47459 (BC LRB).

[19] Counsel on behalf of the Employer provided a written brief of law which we have read and for which we are thankful.

Union's arguments:

[20] The Union, on the other hand, argued that the disputed position should not be excluded from the scope of its bargaining unit. The Union noted that the person occupying the disputed position will have no managerial responsibilities and thus the position would be ineligible for the managerial exclusion. With respect to the confidential employee exemption, the Union argued that the job description did not adequately demonstrate that the incumbent will regularly come into contact with confidential information regarding the University's labour relations. Simply put, the Union argued that the evidence had not sufficiently established that the person occupying the position of Public Affairs Consultant will act in a confidential capacity regarding the University's industrial relations. In this regard, the Union noted various other in-scope positions at the University that were responsible for the performance of duties similar to that which the disputed position is intended to perform.

[21] For these reasons, the Union argued that the Employer's application ought to be dismissed. Counsel on behalf of the Union provided a written brief of law which we have read and for which we are thankful.

Analysis:

[22] In *The Saskatchewan Institute of Applied Science and Technology v. Saskatchewan Government and General Employees' Union*, [2009] 173 C.L.R.B.R. (2nd) 1, 2009 CanLII 72366, LRB File No. 079-06, this Board was called upon to determine whether or not certain disputed positions ought to be excluded from a trade union's 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. In doing so, 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] 1st 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.

[23] The confidential exclusion was described similarly (albeit somewhat more broadly) by the Board in *Community Health Services (Saskatoon) Association Ltd. v. Canadian Union of Public Employees, Local 974*, [2000] Sask. L.R.B.R. 326, LRB File No. 246-98, by using the following terms:

[15] *In the E.C.C. International Inc. case, supra, the Board noted that the purpose of the confidential exclusion under s. 2(f)(1)(B) was to prevent a conflict of interest between an employee, whose job requires him or her to have access to confidential information related to his or her employer's labour relations, and his or her membership in the Union. The provision also permits an employer to freely discuss labour relations issues with a group of managerial and confidential employees without fear that the discussions will be inappropriately disclosed. The exclusion is granted with caution because of the serious consequences for the person holding such position - they are not permitted to belong to any trade union. In this regard, the Board must ensure that the job functions entail regular exposure to confidential labour relations information.*

[24] Irrespective of how it is described, there can be no doubt that, in applying the confidential employee exclusion, *The Trade Union Act* calls upon the Board to balance a number of competing and legitimate rights, including: the rights of individual employees (to not be unnecessarily denied access to collective bargaining); the right of the bargaining unit (to not have its collective strength weakened by an unnecessary reduction of its membership); and the rights of the employer (to be able to make rational and informed decisions regarding labour relations in an atmosphere of candour and confidence and then have those strategies brought to the table by its negotiators or otherwise implemented). Many years ago, the Canada Labour Relations Board identified a three (3) part test¹ to aid in applying the confidential employee exclusion in *Canadian Union of Bank Employees v. Bank of Nova Scotia*, [1977] 2 Can. L.R.B.R. 126:

To this end this Board and other Boards have developed a threefold test for the confidential exclusion. The confidential matters must be in relation to industrial relations, not general industrial secrets such as product formulae (e.g., Int'l Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Loc. No. 300 and Calona Wines Ltd. et al., [1974] 1 Canadian LRBR 471, headnote only (B.C.L.R.B. decision 90/74)). This does not include matters the union or its members know, such as salaries, performance assessments discussed with them or which they must sign or initial (e.g., Exhibit E-21). It does not include personal history or family information that is available from other sources or persons. The second test is that the disclosure of that information would adversely affect the employer. Finally, the person must be involved with this information as a regular part of his duties. It is not sufficient that he occasionally comes in contact with it or that through employer laxity he can gain

¹ A test which has been subsequently applied by this Board. See: *University of Saskatchewan v. Administrative and Supervisory Personnel Association*, 2007 CanLII 68769 (SK LRB), LRB File No. 057-05.

access to it. (See Greyhound Lines of Canada Ltd. (1974), 4 di 22, and Hayes Trucks Ltd. and USW, Loc. 3253, [1974] 1 Canadian LRBR 284.

[25] In the present application, the Board has been asked to make a provisional determination involving a newly-created position without an incumbent. While a description of the job has been prepared, no direct evidence is available as the duties and functions being performed by an incumbent. As such, the Board's determination is based on an analysis of the duties and responsibilities that Employer intends the incumbent to perform. In doing so, our goal is to ascertain whether or not the duties and responsibilities assigned to the position are sufficient to justify the statutory exclusion; whether they will be performed on a regular (rather than incidental) basis; and whether they are genuine. In this sense, the circumstances of this case are similar to the circumstances before the Board in *Early Childhood Intervention Program, Regina Region Inc. v. Saskatchewan Government and General Employees' Union*, 2013 CanLII 53367 (SK LRB), LRB File No. 093-13.

