



SASKATCHEWAN POLYTECHNIC, Applicant v. SASKATCHEWAN INSTITUTE OF APPLIED SCIENCE AND TECHNOLOGY FACULTY ASSOCIATION and SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Respondents

LRB File No. 238-14; April 28, 2015

Vice-Chairperson, Steven D. Schiefner; Members: Maurice Werezak and Allan Parenteau

For the Applicant Employer: Mr. David M.A. Stack
For the Faculty Association: Mr. Gordon D. Hamilton
For SGEU: Ms. Jana Stettner

Bargaining unit – Amendment – Employer certified to multiple bargaining agents – Employer seeks amendment to certification Orders to reflect name change – Amendment not disputed by either bargaining agent – Amendment granted.

Bargaining unit – Appropriate bargaining unit – Employer certified to multiple bargaining agents – Employer creates new position and seeks direction as to which bargaining unit new position should be included – Board reviews criteria for assigning new positions in multiple bargaining unit setting – Board finds that *Instructor, Assistive Technologies* is properly member of the academic bargaining unit.

Saskatchewan Employment Act, s. 6-104(2)(g)(i), 6-104(2)(i) & 6-105.

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson:** The applicant in these proceedings is the Saskatchewan Polytechnic (the “Employer”). Previously, this employer was known as the Saskatchewan Institute of Applied Science and Technology. The Employer is certified and its employees are represented by two (2) different bargaining agents. Although the dividing lines are not perfect, generally speaking, teaching and academic employees of the Employer are represented by the Saskatchewan Institute of Applied Sciences and Technology Faculty Association (the “Faculty Association”) in what is commonly referred to as an “*Academic Unit*”

and the professional services and support staff are represented by the Saskatchewan Government and General Employees' Union ("SGEU") in a "*Professional Services Unit*".

[2] On October 23, 2015, the Employer filed an application with the Saskatchewan Labour Relations Board (the "Board") seeking to amend both of the certification Orders affecting the workplace to change the name of the Employer from the Saskatchewan Institute of Applied Science and Technology (also known as "SIAS") to Saskatchewan Polytechnic. This change was not disputed by either bargaining agent and is therefore granted by the Board. If this had been the only issue between the parties, a hearing would not have been required. However, such was not the case.

[3] In its application, the Employer also asked this Board to determine within which bargaining unit the newly created position of "*Instructor, Assistive Technology*" belongs. Both the Faculty Association and SGEU argue that this new position properly falls within their respective bargaining unit. Other than agreeing that the position is not excluded, the Employer takes no position on which bargaining unit the position should be located.

[4] For the reasons that follow, we find that this new position properly belongs within Academic unit.

Facts:

[5] The Employer is a large, post-secondary educational institution in Saskatchewan. Its primary function is to provide technical education and skills training to students. The Employer operates out of four (4) main campuses in Moose Jaw, Prince Albert, Regina and Saskatoon. In addition, it also provides courses and programs through distance education. Through its programs, the Employer services the educational needs of thousands of students each year and its programs and courses touch on every sector of the economy.

[6] As indicated, the Employer's workforce has historically been organized into two (2) bargaining units and these two (2) units were originally based on statutory prescription. See: section 14 of *The Institute Act*, S.S., 1986-87-88, c.l-9.1. Both the Academic Unit and the Professional Services Unit are "*all employee*" bargaining units, with each certification Order excluding management and the members of the other bargaining unit.

[7] Before turning to the position in dispute, some background information may be helpful. At any given time, a percentage of the population have physical, sensory, cognitive, speech, learning and/or behavioural special needs. The students attending school at the Employer's campuses are no different. In response to the special needs of students with disabilities, the Employer provides specialized services and support and has done so for years. The goal of the Employer is for all of its students to achieve academic success and to provide support for students with special needs and to remove barriers that could negatively impact their educational experience. The Employer encourages any students with disabilities to register with its Disability Services department, who can provide or facilitate a broad range of services, including counselling, assistive technology and reasonable accommodations. In this context, reasonable accommodations can include extra time and/or private space for writing exams; a reduced course load; peer note-takers; alternate format for course material; and even something as simple as an ergonomic chair. The goal of the Employer is to promote inclusion and equality for all of its students, including students with special needs.

[8] With the growth in technology, a number of new devices, programs and services are now available that can be used in a learning environment to support students to overcome barriers and to support successful academic outcomes for students with special needs. Collectively, these are referred to as "*assistive technologies*". For example, there is software and/or online services, such as Kurzweil, that convert text to speech. Kurzweil allows a student's text books and course material to be converted into audio files. Doing so enables students who are visually impaired to listen to their text books and hear their course material. Similarly, programs such as Dragon Dictation can convert speech to text and can be used by students with physical limitations to write reports and complete assignments. There are also so-called smart pens that can either record audio or can record what a student has written and convert that information into text. While some of these technologies have been around for some time, many are new and all of them are improving with advances in technology.

[9] The provision of support to students with disabilities is not unique to the Employer's campuses. Many other educational institutions have recognized the need to support students with special needs in achieving positive educational outcomes. In fact, the need for these support systems in education has resulted in the University of Calgary now offering a Certificate in "*Assistive Technology for Learning in an Inclusive Classroom*".

[10] Students identifying to the Employer with special needs are assessed by an educational psychologist. This can include psycho-educational, medical and therapeutic assessments. The goal of this assessment is to define the special needs of the student and to prescribe accommodations and/or assistive technologies that will support that student in their academic endeavors with the Employer. As indicated, the prescribed accommodations and assistive technologies can be diverse, ranging from more time to write exams, to ergonomic chairs, to software and other programs to generate course material in alternate formats.

[11] In the past, one of the most commonly prescribed assistive technologies prescribed for students has been Kurzweil (aka Kurzweil Firefly). As indicated, this program enables students with visual disabilities to take the same course and programs offered by other students by converting the course material and text books into an audio format. In the past, once a student with a disability was finished being assessed by an educational psychologist (who is a member of the Faculty Association), it was the responsibility of someone in SGEU to obtain a license for the student to use Kurzweil, to obtain the course material required by that student for his/her classes, and then to show that student how to use Kurzweil. Showing a student how to use Kurzweil involves explaining how to download and open the program and how to open, use and save files in the Kurzweil format. In the past, these instructional sessions were completed by someone within the SGEU bargaining unit. For example, at the Kelsey Campus in Saskatoon, this was done by an office assistant working in the Disability Services office. At the Palliser Campus in Moose Jaw, students would receive this instruction from a library technician at the Campus's main library. It should be noted, however, that this practice changed approximately one (1) year prior to the hearing.

[12] Ms. Shawna North was called to testify on behalf of SGEU. Ms. North testified that she was a library technician at the Palliser Campus in Moose Jaw. Ms. North testified that for a period of approximately a decade, educational psychologists at the Palliser Campus would bring students who had been assessed with special needs to the reference desk at the library. Ms. North testified that she and other library technicians would sit down with students and show them how to access and use programs such as Kurzweil, as well as other assistive technologies, including smart pens.

[13] Ms. Mona Spence was called to testify on behalf of SGEU. Ms. Spence testified that she was an Assistive Technology & Accommodations Office Assistant at the Kelsey Campus

in Saskatoon and that it was her responsibility, until recently, to show students how to use assistive technologies. In doing so, she would sit down with students and provide one-on-one instructional sessions regarding the use of Kurzweil. In addition, Ms. Spence prepared written material to help students understand how to use these programs. However, a year prior to the hearing, Ms. Spence was asked to stop demonstrating how to use assistive technologies to students. Rather, Ms. Spence understood that any demonstrations or one-on-one instruction with students regarding assistive technologies would, in the future, be conducted by an instructor. Instructors are members of the Faculty Association.

[14] The Employer called Ms. Ann (Susan) McIntyre, the Associate Vice-President of Student Services, and Ms. Beverly (Bev) Kynoch, the Program Head for Student Development in Saskatoon, both of whom testified as to the function and purpose of the proposed new position.

[15] Simply put, the Employer is in the process of creating a new position and this position is identified as an “*Instructor, Assistive Technologies*”. At the time of the hearing, the Employer only had sufficient funding for one (1) incumbent. However, the Employer envisioned at least two (2) incumbents, if not more, were needed in the workforce. The first incumbent is intended to be located in the Student Development area at the Employer’s Kelsey Campus in Saskatoon. The second incumbent will be located at a southern campus. Irrespective of where they are located, the incumbents in the new position will all report directly to the Director of Student Development.

[16] The draft position description for the position of “*Instructor, Assistive Technologies*” prepared by the Employer is as follows:

Reporting to the Director of Student Development, the Instructor, Assistive Technologies will be responsible for the prescription and instruction of assistive technologies and alternate media that students with disabilities require to support their academic activities at SIAST.

DUTIES

1. *Develop, implement and coordinate an assistive technology plan, provide guidelines and assistance to students, staff and faculty.*
2. *Meet with students and prescribe assistive technologies based on documentation from psycho-educational assessments, medical and other therapeutic assessments.*
3. *Provide one on one and group teachings of assistive technology in the context of addressing learning strategy skills development. Teach applications, e.g. Kurzweil, Dragon, as well as productivity suites and*

commonly used operating systems for PC and Mac products. Assist students in self-monitoring the effectiveness of the integration of technology and learning strategies.

4. Prepare reports for student and disability services with respect to prescription of assistive technology and instructions given to students.
5. Problem solves technology malfunction or problems as they relate to specialized assistive technology and software.
6. Assists with planning and conducting of workshops for students, faculty and staff.
7. Works in partnership with financial aid/CSG/Workforce Development and other funding agencies to assist students in accessing funds for assistive technology.
8. Stays current with new and evolving technologies for students with disabilities.
9. Consult with internal and external partners to ensure comprehensive assistive technology services.
10. Work with Information Technology Services (ITS) to ensure that technology solutions and support follow ITS architectural standards and processes.
11. Work with ITS and Learning Technologies to ensure the best possible integration of assistive technologies into the SIAST learning platform.

QUALIFICATIONS, SKILLS, ABILITIES AND EXPERIENCE

Required

1. Bachelor's degree in a technology related area with additional education in disability studies, education, adult education, psychology, library sciences and an assistive technologist certificate or equivalent combination of education and experience.
2. Two years of recent experience preferably in a post-secondary environment in the field of assistive technology which required the use of assistive technology software and equipment.
3. Demonstrated ability to understand differential diagnosis related to learning and mental health disabilities and their impact on learning at the post-secondary level.
4. Understanding of diverse academic, socioeconomic and cultural backgrounds of individuals with disabilities.
5. Ability to work as a member of a multidisciplinary team to meet the needs of students.
6. Superior problem solving and decision-making skills.
7. Effective interpersonal and communication skills in complex and emotionally charged situations.
8. Proficiency in the use of the internet, e-mail, MS Office Suite software and computerized testing.
9. Demonstrates valuing diversity.

Arguments on behalf of the Faculty Association:

[17] The Faculty Association takes the position that the disputed position of *Instructor, Assistive Technologies* is properly part of its bargaining unit. Although acknowledging that teaching is not a primary function of the disputed position, the Faculty Association argues that the subject matter expertise of the position and the integration of the services the incumbent will

provide with roles and functions of other members of the Faculty Association should influence our decision. Simply put, the Faculty Association argues that the disputed position will be an integrated part of a team of specialists and, therefore, the incumbent belongs in the bargaining unit where these other specialists are located, namely the Academic Unit.

Arguments on behalf of the Saskatchewan Government and General Employees' Union:

[18] SGEU takes the position that the Employer's new position properly belongs within its bargaining unit. Firstly, SGEU disputes that the incumbents of this position will regularly teach courses or that "teaching" will be a significant feature of his/her duties. SGEU takes the position that the so-called "*teaching*" duties to be performed by the incumbent will involve little more than demonstrating and answering questions, much as was previously done by members of the Professional Services Unit. Secondly, SGEU argues that primary duties of this new position trace back to duties performed by its members, including the position held by Ms. Spence (i.e.: the Assistive Technology & Accommodations Office Assistant) and library technicians, such as Ms. Shawna North. Thirdly, SGEU argues that the disputed position bears more similarities to positions in the Professional Services Unit, including lab technologists who regularly assist with course work and provide instruction to students regarding the use of particular technology.

[19] SGEU argues that the essence of the disputed position is to help students access and use technologies that will assist them in their regular course, much as is done by lab technologists in demonstrating how to use lab equipment. SGEU notes that these individuals are also subject matter experts with respect to the equipment they are responsible for. Simply put, SGEU argues that the incumbents of the Employer's new position will have more community of interests and more relationships with members of the Professional Services Unit than with members of the Academic Unit.

[20] Counsel on behalf of SGEU provided a written Brief of Law, which we have read and for which we are thankful.

Analysis:

[21] In this workplace, the Employer has multiple bargaining relationships. Decisions concerning the proper allocation of new or additional positions between competing bargaining units can be difficult. In a number of previous decisions, this Board has been asked to determine

the assignment of positions in workplaces with multiple bargaining units and, in doing so, has considered a number of different factors. These decisions include *Canadian Union of Public Employees, Local 1975 v. University of Saskatchewan & Administrative and Supervisory Personnel Association*, [1990] Summer Sask. Labour Rep. 97, LRB File No. 040-90; *Service Employees International Union, Local 333 v. St. Paul's Hospital (Grey Nuns') Saskatoon & Health Sciences Association*, [1991] 2nd Quarter Sask. Labour Rep. 78, LRB File Nos. 130-90, 205-90, 003-91 & 004-91; *Regina Professional Fire Fighters Association v. City of Regina and Regina Civic Middle Management Association*, [1994] 4th Quarter Sask. Labour Rep. 164, LRB File Nos. 202-94 and 226-94; *Canadian Union of Public Employees, Local 47 v. City of Saskatoon & Saskatoon Middle Management Association*, [2002] Sask. L.R.B.R. 542, 2002 CanLII 52893 (SK LRB), LRB File No. 030-02; *Canadian Union of Public Employees, Local 21 v. City of Regina and Regina Civic Middle Management Association*, [2005] Sask. L.R.B.R. 274, 2005 CanLII 63086 (SK LRB), LRB File Nos. 103-04 & 222-04. None of the factors used by the Board in these decisions appear to be either exhaustive or conclusive. Rather, the identified factors have provided the Board with touchstones or reference points in its decision-making process.

[22] From a review of the previous decisions of the Board, it appears that the following factors/considerations can provide helpful guidance to the Board in determining the proper assignment of a newly created or additional position in a multi-bargaining unit workplace:

1. **Similarities of the disputed position and other positions in the competing bargaining units.** Under this factor, the Board examines the role to be performed by the incumbent in the workplace, together with the work, duties and responsibilities of the position, as well as the potential for career advancement; all in an effort to determine whether the disputed position bears more similarities to the member of one unit or another. See: *SEIU West v. St. Paul's Hospital & HAS*, *supra*. See also: *CUPE, Local 1975 v. University of Saskatchewan & ASPA*, *supra*. This is a pragmatic analysis intended to promote homogeneity and functional coherence in bargaining units. To a certain extent, the Board has also considered which bargaining unit would present the best career option for the incumbent. See: *Regina Professional Firefighters Association v. City of Regina & RCMMA*, *supra*.

2. **Community of interest.** Under this factor, the Board examines the educational qualifications, competencies and skills expected of the incumbent, together with the conditions of employment and avenues for lateral mobility for the incumbent. While this factor also examines similarities in positions, it tries to focus that examination on the anticipated collective bargaining interests of the disputed position relative to the interests of the members of the competing bargaining units. See: *CUPE, Local 21 v. City of Regina & RCMMA, supra*. See also: *SEIU West v. St. Paul's Hospital & HAS, supra*.

3. **The history or origins of the disputed position.** Under this factor, the Board examines whether the duties or responsibilities of a newly created position can be traced back to a particular bargaining unit. Evidence that the work to be performed by a disputed position was carved out of a particular bargaining unit supports a rebuttable presumption that the position ought to be assigned to that bargaining unit. See: *CUPE, Local 1975 v. University of Saskatchewan & ASPA, supra*.

4. **Industrial stability and viability of the bargaining relationship.** Under this factor, the Board considers whether the inclusion or exclusion of a disputed position will jeopardize the strength and effectiveness of either bargaining unit or otherwise endanger the equilibrium of the bargaining relationships. See: *Regina Professional Firefighters Association v. City of Regina & RCMMA, supra*.

5. **Broader, More Inclusive Bargaining Units:** In the case of multi-bargaining unit workplace involving a middle management unit, there is a rebuttable presumption that new or additional positions belong in the broader, more inclusive bargaining unit. See: *CUPE, Local 21 v. City of Regina & RCMMA, supra*; and *CUPE, Local 47 v. City of Saskatoon & SCMMA, supra*.

[23] Finally, it should be noted that in evaluating a disputed position for either assignment between competing bargaining units or its eligibility for an exclusion (i.e.: management and/or confidentiality), the Board tries to look beyond titles and position descriptions in an effort to ascertain the true role which that position will play in an organization. See: *Saskatchewan Institute for Applied Science and Technology v. Saskatchewan Government*

and General Employees' Union, (2009) 173 C.L.R.B.R. (2d) 1, 2009 CanLII 72366 (SK LRB), LRB File No. 079-06.

Analysis of the Disputed Position:

[24] The Employer is of the opinion that there is a growing need for assistive technology services for its students and intends the position of “*Instructor, Assistive Technologies*” to be a subject matter expert in that field. The Employer sees this position as being able to provide guidance to its staff and faculty on new developments in the field of assistive technology for learning. The Employer envisions the position bridging a gap between educational psychologists (who prescribed assistive technology), the Employer’s instructors (who teach students) and counsellors and other staff who provide support and guidance to students with special needs. The Employer sees the incumbent(s) supporting students in their understanding and use of prescribed assistive technology, as well monitoring and reporting back on the efficacy of prescribed technologies in meeting the educational needs of those students. The Employer was concerned that some students, who were prescribed assistive technologies (by educational psychologists), were not using those technologies and there had been no follow up to find out why. Finally, the Employer also intends this new position to prepare assistive technology plans for students with special needs following their assessment by an educational psychologist.

[25] In our view, the creation of the disputed position and the Employer's use and intended deployment of that position appears quite reasonable. Furthermore, the duties that have been assigned to the disputed position appear to be responsive to demonstrable needs in the workplace. While the disputed position will be performing many of the services previously provided by members of SGEU, including obtaining required course material in alternate formats, problem solving technological malfunctions and problems, etc., it was apparent that the incumbent will be functioning at a different level and performing duties not previously performed by SGEU members.

[26] In reviewing the evidence, we are satisfied that the disputed position is intended to provide a higher level of support for students with special needs than has been the case in the past. This is not to suggest in any way that the services provided by office assistants, such as Ms. Spence, and library technologists, such as Ms. North, were not professional or competently performed. To the contrary, these individuals demonstrated knowledge, competency,

compassion and understanding. Rather, the Employer has concluded that the provision of assistive technologies to students with special needs should be done as part of an individualized plan for those students. Furthermore, the Employer believes that someone should be assessing the efficacy of the prescribed assistive technologies as they are being used by students. These are new functions/services not specifically provided by anyone; or, at least, no one was specifically responsible for the provisions of these services. Simply put, the Employer has identified a gap in its service delivery model and it intends to begin filling that gap by staffing the position of *Instructor, Assistive Technologies*.

Similarities of the Disputed Position and Other Positions in the Competing Bargaining Units:

[27] The Board was not provided with a comprehensive listing of the positions contained in either the Academic Unit or the Professional Services Unit. Rather, the Board was provided with examples of positions believed to be similar or comparable to the disputed position by both SGEU and the Faculty Association. For example, SGEU provide job information questionnaires which had been previously completed by the incumbents of the following positions, all of which were members of the Professional Services Unit:

- Library Technician (Palliser Library)
- NRT Lab Technologist (Woodland Campus/Technology Division)
- Student Recruitment Officer
- Coordinator, Recruitment Services (Student Affairs)
- IR Training Coordinator (Administrative Offices)
- Student Development Assistant (Student Affairs – Palliser/Wascana)
- International Recruiter/Adviser (International Education)
- Lab Technician (SIAS Technology Division)
- Environmental Lab Technologist (Civil, Water Resources & Environmental Engineering Technology Division)
- Instrumentation Lab Technician (Palliser Campus – Technology Division)
- Computer Lab Technician (Palliser Campus – Technology Division)
- Draftsperson (Palliser Campus – Architectural Engineering Technology Division)
- CADD/Geomatics Technologist (Palliser Campus – CADD/Geomatics Technology)
- Lab Technician (Palliser Campus - Technology Division)
- Civil Lab Technologist (Palliser Campus - Environmental Technology Division).

[28] The Faculty Association provided position descriptions for the following positions, all of which were members of the Academic Unit:

Educator Counsellor (Aboriginal Activity Centre)
Aboriginal Advisor (Science and Health Aboriginal Success Strategy)
Educational Technology Planner Instructor
Instructional and Leadership Development Centre (ILDC) Facilitator
Faculty Trainer Instructor

[29] In addition, Mr. Warren White testified on behalf of the Faculty Association. Mr. White was the President of that Association. Mr. White testified that the members of the Faculty Association are, generally speaking, described as professionals engaged in the fields of *pedagogy* and *andragogy*; namely, the art and science of teaching, education and instructional methods in general and in the specific context of adults. As the name would imply, members of the Faculty Association are involved in teaching in one form or another. Mr. White testified that instruction by Faculty members includes all forms of teaching, including classroom instruction, on-line instruction, tutorials and instructional aid. In addition, Faculty members are also involved in the supervision of instructors, as well as quality assurance and auditing. Finally, Faculty members are involved in the development of curriculum, courses and programs.

[30] It is obvious that the range of positions included within the Academic bargaining unit is broad. It covers more than just teaching and includes a range of professionals and subject matter experts in art and science of adult education and instructional methods. It also includes a number of positions, such as councilors, whose function is not to teach but rather is to support students and remove barriers to their educational outcomes.

[31] SGEU argues that the position of Instructor, Assistive Technologies bears many similarities to positions within its unit, including the Assistive Technology and Accommodation Office Assistant, library technicians, and lab technologists. While we do not dispute that the Employer's proposed new position bears similarities to members of the Professional Services Unit, in our opinion, the disputed position bears more similarities to members of the Faculty Association. Firstly, the primary role of the disputed position will be in the field of *pedagogy*; specifically, the art and science of instructional methods for students with special needs. The target audience for the incumbent's knowledge and expertise will be members of the Faculty

Association, including educational psychologists, councilors and instructors. Secondly, the duties to be performed by the position will be complementary to, and intended to bridge a gap between, educational psychologists, instructors and councilors. Finally, it would be in the Faculty Association that incumbents of the disputed position will be most likely to find their peers and colleagues (i.e.: other subject matter experts in the field of adult education).

Community of Interest with other Members:

[32] SGEU notes that many positions within the Professional Unit have advanced educational requirements similar to the disputed position. SGEU also takes the position that this person could also apply for other positions, including lab technologists, if it was located within the Professional Services Unit. While both of the assertions are true, they are not persuasive in assignment of the disputed position.

[33] In an educational institution, it is not surprising that many positions of the Employer include advanced educational requirements. No evidence was led on the respective collective bargaining aspirations and interest of the competing bargaining units. However, in the Faculty Association, the incumbent will be part of a range of positions providing specialized services within specific fields of expertise. It is reasonable to assume that the greater community of interest will exist between the disputed position and members of the Academic Bargaining Unit. As a member of the Faculty Association, the incumbent(s) will be part of a team of subject matter experts and it is reasonable to assume that an incumbent's career aspiration will be found within that team.

History or Tracing of Duties of the Disputed Position:

[34] SGEU argues that many of the duties and responsibilities to be assigned to the *Instructor of Assistive Technology* can be traced back to members of the Professional Services Unit. While some of the duties to be performed by the disputed position find their origins in the duties previously performed by members of SGEU, these duties are not the *raison d'être* of the position. In our opinion, the true role that the Employer's new position will place in the workplace will be to bridge a gap that has been identified in the services delivered to students with special needs. In this respect, the disputed position will provide services that were not previously being provided in the workplace. In the absence of this new position, it is more likely to assume that the Employer would turn to members of the Academic Unit to prepare assistive technology plans for

students with special needs and to report on the efficacy of the assistive technologies that have been prescribed to students.

Industrial Stability:

[35] In the present application, concerns related to industrial instability and/or viability of the bargaining relationships are not significant. No serious argument could be (or was made) that the allocation of this particular position will endanger the bargaining equilibrium between the Employer and either the Faculty Association or SGEU. Simply put, the relative strength and/or effectiveness of either bargaining agent is not likely to be jeopardized by the inclusion or exclusion of the disputed position within one unit or another.

Broader, More Inclusive Bargaining Unit:

[36] Some of the Board's previous decisions dealing with multi-bargaining unit workplaces have involved middle management associations, including *City of Regina v. Canadian Union of Public Employees, Local 7 & Regina Civic Middle Management Association*, [1986] Sept. Sask. Labour Rep. 69, LRB File Nos. 387-85, 389-85, 031-86 & 032-86; *CUPE, Local 47 v City of Saskatoon & SCMMA, supra*; and *CUPE, Local 21 v. City of Regina & RCMMA, supra*. Middle management bargaining units are primarily composed of individuals who are excluded from the broader bargaining unit because of their management responsibility and/or because of the confidential nature of the work they perform. Because of the Board's narrow application of these exclusions, the Board has adopted a slightly different approach to the assignment of newly created positions to competing bargaining units if one of those bargaining units is a middle management association. Simply put, there is a rebuttable presumption that new or additional positions belong in the broader, more inclusive bargaining unit.

[37] In the present application, neither bargaining unit can be characterized as a middle management bargaining unit. In the present application, both of the competing bargaining units find their genesis in statutory prescription. Both bargaining units are "all employee" units. In this workplace, there are two (2) equally inclusive bargaining units, with membership theoretically and/or historically determined or assigned depending on whether a position's duties are primarily "academic" in nature or involve the provision of "professional services". As a consequence, this factor is not applicable in the present application.

Conclusions:

[38] Although there are some similarities with members of the Professional Services Union, in our opinion, the roles, duties and responsibilities to be assigned to the position of *Instructor, Assistive Technologies* have more in common and bear more similarities with members of the Faculty Association. It is in the Academic Unit that incumbent(s) of the disputed position will find the other members of his/her team and is the most likely to find professional peers and colleagues. It is reasonable to assume that the greater community of interest will exist between this new position and members of the Faculty Association. For these reasons, we find that the position of *Instructor, Assistive Technologies* is properly a member of the Saskatchewan Institute of Applied Science and Technology Faculty Association.

[39] Board members Maurice Werezak and Allan Parenteau both concur with these Reasons for Decision.

DATED at Regina, Saskatchewan, this 28th day of April, 2015.

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson