



**SASKATCHEWAN POLYTECHNIC, Applicant v. SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Respondent**

LRB File No. 149-17; March 2, 2018

Chairperson, Kenneth G. Love, Q.C.; Members: Laura Sommervill and Maurice Werezak

For the Applicant, Saskatchewan Polytechnic: Paul Clemens

For the Respondent, Saskatchewan  
Government and General Employees'  
Union: Jana Stettner

**Exclusion from bargaining unit – Applicant applies to the Board to have new positions excluded from bargaining unit – Applicant argues that positions will have managerial responsibilities or will have access to confidential information used in strategic business planning.**

**Proper procedure when new position created – Board reviews previous jurisprudence detailing process to be followed when new position created – When new position created, position can be excluded only through agreement of the parties or Board Order.**

**Material Change in Circumstances required to be shown for amendment – Board discusses rationale for requirement to show material change, which is to avoid continuous review of previous decisions – Board determines that a change in the definition of “employee” sufficient to show material change.**

**Necessity for amendment – Material change is “one step” towards the demonstration of the necessity for an amendment – Board has wide discretion to determine necessity for an amendment.**

**Management Exclusion – Board reviews facts in this case and determines that positions do not have primary responsibility to exercise authority and perform functions that are of a managerial character – Evidence supports some possible supervisory function for positions – Board determines that supervisory function insufficient for exclusion of the position.**

**Confidentiality Exclusion – Board reviews facts and evidence in this case and determines that Procurement positions do not have primary duties which include activities that are within the categories of confidentiality as set out in statutory definition.**

**Confidentiality Exclusion – Board reviews evidence with respect to Manager, Institutional Research & Analysis. Finds position has access to confidential student data which may impact bargaining unit and direct the strategic planning of Saskatchewan Polytechnic.**

**Provisional Exclusion – Provisional exclusion only available when proposed job duties meet the statutory criteria for exclusion of positions.**

## **REASONS FOR DECISION**

### **Background:**

**[1]** Saskatchewan Polytechnic (“Sask. Poly”) applied to the Board to determine if four (4) newly created positions should be excluded from the bargaining unit represented by the Saskatchewan Government and General Employees’ Union (“SGEU”). The four positions at issue were:

1. Manager, Institutional Research & Analysis;
2. Manager, Competitive Sourcing;
3. Manager, Purchasing and Materials Management; and
4. Manager, Vendor and Category Management.

**[2]** The first named position falls within the Institutional Research and Analysis branch of Sask. Poly. The other three (3) positions fall within the Procurement area of Sask. Poly.

**[3]** For the reasons that follow, the Board has determined that the Manager, Competitive Sourcing, the Manager, Purchasing and Materials Management and the Manager, Purchasing and Materials Management do not meet the criteria for exclusion from the bargaining unit. The Manager, Institutional Research & Analysis falls within the criteria for exclusion from the bargaining unit.

**Facts:**

[4] The parties provided the Board with an Agreed Statement of Facts as set out below. The Board also heard testimony from five (5) witnesses. The Board will reference such testimony as necessary in our analysis section below. The parties also supplied the Board with a Joint Book of Documents.

**Agreed Statement of Facts:**

[5] The parties relied on the following Agreed Statement of Facts:

1. *This application concerns four positions. Sask Polytechnic takes the position that these positions are new positions, as they involve the creation, posting and hiring of previously non-existent Manager Positions. SGEU takes the position that the duties of these positions are not, in substance, new, but rather are found in existing in-scope positions.*
2. *Regardless of whether the positions are new or not, both parties disagree as to whether the positions should be excluded from SGEU's professional services bargaining unit.*
3. *The four positions at issue are: "Manager, Institutional Research & Analysis", "Manager, Competitive Sourcing", "Manager, Purchasing and Materials Management", and "Manager, Vendor and Category Management." The latter three positions are in the Procurement area. These positions will subsequently be referred to as the "Contested Positions".*
4. *Sask Polytechnic has advised that if the Contested Positions are implemented as out of scope Managers, the following existing in-scope positions will be abolished: "Coordinator of Institutional Research & Analysis" and three "Materials Management Coordinator" positions.*
5. *The Coordinator of Institutional Research & Analysis position is presently vacant and has been vacant since February 15, 2017.*
6. *There are presently two Materials Management Coordinator positions with incumbents, one position for South Saskatchewan and one for North Saskatchewan. These positions are filled by Lyle Howat (North) and Patty Yuzek-Woytuik (South). Previously, there were four Materials Management Coordinator positions, one for each of Prince Albert, Saskatoon, Moose Jaw and Regina.*
7. *Sask Polytechnic has advised that the two incumbents to the in-scope Materials Management Coordinator positions will have an opportunity to apply for the Contested Positions if they are implemented.*
8. *The duties of positions that are in-scope to SGEU's professional services unit are set out in documents called Job Information Questionnaires or JIQs. An individual who fills a particular job that is in-scope to SGEU's unit works with their supervisor to list their duties in a job information questionnaire form. Once completed, the form must be approved by the employee's manager who verifies that the duties listed are accurate. It is Saskatchewan Polytechnic's guide that JIQ's are supposed to be reviewed every (5) years.*

*Because JIQ's aren't always reviewed within five (5) years, actual duties of jobs can differ over time from the JIQ criteria. JIQ's are also used to determine which pay band a particular position will be placed in and therefore, the level of remuneration that an individual will receive for their work at Sask Polytechnic.*

**Institutional Research & Analysis**

9. *The JIQ for the "Coordinator of Institutional Research and Analysis" position is attached to this Agreed Statement at Tab B2 of the Joint Exhibit Book. This form was completed in December 2003 by Melanie Skinner, who remained in the position until February 15, 2017.*
10. *The existing and proposed structure for the Institutional Research & Analysis area is attached at Tab A13, B3 and B5 of the Joint Exhibit Book. The position of Coordinator of Institutional Research and Analysis is presently vacant.*

**Procurement**

11. *Because there were historically four "Materials Management Coordinators" at Sask Polytechnic, there are four separate JIQs for these positions. The JIQs for the positions that are currently filled by Lyle Howat and Patty Yuzek-Woytiuk are attached to this Agreed Statement at Tabs A5 and A6 of the Joint Exhibit Book respectively. These forms were completed in August 2004 and June 2002 respectively.*
12. *The JIQs for the two Materials Management Coordinator positions for which there are no incumbents are attached at Tabs A7 and A8 of the Joint Exhibit Book respectively. Both of these JIQs were completed in 2004.*
13. *A copy of the current organizational structure for the Procurement Area is attached at Tab A9 of the Joint Exhibit Book. A copy of the proposed organizational structure for the Procurement Area/Finance is attached at Tab A10 and A11 of the Joint Exhibit Book.*

**Relevant statutory provision:**

[6] Relevant statutory provisions are as follows:

**6-1(1)** *In this Part:*

(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 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;

...

**6-104(2)** In addition to any other powers given to the board pursuant to this Part, the board may make orders:

...

(g) amending a board order if:

(i) the employer and the union agree to the amendment; or

(ii) in the opinion of the board, the amendment is necessary;

...

#### **Provisional determination of employee**

**6-105(1)** On an application made for the purposes of clause 6-104(2)(i), the board may make a provisional determination before the person who is the subject of the application actually performs the duties of the position in question.

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

**Sask. Poly's arguments:**

[7] Sask. Poly provided the Board with a Written Argument and Book of Authorities which we have reviewed and found helpful. In that Brief, and in its oral arguments, Sask. Poly argued that the four (4) positions, which were the subject of this application, should be excluded from the bargaining unit represented by SGEU. They noted that the onus fell upon them to show the positions should be excluded.

[8] Sask. Poly also argued that they had satisfied the onus of showing a material change of circumstances to support the amendment application. In support they cited *Health Sciences Association of Saskatchewan v. Unifor*<sup>1</sup>, *RWDSU v. Battlefords and District Cooperative Limited*<sup>2</sup> and *SIASR v. SGEU*<sup>3</sup>.

[9] Citing numerous case authorities, Sask. Poly argued that the positions fell within the Managerial and Confidentiality exclusions provided for in section 6-1(1)(h) of *The Saskatchewan Employment Act* (the "SEA"). In summary, they argued that:

- (a) *Duties performed in a confidential capacity need not be the primary focus of the Position. In this case, the evidence was clear that all Managers will necessarily have to access confidential information for budgeting, policy, and labour relations purposes and make decisions that could affect the economic livelihood of in-scope members. The purpose of confidential exclusion is 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.*
- (b) *The authority attached to and the duties of the Managers would create and 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. Simply, these Managers are all directed to institute discipline and power to terminate other employees. This puts them in a clear conflict if called upon to deal with discipline or termination.*
- (c) *The Managers will all have a significant degree of decision-making authority in relation to matters which affect the terms, conditions or tenure of employment of other employees including the power to discipline and discharge, the ability to influence labour relations, and the power to hire, promote, demote and terminate.*
- (d) *The Managers here will provided leadership and be responsible for planning in the department and will work with Directors or higher level AVP's and Deans.*

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<sup>1</sup> 2015 CanLII 43776 (SK LRB), LRB File No. 003-15

<sup>2</sup> 2015 CanLII 19983 (SK LRB), LRB File No. 170-14 & 19814

<sup>3</sup> 2009 CanLII 72366 (SK LRB), LRB File No 079-06

- (e) *The Managers will play a role in collective bargaining proposals (costing and implementation).*
- (f) *The size of a department being managed by an out of scope Manager is not illustrative of the authority granted.*
- (g) *The fact that Sask. Poly has a “fully staffed and functional human resource department to assist and augment” dismissal decisions is not detrimental to Managers exercising their authority to terminate or impactful on scope.*
- (h) *Positions will be excluded where “they represent the kind of internal resources that are necessary and desirable to enable the Employer to make informed and rational decisions regarding industrial relations with the Union”. Sask. Poly argued that the role of the Managers under consideration here accords precisely with the type that will assist the Employer in relations with the Union.*
- (i) *It is the use to which confidential information is being put that can place the disputed position within the confidential exemption. In the case of the Manager, Institutional Research & Analysis, he/she will have data which will directly identify which educational programs are being cut and hence the in-scope positions falling within those programs.*
- (j) *Similar positions, identified by Sask. Poly have been determined as being out of scope.*
- (k) *That, in the alternative, the positions should be provisionally excluded pursuant to section 6-105 of the SEA.*

### **SGEU's Arguments:**

**[10]** SGEU also provided the Board with a Written Argument and Book of Authorities which we have reviewed and found helpful. In its written and oral arguments, SGEU argued that none of the disputed positions should be excluded from its bargaining unit.

**[11]** SGEU cited two<sup>4</sup> of the same cases as Sask. Poly, that the onus lies upon Sask. Poly to establish that there had been a material change in circumstances to support the application. SGEU argued that no such material change had been shown. SGEU argued that Sask. Poly could not “test drive” the positions through a provisional order under section 6-105 of the SEA.

**[12]** SGEU further argued that none of the positions should be excluded as either managerial or confidential, nor should the Board treat any of the positions as “new” when they

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<sup>4</sup> See footnotes 1 and 2 above

are merely a recasting of former job duties and responsibilities for positions within the scope of the bargaining unit.

[13] SGEU also argued that the proposed job duties did not qualify any of the new positions to be excluded from the bargaining unit on the basis of either the managerial exclusion or confidentiality exclusion as set out in section 6-1(1)(h) of the *SEA*. SGEU argued that the job duties were supervisory in nature, not managerial and that there was no ‘insoluble conflict’ in their being within the bargaining unit.

[14] Additionally, SGEU argued that the job duties did not qualify as confidential as they were substantially the same duties as those duties performed by an in scope employee. Nor, they argued, did any confidential information which the employees may have access to would have any direct impact on bargaining unit employees.

**Analysis:**

**Has there been a Material Change?**

[15] The Board has adopted the requirement that there be a material change demonstrated whenever an application is made to amend the certification Order for a unit of employees. The rationale for the requirement was described by the Board in *SIASST v. SGEU*<sup>5</sup> at para. [50]:

*The rationale for the requirement for material change in instances other than where a provisional determination is sought for a newly created position is simple. It imposes a requirement that a material change be demonstrated in the duties or responsibilities in the position with respect to which the scope amendment is sought. However, in the case of a newly created position, there are no previously reviewed duties or responsibilities which the Board has considered as to whether the position met the criteria in s. 2(f) of the Act.*

[16] The need to demonstrate a material change was introduced by the Board as a check against recurrent applications seeking to have the Board review its scope determination. In *Re: Federated Co-operatives*<sup>6</sup>, former Chairperson Sherstobitoff said:

*It can be inferred that some persons might make applications for amendment in the hope that a new panel will view the matter in a different light. The Board*

<sup>5</sup> 2012 CanLII 65539 (SK LRB), LRB File No. 106-12

<sup>6</sup> [1978] July Sask. Labour Rep. 45, LRB File No. 502-77



*wishes to make it clear that it will not sit in appeal on previous decisions of the board and it therefore determines in this application, as in all applications for amendment, the applicant must show a material change in circumstances before and amendment will be granted.*

[17] The requirement to demonstrate a material change is, as described by Abella J. in *Theratechnologies Inc. v. 121851 Canada Inc.*<sup>7</sup>, “more than a speed bump”, and the Board must undertake a reasoned consideration of the evidence to ensure that the action has some merit.

### **The Procurement Group Positions**

[18] The onus of showing a material change in circumstances falls to the person seeking the amendment to the certification Order. In this case, that is Sask. Poly. In the case of the Manager, Competitive Sourcing, the Manager, Purchasing and Materials Management, and the Manager, Vendor and Category Management, Sask. Poly provided evidence that the changes were being proposed as the result of a consultant’s review of procurement practices. That review showed that Sask. Poly could realize significant savings through improvements to their procurement practices.

[19] The final report identified an organizational structure having a “Procurement Lead” position and four (4) operating groups under that Lead. This proposed model was adopted by Sask. Poly in their proposed procurement structure.<sup>8</sup>

[20] The parties were able to agree that the Lead position should be outside of the scope of the bargaining unit, so it is not the focus of this application. Two of the four (4) operating groups were combined into the position of Manager, Purchasing and Materials Management and the other two (2) positions related to the other identified operational groups.

[21] Similar positions to those being proposed existed within the scope of the bargaining unit. These were a Manager, Procurement, two (2) Materials Management Coordinators, and a vacant Procurement Specialist position. This structure represented an amalgam of the previous system of procurement which was campus based<sup>9</sup>. The current

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<sup>7</sup> 2015 SCC 18 (CanLII)

<sup>8</sup> See Tab 10 of Joint Document Book

<sup>9</sup> Sask. Poly has a number of campuses throughout Saskatchewan where previously, procurement had been done on a local level.

structure was more authority centralized, but geographically decentralized with positions situated in Saskatoon, Regina, and Moose Jaw.

[22] The organizational changes resultant from the consultant's study, in the Board's opinion, show a material change so as to justify the application to the Board.

**Manager of Institutional Research and Analysis**

[23] The proposed new position of Manager, Institutional Research & Analysis involved the movement of a position currently known as the Institutional Research & Analysis Coordinator out of scope and renaming the position as Manager, Institutional Research & Analysis.

[24] In respect of this position, the Board heard evidence from Ms. Lucy Pereira, the Director of Strategy for Sask. Poly. She testified that the proposed change arose from a vacancy that occurred in the Institutional Research & Analysis Coordinator position. She testified that the former position focused on research product production and not on planning and priorities for her department and Sask. Poly. She testified that she wanted to make a "transformational change" and have the new position take a formal leadership role and have accountability within the organization.

[25] The new role was to have a significant servicing role, ensuring that research projects being undertaken by the Department were properly designed in order to yield valid results which could be relied upon by Sask. Poly in its planning and budgeting. The position would also be representative of Sask. Poly with external bodies.

[26] The new position would also be responsible for, and would have access to, student data to analyze it to provide direction to Sask. Poly in planning for program demand.

[27] The demonstration of a material change in circumstances was not as compelling with respect to this position, however, as noted by the Board in *Liquor Board of Saskatchewan v. SGEU*<sup>10</sup> that a change in the definition of "employee" as occurred with the proclamation of the SEA and the repeal of *The Trade Union Act* "could amount to a "material change" justifying review of a previous exclusion". In this case, that conclusion is particularly appropriate since one of the changes to the definition of "employee" in s. 6-1(1)(h)(i)(B) was to make specific

reference to employees who have responsibilities in the area of “business strategic planning”, “policy advice” or “budget implementation or planning”.

[28] The legislative change, along with the evidence from Ms. Pereira, satisfies the requirement of showing a material change.

### **Is the Proposed Amendment Necessary?**

[29] The conclusion reached by the Board in *Health Sciences Association of Saskatchewan v. Unifor, Local 609*<sup>11</sup> is appropriate here as well. At paragraphs [30] & [31], the Board said:

*As noted in Battlefords Co-operative, the demonstration of a material change is “one step along the road to an applicant demonstrating the necessity for an amendment”. As noted in paragraph 98 of that decision, the Board has wide discretion to determine if an amendment is necessary. The test to determine the necessity of an amendment is an objective test.*

*Necessity may be shown by effluxion of time from the date of the Order, changed circumstances or material change, changes in business organization or mandate, or other facts which tend to show that the amendment is required. The creation of a new position which was not dealt with by the Board at the time of certification would, in our opinion, necessitate an amendment to the order if that position is determined by the Board to fall outside the definition of “employee”. That is particularly true when, as here, there has been a change in the definition by the legislature since the certification Order was made.*

[30] Accordingly, given that the definition of “employee” has changed, the Board finds the amendments can be categorized as necessary.

### **Should the Procurement Positions be Excluded?**

[31] For these three (3) positions to be excluded, they need to fall within the managerial or confidential exclusions contained within the definition of employee in s. 6-1(1)(h)(i) of the *SEA*. That definition is somewhat different from the former exclusion definition in the former *Trade Union Act*. That difference was also described by the Board in *Health Sciences Association of Saskatchewan v. Unifor, Local 609* at paragraphs [34] & [35]:

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<sup>10</sup> [1984] Nov. Sask. Labour Report 38, LRB File No. 083-84 @ para. 28

<sup>11</sup> 2015 CanLII 43776 (SK LRB), LRB File No. 003-15

**[34]** *To be excluded from the bargaining unit, the position must fall within the exceptions set out in subsections (A) and (B) of section 6-1(h)(i) of the SEA. Those exclusions, for ease of reference are: (emphasis added)*

- (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 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 advice;*
  - (III) *policy advice;*
  - (IV) *budget implementation or planning.*

**[35]** *This definition is markedly different from the previous definition of “employee” contained in section 2(f) of The Trade Union Act. Again, for ease of reference, exclusions in that section read as follows: (emphasis added)*

- (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;*

**[32]** Under the *Trade Union Act*, it was necessary that the employee “actually exercise authority” in reference to the managerial exception, whereas under the *SEA*, the responsibility must be a “primary” responsibility.

**[33]** With respect to the confidentiality exception, the requirement under *The Trade Union Act* was to “regularly act”, whereas now the requirement is to have “primary duties” which include the 4 areas set out in subclauses (B)(I) to (IV).

**[34]** SGEU led evidence with respect to the duties which the persons in the previous positions performed. This evidence was in relation to Job Information Questionnaires that were all completed in 2004, which was prior to the coming into force of the *SEA*. As such, they have limited value in evaluating the current situation and the new definitions found in the *SEA*.

**[35]** Sask. Poly provided the Board with draft job descriptions for each of the positions that they wished to create. It is in the context of these proposed job descriptions that the Board must determine if the positions, as proposed, would bring the employee into the exceptions to the definition of “employee”.

**Manager, Purchasing and Materials Management**

[36] To fit within the managerial exception, the employee must have “primary” responsibility to exercise authority and perform functions that are of a managerial character. In this context, “primary” has its usual meaning of “earliest, original, of the first rank in a series, of the first importance, chief”<sup>12</sup>.

[37] The Board has carefully reviewed the proposed job description and cannot find, even in the section headed “People Management”, duties or responsibilities that satisfy the requirement that these be “primary” duties. There are certainly peripheral duties which the position would be required to perform and which Sask. Poly argued were managerial in character. Those duties are, we believe, not appreciably different from duties performed by in scope supervisors in respect to employees which they supervise. Accordingly, from our review of the proposed job description, the proposed position does not fall within the managerial exception to the definition of “employee”.

[38] The Management Authorities Grid provided also supports this conclusion. According to that grid, even out of scope managers have limited authority to contract<sup>13</sup>, undertake probationary reviews<sup>14</sup>, all for temporary performance of higher duties, approve some leaves, approve earned days off carryover with HR involvement, approve payroll, approve reimbursement of professional fees, approve hospitality expenses up to \$5,000.00 per event, and approved budgeted purchasing for amounts less than \$75,000.00. These limited scope activities do not, in our opinion, bring the position within the managerial exception.

[39] To fit within the confidentiality exception, the proposed position must have primary duties which have a direct impact on the bargaining unit and which fit within the four (4) categories spelt out in the definition. Those categories are:

- (I) *labour relations;*
- (II) *business strategic advice;*
- (III) *policy advice;*
- (IV) *budget implementation or planning.*

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<sup>12</sup> See The Concise Oxford Dictionary (4<sup>th</sup> Ed)

<sup>13</sup> Employment Contracts of \$10,000 or less or renewals thereof.

<sup>14</sup> Such managers can only extend or Fail and Terminate/Revert with the involvement of the HR dept.

[40] The evidence does not establish that the proposed position would have any primary duties which would have a direct impact on the bargaining unit in any of these four (4) areas. Some evidence was lead that the position would have some responsibility for budgeting and implementation of the budget, but again, that duty was not a primary responsibility of the position. The evidence established that operational budgets were not set by the position, but were merely administered by the position, once set by upper management. The responsibilities set out in the job description under “Resource Allocation and Management” do not, in our opinion, satisfy the requirement that the activities be a primary activity that would have a direct impact on the bargaining unit.

[41] Accordingly, the Board is of the view that the duties of the Manager, Purchasing and Materials Management do not meet the qualifications for exemption from the definition of “employee” and hence that position should not be excluded from the bargaining unit.

#### **Manager, Vendor and Category Management**

[42] Neither the evidence presented, nor a review of the proposed job description, places this position within the exceptions from the definition of “employee”. The job description provisions with regard to “People Management” and “Resource Allocation and Management” are similar to those provided for the Manager, Purchasing and Materials Management referenced above. There is insufficient evidence to support Sask. Poly’s contention that there is a primary activity or duty which would make the duties of this position managerial or confidential such that it meets the requirements of the exception.

[43] The Board has again, carefully reviewed the proposed job description and cannot find any duties or responsibilities that satisfy the requirement that the position be responsible to exercise authority and perform functions that are of a managerial character. There are certainly peripheral duties, related to people management, which the position would be required to perform and which Sask. Poly argued were managerial in character. Again, those duties are, we believe, not appreciably different from duties performed by in scope supervisors in respect to employees which they supervise. Accordingly, from our review of the proposed job description, the proposed position does not fall within the managerial exception to the definition of “employee”.

[44] The Management Authorities Grid provided also supports this conclusion. According to that grid, even out of scope managers have limited authority to contract<sup>15</sup>, undertake probationary reviews<sup>16</sup>, all for temporary performance of higher duties, approve some leaves, approve earned days off carryover with HR involvement, approve payroll, approve reimbursement of professional fees, approve hospitality expenses up to \$5,000.00 per event, and approved budgeted purchasing for amounts less than \$75,000.00. These limited scope activities do not, in our opinion, bring the position within the managerial exception.

[45] Nor does the evidence establish that the proposed position would have any primary duties which would have a direct impact on the bargaining unit in any of the four (4) defined areas or responsibility. Again, some evidence was lead that the position would have some responsibility for budgeting and implementation of the budget, but again, that duty was not a primary responsibility of the position. Similar to the evidence adduced with respect to the Manager, Purchasing and Materials position, the evidence showed that operational budgets were not set by the position, but were merely administered by the position, once set by upper management. The responsibilities set out in the job description under “Resource Allocation and Management” do not, in our opinion, satisfy the requirement that the activities be a primary activity that would have a direct impact on the bargaining unit.

[46] Accordingly, we are of the view that the Manager, Vendor and Category Management does not meet the qualifications for exemption from the definition of “employee” and hence should not be excluded from the bargaining unit.

#### **Manager, Competative Sourcing**

[47] Again, neither the evidence presented, nor a review of the proposed job description places this position within the exceptions from the definition of “employee”. The job description provisions with regard to “People Management” and “Resource Allocation and Management” are similar to those provided for the Manager, Purchasing and Materials Management referenced above. There is insufficient evidence to support Sask. Poly’s contention that there is a primary activity or duty which would make the duties of this position managerial or confidential such that it meets the requirements of the exception.

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<sup>15</sup> Employment Contracts of \$10,000 or less or renewals thereof.

**[48]** The Board has again, carefully reviewed the proposed job description and cannot find any duties or responsibilities which satisfy the requirement that the position be responsible to exercise authority and perform functions that are of a managerial character. Again, there are certainly peripheral duties, related to people management, which the position would be required to perform. Again, those duties are, we believe, not appreciably different from duties performed by in-scope supervisors in respect to employees which they supervise. Accordingly, from our review of the proposed job description, the proposed position does not fall within the managerial exception to the definition of “employee”.

**[49]** The Management Authorities Grid provided also supports this conclusion. According to that grid, even out of scope managers have limited authority to contract<sup>17</sup>, undertake probationary reviews<sup>18</sup>, all for temporary performance of higher duties, approve some leaves, approve earned days off carryover with HR involvement, approve payroll, approve reimbursement of professional fees, approve hospitality expenses up to \$5,000.00 per event, and approved budgeted purchasing for amounts less than \$75,000.00. These limited scope activities do not, in our opinion, bring the position within the managerial exception.

**[50]** Nor does the evidence establish that the proposed position would have any primary duties which would have a direct impact on the bargaining unit in any of the four (4) defined areas or responsibility. The Board heard some evidence that the position would have some responsibility for budgeting and implementation of the budget, but again, that duty was not a primary responsibility of the position. Similar to the evidence adduced with respect to the other two positions, the evidence showed that operational budgets were not set by the position, but were merely administered by the position, once set by upper management. The responsibilities set out in the job description under “Resource Allocation and Management” do not, in our opinion, satisfy the requirement that the activities be a primary activity that would have a direct impact on the bargaining unit.

**[51]** Accordingly, we are of the view that the Manager, Vendor and Category Management does not meet the qualifications for exemption from the definition of “employee” and hence should not be excluded from the bargaining unit.

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<sup>16</sup> Such managers can only extend or Fail and Terminate/Revert with the involvement of the HR dept.

<sup>17</sup> Employment Contracts of \$10,000 or less or renewals thereof.

<sup>18</sup> Such managers can only extend or Fail and Terminate/Revert with the involvement of the HR dept.



**Should the Procurement Positions be provisionally excluded?**

[52] In the alternative, Sask. Poly asked that the Board provisionally exclude the three (3) positions from the bargaining unit pursuant to section 6-105 of the *SEA*. Section 6-105 allows the Board to provisionally exclude a position from the bargaining unit where the position is newly created and has no incumbent in the position. This is the case here. While similar positions existed to those being created, they are new positions based upon the expected change in duties for those positions.

[53] To be excluded provisionally under section 6-105 of the *SEA*, the evidence needs to establish that the duties of the position fall within one of the exclusions discussed above. The Board has determined that they do not. Accordingly, we are unable to even provisionally exclude the positions as they should not be excluded from the bargaining unit.

**Manager, Institutional Research & Analysis**

[54] For essentially the same reasons as set out above with respect to the Managers in the procurement area, the evidence did not establish that this position would fall within the managerial exception to the definition of “employee”. The Board, in this instance, heard evidence from Ms. Lucy Pereira, the Director of Strategy and Business Development for Sask. Poly. Her testimony was that the new position was to create a new out of scope position from the former in scope position of “Institutional Research and Analysis Coordinator”. The main rationale for the change was so that the position could have access to “very confidential” information related to strategic planning for Sask. Poly.

[55] In particular, Ms. Pereira noted that the position would have access to detailed student records which would be analyzed and could lead, for example, to a change in entrance requirements for a particular Sask. Poly program. Such change could have an impact on staffing levels and on bargaining unit positions. She also noted that the Coordinator position was focused on “product production”. She wanted to refocus the position to planning and priorities for Sask. Poly in the courses and classes which were offered. She described the new position as being a transformational change with formal leadership and accountability roles.

**[56]** The job description provided with respect to this position, similar to the job descriptions provided for the procurement managers, does not support the position being excluded due to its exercise of primary responsibility in exercising authority and performing functions that are of a managerial character. Nor does the Management Authorities Grid provide any assistance in this respect. Accordingly, we find that the position does not meet the requirements for a managerial exception.

**[57]** However, it is clear from Ms. Pereira's testimony that this position will have a primary responsibility for business strategic advice in the analysis of student and other data which will direct Sask. Poly in the operation of its business operations, which could have a marked impact on the bargaining unit should that data show that a change of direction is required. Sask. Poly's business is education and it offers a wide variety of education at its various locations. Analysis of its business data is fundamental to the provision of strategic business advice to Sask. Poly and will be provided, in part, by this position.

**[58]** We are of the opinion that this position falls within the exclusion provide for in section 6-1(h)(i)(B).

**[59]** An appropriate Order will accompany these reasons. This is a unanimous decision of the Board.

**DATED** at Regina, Saskatchewan, this **2nd** day of **March, 2018**.

**LABOUR RELATIONS BOARD**

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Kenneth G. Love, Q.C.  
Chairperson