[26] In the *Early Childhood Intervention* case, the Board first examined the duties and responsibilities that were expected to be performed by the new position to determine whether the performance of those duties and responsibilities would place the incumbent into an insoluble conflict with members of the bargaining unit and the extent to which those duties would be regularly performed. In doing so, the Board looked beyond the position's job title and beyond the words set out in the draft job description and considered the evidence as to why the position was created and the operational deficient it was intended to rectify. The Board then reflected on whether or not it was satisfied that the duties and responsibilities assigned to the position were genuine and necessary. In doing so, the Board looked for indications that management had not merely "sprinkled" the proposed new position with managerial duties and/or functions of a confidential nature for the purpose of obtaining an unnecessary exclusion (for a position that would otherwise have fallen within the definition of "employee"). In that case, the Board was satisfied that the duties and responsibilities of the disputed position were intended to rectify legitimate operational deficits within the employer's management structure.

[27] Having considered the evidence in these proceedings, we are satisfied that the duties and responsibilities intended to be performed by the Public Affairs Consultant can not be performed by a member of the Union's bargaining unit. The Employer intends to replicate (and potentially enhance) the public affairs function previously performed by the Vice-President of External Relations. The Employer seeks to have the disputed position provide advice to the

University's executive team on public relations matters, including matters involving or touching upon labour relations. The Employer intends the incumbent to be present during the University's decision-making process on a variety of major strategic issues or matters having (or expected to have) a significant public affairs dimension and/or to be privy to the information upon which the University based its decision. In our opinion, the University's rationale for doing so is reasonable, namely; so that the incumbent may be appropriately informed when acting as the University's institutional spokesperson. With all due respect to the Union's legitimate concern over maintaining the strength and scope of its bargaining unit, the kind of informational access that management intends to grant this position is wholly incompatible with membership in the Union's bargaining unit. In coming to this conclusion, we are satisfied that a regular component of the information to which the incumbent will have access will touch upon matters of labour relations with both the Union and other trade unions in the workplace. We are also satisfied that the disclosure of this information could adversely affect the Employer or could materially jeopardize the Employer's position in dealings with the Union or another trade union in the workplace.

[28] We are also satisfied that the duties and responsibilities intended to be transferred to this new position are genuine. We saw no evidence from which we could infer that these duties and responsibilities were unnecessary. Certainly, in today's day and age, it is improbably to imagine a large public institution like the University of Regina without an institutional spokesperson. It is also reasonable to assume that matters touching upon labour relations are likely to be a regular aspect of the functions performed by this new position. In coming to this conclusion, we are satisfied that the function of public relations, in all of its facets (including matters touching upon labour relations), is a legitimate business interest for employers. Employers are not required to sit gagged and bound when labour relations issues take on a public dimension or because a particular issue may touch on matters of labour relations. Employers have the right (in some cases, an obligation) to communicate their views to the public. With recent amendments to *The Trade Union Act*, employers also have the right to communicate facts and opinions to their employees. In some cases, employers may become engaged in strategic and tactical communications with a goal of actively managing a particular issue or placing its own "spin" on a matter that is anticipated to have a public dimension. In other cases, an employer may feel compelled to respond to allegations or correct what it perceives to be misinformation in the hands of the public, its customers, or its employees. While an employer's right to engage in communications that touch on matters of labour relations is not

without restrictions, there can be no doubt that public relations is a legitimate business interest for employers and that these activities may well touch upon matters of labour relations.

[29] In the present case, we are satisfied that the Employer's desire to continue the public affairs function that it previously enjoyed by transferring those duties to the disputed position is genuine. There can be no doubt that the Employer intends the incumbent of its new position to play a central role in the formulation and delivery of the University's public message and it is reasonable to assume that the University's message will touch upon matters of labour relations involving either the Union or another trade union in the workplace. While only time will tell whether or not (or the extent to which) the incumbent will perform these duties, these are clearly the kind of functions that would place a person performing these duties into an insoluble conflict with other members of the Union's bargaining unit. On this basis, we are satisfied that the Employer has satisfied the onus with respect to the exclusions sought. On the other hand, a provisional determination will allow the parties the opportunity to reevaluate the disputed position after it has been staffed and after the incumbent has begun performing the duties and responsibilities expected of the position.

[30] For the foregoing reasons, an Order shall issue pursuant to s. 5.2 of *The Trade Union Act* provisionally determining the position of Public Affairs Consultant to be outside the scope of the Union's bargaining unit on the basis that the duties expected to be performed by this position do not satisfy the definition of an "employee" as set forth in para. 2(f) of the *Act*.

DATED at Regina, Saskatchewan, this 5th day of February, 2014.

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson