SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, REGINA PROFESSIONAL FIRE FIGHTERS ASSOCIATION, IAFF LOCAL 181, SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, SOBEYS CAPITAL INCORPORATED (SAFEWAY OPERATIONS), Proposed Intervenors v UNIVERSITY OF SASKATCHEWAN and ADMINISTRATIVE AND SUPERVISORY PERSONNEL ASSOCIATION, Respondents and CANADIAN UNION OF PUBLIC EMPLOYEES, LOCALS 9, 2669, 3462 and 1594, Intervenor

LRB Files No. 080-19, 084-19, 085-19 & 104-19; August 6, 2019

Chairperson, Susan C. Amrud, Q.C.; Board Members: Mike Wainwright and Maurice Werezak

For the Applicant Intervenor, Saskatchewan Government and General Employees' Union:	Crystal L Norbeck and Rick Engel, Q.C.
For the Applicant Intervenor, Regina Professional Fire Fighters Association, IAFF Local 181:	Sean McManus
For the Applicant Intervenor, Saskatchewan Joint Board, Retail, Wholesale and Department Store Union:	Ronni A. Nordal, Q.C.
For the Applicant Intervenor, Sobeys Capital Incorporated (Safeway Operations):	Kevin Wilson, Q.C.
For the Respondent, University of Saskatchewan:	David M.A. Stack, Q.C.
For the Respondent, Administrative and Supervisory Personnel Association:	Gary L. Bainbridge, Q.C.
For the Intervenor, Canadian Union of Public Employees, Locals 9, 2669, 3462 and 1594:	Sachia Longo

Intervenors – Applicants did not meet criteria for exceptional intervenor status.

Intervenors – Applicants did not meet test for public law intervenor status – All applicants proposed to widen the lis between the parties.

Intervenors – None of the applicants satisfied the Board that the process would be advanced or improved by their participation – Granting of intervenor status is discretionary and to be exercised sparingly.

REASONS FOR DECISION

Background:

[1] **Susan C. Amrud, Q.C., Chairperson:** On November 15, 2016, the University of Saskatchewan ["University"] filed an Application to Amend the most recent Certification Order[1] granted by the Board with respect to the University and the Administrative and Supervisory Personnel Association ["ASPA"], to exclude certain employees that it considers supervisory employees within the meaning of clause 6-1(1)(o) of *The Saskatchewan Employment Act*[2] ["Application to Amend"].

[2] On August 8, 2017 the Canadian Union of Public Employees, Locals 1975, 9, 2669, 3462 and 1594 ["CUPE"] was granted intervenor status as an exceptional intervenor in the Application to Amend on the understanding that it would not raise any constitutional questions before the Board[3].[4] The Board recognized that CUPE is present in this workplace and therefore has legal rights or obligations that may be affected by the outcome of the Application to Amend.

[3] The University, ASPA and CUPE asked the Board to consider the University's Application to Amend without a hearing. ASPA and CUPE were of the view that the Board has already decided the question at the heart of the Application to Amend, in *Saskatoon Public Library Board v CUPE, Local 2669*, 2017 CanLII 6026 (SK LRB) ["*Saskatoon Public Library Board*"]. The Board considered the written submissions of the parties and CUPE and on March 20, 2019 advised them by email that the Board declined to dismiss the Application to Amend without a hearing. Dates for hearing that Application have been set for five days in September 2019, at which time the Board will hear evidence and argument respecting the proposed amendment.

[4] The email that was sent to counsel for the University, ASPA and CUPE somehow ended up in the hands of the proposed intervenors. Having no background in the matter being considered by the Board on that date, they misinterpreted the content of the email by assuming that it means that the Board has decided to undertake a second test case on the interpretation of the supervisory employee provisions of *The Saskatchewan Employment Act* ["Act"] (*Saskatoon*

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[1] LRB File No. 108-01; November 1, 2001.
[2] LRB File No. 254-16.
[3] LRB File No. 003-17.
[4] On October 17, 2018, CUPE Local 1975 withdrew its participation.

Public Library Board having been characterized by the Board as a test case on that issue[5]). This misinterpretation has apparently led to the applications for intervention in this matter.

[5] Four parties applied for intervenor status in this matter: Saskatchewan Government and General Employees' Union ["SGEU"][6], Regina Professional Fire Fighters Association, IAFF Local 181 ["IAFF"][7], Saskatchewan Joint Board, Retail, Wholesale and Department Store Union ["RWDSU"][8] and Sobeys Capital Incorporated (Safeway Operations) ["Safeway"][9]. SGEU requested exceptional intervenor status in its application, but in its Brief of Argument requested public law intervenor status. IAFF applied for public law intervenor status. RWDSU and Safeway applied for both public law and exceptional intervenor status.

[6] The Board's records indicate that the parties to the Application and CUPE have taken the following positions on the intervention applications. The University filed a Brief of Law in which it consents to the proposed intervenors being granted public law intervenor status, but opposes the granting of exceptional intervenor status to any applicant. CUPE filed a letter with the Board indicating that it takes no position with respect to the intervention applications. ASPA has not responded to the applications.

Relevant Statutory Provisions:

[7] The following provisions of the Act will be referred to throughout these Reasons as the supervisory employee provisions:

> ***Interpretation of Part***
> *6-1(1) In this Part:*
>
> > *(o)* ***"supervisory employee"*** *means an employee whose primary function is to supervise employees and who exercises one or more of the following duties:*
> >
> > > *(i) independently assigning work to employees and monitoring the quality of work produced by employees;*
> > >
> > > *(ii) assigning hours of work and overtime;*
> > >
> > > *(iii) providing an assessment to be used for work appraisals or merit increases for employees;*
> > >
> > > *(iv) recommending disciplining employees;*
> >
> > *but does not include an employee who:*

[5] At para 8.
[6] LRB File No. 080-19.
[7] LRB File No. 084-19.
[8] LRB File No. 085-19.
[9] LRB File No. 104-19.

> *(v) is a gang leader, lead hand or team leader whose duties are ancillary to the work he or she performs;*
>
> *(vi) acts as a supervisor on a temporary basis; or*
>
> *(vii) is in a prescribed occupation;*

Determination of bargaining unit
6-11(3) Subject to subsections (4) to (6), the board shall not include in a bargaining unit any supervisory employees.

(4) Subsection (3) does not apply if:

> *(a) the employer and union make an irrevocable election to allow the supervisory employees to be in the bargaining unit; or*
>
> *(b) the bargaining unit determined by the board is a bargaining unit comprised of supervisory employees.*

(5) An employee who is or may become a supervisory employee:

> *(a) continues to be a member of a bargaining unit until excluded by the board or an agreement between the employer and the union; and*
>
> *(b) is entitled to all the rights and shall fulfil all of the responsibilities of a member of the bargaining unit.*

(6) Subsections (3) to (5) apply only on and after two years after the date on which subsection (3) comes into force.

Analysis:

[8] In *Saskatchewan Government Employees Union*, 2016 CanLII 74494 (SK LRB), the Board considered the issue of whether to grant intervenor status to the Saskatchewan Government Employees' Union and the Saskatchewan Joint Board, Retail, Wholesale and Department Store Union for the hearing to be held in *Saskatoon Public Library Board*. It quoted with approval the following passage from *Government of Saskatchewan, Ministry of Environment v Saskatchewan Government Employees Union*[10] ["*Ministry of Environment*"]:

> *The granting of intervenor status is discretionary and should be exercised sparingly. Within the ambit of that discretion, CIFFC as an applicant seeking to be made an intervenor in this Queen's Bench matter pursuant to Rule 2-12 should be prepared to address the following:*
>
> > *a. A sufficient interest in the outcome of the matter must be shown such that their involvement is warranted. An outcome that adversely affects them may well be considered sufficient to meet this criterion;*
> >
> > *b. There must exist the reasonable prospect that the process will be advanced or improved by their addition as an intervenor. This includes demonstrating that, as an intervenor, they will bring a new perspective or special expertise to the proceedings that would not be available without their participation. Merely echoing the position of one or more of the parties indicates they will not provide the requisite value;*

[10] [2016] CanLII 250 (SKQB) at para 41.

> *c. As an intervenor they cannot seek to increase the number of issues the parties themselves have included in the proceeding;*
>
> *d. Adding them as an intervenor must meet the goals and objectives identified by Rule 1-3 such that the issues raised by the litigation will be heard with reasonable dispatch and the matter will not be overwhelmed with procedure by virtue of their inclusion as an intervenor;*
>
> *e. Adding them as an intervenor must not unduly prejudice one of the parties;*
>
> *f. The intervention should not transform the court into a political arena; and*
>
> *g. The court is not bound by any of these factors in determining an application for intervention but must balance these factors against the convenience, efficiency and social purpose of moving the case forward with only the persons directly involved in the proceeding.*

[9] Even for *Saskatoon Public Library Board*, which it characterized as a test case, the Board refused the applications of the two unions to be granted status as exceptional intervenors, making the following comment:

> *[13] There were no special circumstances demonstrated in this case. SGEU and RWDSU are impacted by the provisions not unlike every other party governed by the provisions of the SEA. They are not unique insofar as the impact these provisions may have on a union or the members of a union. There are legions of other unions upon whom these provisions will have an impact.*

[10] Instead it granted them status as public law intervenors on the basis that neither was allowed to call evidence, cross-examine witnesses or introduce any legal arguments beyond those raised by the parties. In addition, any arguments provided were directed to be supplemental to, rather than supportive of, the arguments advanced by the parties.[11]

[11] The Board's approach to the granting of intervenor status in proceedings before the Board was summarized as follows in *Construction Workers Union (CLAC), Local 151 v Tercon Industrial Works Ltd*[12] ["*Tercon*"]:

> *In J.V.D. Mills Services #1, supra, this Board clarified its general approach to the granting of intervenor status in proceedings before the Board. In doing so, the Board reiterated the long standing principle that the granting of standing as an intervenor in any proceedings before the Board is a matter of discretion and that, generally speaking, the Board exercises its discretion based on the circumstances of each case, considerations of fairness (to the party seeking*

[11] At the commencement of the hearing the Board granted public law intervenor status to the City of Regina on the same basis.

[12] 2012 CanLII 2145 (SK LRB) at para 31.

> *standing) and/or the potential for the party seeking standing to assist the Board (by making a valuable contribution or by providing a different perspective) without doing injustice to the other parties. The Board went on to identify and adopt three (3) forms of intervention recognized by this Board. These three (3) forms of intervention are summarized as follows:*
>
> *1. **A Direct Interest Intervenor**; where the applicant seeking standing has a direct interest in the answer to the legal question in dispute in that it has legal rights or obligations that may be directly affected by the determinations of the Board.*
>
> *2. **An Exceptional Intervenor**; where the applicant has a demonstrable and genuine interest in the answer to the legal question in dispute (i.e.: for example, if the party has a pending application before the Board on the same issue and thus has legal rights or obligations that may be affected by a binding precedent); and the applicant can establish the existence of "special circumstances" that differentiate it from others who may have a similar interest; and where that party can demonstrate that it can provide a valuable assistance to the Board in considering the issues before it.*
>
> *3. **A Public Law Intervenor**; where the applicant has no legal rights or obligations that may be affected by the answer to the legal question in dispute, but can satisfy the Board that its perspective is different or that its participation would assist the Board in considering a public law issue before it.*

[12] The University also draws the Board's attention to *Whatcott v Saskatchewan (Human Rights Tribunal)*, 2008 SKCA 95 (CanLII), which held that a proposed intervenor cannot raise new issues not previously raised by the parties.

Exceptional Intervenor Status

[13] The Board turns first to the issue of exceptional intervenor status. As noted in *Tercon*, to be successful, an applicant must satisfy the Board that it satisfies all three of the following criteria:

- It has a demonstrable and genuine interest in the answer to the legal question in dispute;
- Special circumstances differentiate it from others who may have a similar interest; and
- It can provide valuable assistance to the Board in considering the issues before it.

[14] The Board elaborated in *Tercon* on the requirements to be met by a proposed intervenor for status as an exceptional intervenor[13]:

> *To qualify as an Exceptional Intervenor, the proposed intervenors must not only have a demonstrable and genuine interest to the legal questions in dispute in CLAC's certification application, but they must also satisfy the Board that an "exceptional circumstance" exists that differentiates them from others who may also share a similar interest in the outcome of proceedings before the Board and that they can assist the Board with the issues before it by providing a different perspective (such as the ability to bring probative evidence on matters directly in issue that would not necessarily be forthcoming from the parties). In J.V.D. Mills*

[13] At para 37.

> *Services #1, supra, this Board cautioned that under this form of intervention an intervenor must demonstrate, as the name would imply, circumstances that are "exceptional".*

[15] In the Application to Amend, the Board has previously found that CUPE met these criteria because it represents employees at the University who may be affected by its outcome. Even so, the Board did not grant CUPE the ability to expand the questions at issue in the Application, as it had proposed to do.

(a) RWDSU

[16] RWDSU applies for exceptional intervenor status to call evidence and cross examine witnesses as well as to introduce and make legal arguments. It proposes to introduce a new issue to the Application to Amend, that is, the constitutionality of the supervisory employee provisions.

[17] RWDSU states that it has a demonstrable interest in the outcome of the Application to Amend as it is facing a similar application and its legal rights and obligations may be affected by the decision in that matter.

[18] RWDSU states that the constitutional challenge to the supervisory employee provisions that it has launched demonstrates the required special circumstances.

[19] While RWDSU says it can be of assistance to the Board in considering the Application to Amend, it has not provided any information about what that assistance would be, bearing in mind that the issue before the Board is whether a bargaining unit at the University should be amended.

[20] Every union and unionized employer in the province could argue that it has an interest in every application heard by the Board, as it has the potential to be considered with respect to their workplace at some point in the future. This does not mean it has an interest in the answer to the Application to Amend. No special circumstances were identified that would differentiate RWDSU from other unions. RWDSU is in the same situation as any other union facing an application to amend a bargaining unit or that may face a similar application in the future. Their circumstances are not exceptional.

(b) Safeway

[21] Safeway says that it has a demonstrable interest in the answer to the legal question in dispute in the Application to Amend. As noted above, this simple assertion is not sufficient to

satisfy the test; being interested in the outcome and having an interest in the outcome are two different things. Safeway states that the special circumstances that differentiate it from others is that it is a private sector employer. It also relies on this factor as the basis on which it can provide valuable assistance to the Board. The Board is of the view that this fact works against Safeway's application. The legal question in dispute is whether a bargaining unit at the University should be amended. Safeway has provided no submissions on how it can be of assistance to the Board on that issue.

(c) SGEU

[22] SGEU's application requests leave to intervene as an exceptional intervenor. However, it provided no argument on that issue.

Public Law Intervenor Status

[23] The next question is whether any of the proposed intervenors should be granted public law intervenor status. In *Communication, Energy and Paperworkers Union of Canada v. J.V.D. Mill Services*, [2010] 199 C.L.R.B.R (2nd) 228, LRB File No. 087-10 (SK LRB), the Board described its approach to applicants seeking standing as public law intervenors:

> *[24] Public Law (or often called Public Interest) intervenor status is granted when a court "is satisfied that the participation of the applicant may help the court make a better decision". Public Interest Standing has been recognized by the courts in Saskatchewan. The principles to be applied in determining whether to grant status to a public interest intervenor were set out by the Saskatchewan Court of Appeal in R. v. Latimer:*
>
> > *1. Whether the intervention will unduly delay the proceedings?*
> > *2. Possible prejudice to the parties if intervention be granted?*
> > *3. Whether the intervention will widen the lis between the parties?*
> > *4. The extent to which the position of the intervenor is already represented and protected by one of the parties? and*
> > *5. Whether the intervention will transform the court into a political arena?*
>
> *[25] The Court in Latimer, supra, also noted that "[A]s a matter of discretion, the court is not bound by any of these factors in determining an application for intervention but must also balance these factors against the convenience, efficiency and social purpose of moving the case forward with only the persons directly involved in the "lis".*
>
> *[26] The Board has also recognized that it must be cognizant of balancing the interests of the parties in having access to make representations to the Board and preserving the resources of the Board. As noted by the Board in Re: Merit Contractors Association at paragraph 20:*
>
> > *These statutes represent an embodiment of public policy, and a wide range of persons may have an "interest" in a broad sense, in bringing to our attention various issues which may arise in conjunction with the implementation of these policies. As both the courts and other tribunals like our own have concluded, however, some limits must be set in allowing the assertion of interests which are*

> *contingent in nature. In Canadian Council of Churches v. The Queen (1992), 88 D.L.R. (4th) 193, the Supreme Court of Canada expressed the concern in this way:*
>
> > *I would stress that the recognition of the need to grant public interest standing in some circumstances does not amount to a blanket approval to grant standing to all who wish to litigate an issue. It is essential that a balance be struck between ensuring access to the Courts and preserving judicial resources. It would be disastrous if the Courts were allowed to become hopelessly overburdened as a result of the unnecessary proliferation of marginal or redundant suits brought by well-meaning organizations pursuing their own particular cases certain in the knowledge that their cause is all important. It would be detrimental, if not devastating, to our system of justice and unfair to private litigants.*

(a) SGEU

[24] SGEU's application requests leave to intervene as an exceptional intervenor. Its Brief of Argument states that it seeks public law intervenor status. It did not file an application to be granted leave to intervene as a public law intervenor. Nonetheless, the Board will address its arguments.

[25] SGEU cited two main arguments why it should be granted public law intervenor status in this matter. The first reason was because it was granted such status in *Saskatoon Public Library Board*. With all due respect, that is irrelevant. The second reason is that it has a long history of participating in Board hearings that have considered various issues pertaining to bargaining unit configuration. Again that is irrelevant.

[26] Turning to the criteria described above, SGEU's intervention would delay the proceedings, as it has signaled that the dates set for the hearing of this matter may need to be postponed to accommodate the availability of its counsel.

[27] SGEU's intervention would widen the *lis* between the parties, by its proposed attempt to turn this matter into what it describes as a second test case.

[28] SGEU has not satisfied the Board that it has a perspective on the issues in this matter that cannot be advanced by one of the parties or CUPE. The three issues on which it proposes to provide argument can easily be addressed by ASPA and/or CUPE if they determine it will advance their case. SGEU has not convinced the Board that the position it proposes to advance is not already represented and protected by ASPA and/or CUPE.

(b) IAFF

[29] The IAFF applies for leave to intervene as a public law intervenor. It argues that it should be granted intervenor status because it has a different perspective from the parties in that it represents a bargaining unit of firefighters. While the Board agrees that this is a different perspective, IAFF does not explain how this perspective is relevant to the issue before the Board, whether a bargaining unit at the University should be amended.

[30] The IAFF's proposed intervention would clearly increase the number of issues in the proceeding and unduly delay the proceedings, as it proposes to make argument about how the supervisory employee provisions would apply to its workplace, when the issue before the Board is how they apply to a bargaining unit at the University.

[31] The IAFF states that the parties will not be prejudiced by its intervention. It notes as support for this position its view that both parties have consented to it being granted intervenor status. This is not accurate and, in any event, not determinative.

[32] The position of the IAFF as a proposed intervenor is already represented and protected by ASPA and CUPE.

[33] The IAFF argued that the importance of the issue under consideration should weigh in its favour. It relied on *JVD Mill Services #2* (2011), 192 CLRBR (2d) 1 (SK LRB), where the Board granted public law intervenor status to two unions to make submissions on the important issue that was being raised there for the first time following amendments to the Act. The Board does not accept this argument because this is not the first time the Board has considered the supervisory employee provisions. They were considered for the first time in *Saskatoon Public Library Board* and, in that case, the Board did allow intervenors to participate.

(c) RWDSU

[34] RWDSU is seeking public law intervenor status to call evidence and cross examine witnesses as well as to introduce and make legal arguments. It proposes to introduce a new issue to the Application to Amend, that is, the constitutionality of the supervisory employee provisions.

[35] It suggests that one potential outcome of the Application to Amend is to "overturn" the decision in *Saskatoon Public Library Board*. Clearly, that is not an order that the Board could

make. The purpose of the Application to Amend is to determine how the supervisory employee provisions apply to the employees identified by the University.

[36] RWDSU argues that the decision in this matter will have an effect on future matters involving it. That could be said about any decision of this Board. That is not sufficient grounds for granting intervenor status.

[37] RWDSU's proposed intervention would unduly delay the hearing of this matter both because it proposes to expand the issues to be considered and call evidence and because it states that its counsel is unavailable for the dates that have been set for the hearing of this matter.

[38] RWDSU has not explained its request to call evidence; it has no involvement in or knowledge of the workplace at issue in the Application to Amend. Therefore, it is unclear how it would have evidence relevant to that Application.

[39] RWDSU argues that since it is the respondent in a similar application before the Board, in which it raised the constitutionality of the supervisory employee provisions, it should be granted leave to intervene in this matter and raise those issues here. Clearly that would widen the *lis* between the parties to the Application to Amend.

(d) Safeway

[40] Safeway argues that it has a sufficient interest in the outcome of the Application to Amend because the decision in that matter may materially impact its bargaining units. It also states that the process will be advanced by its participation as it is the only private sector employer seeking intervenor status. In the Board's view, how the supervisory employee provisions apply to a private sector employer is a different issue than the one before the Board in the Application to Amend. Spending time on that issue would widen the *lis* and unduly delay the hearing of that matter.

[41] As with other proposed intervenors, Safeway proposes to provide argument to the Board on the issues of the jurisdiction of the Board with respect to including or retaining supervisory employees within the same bargaining unit as non-supervisory employees and the statutory interpretation of the supervisory employee provisions. It provides no explanation of why it thinks the parties to the Application and CUPE cannot provide the Board with sufficient argument on those issues. It has not satisfied the Board that its intervention is not already represented and protected by one of the parties.

Summary:

[42] In summary, the Board returns to the criteria set out in *Ministry of Environment*.

[43] *A sufficient interest in the outcome of the matter must be shown such that their involvement is warranted. An outcome that adversely affects them may well be considered sufficient to meet this criterion:* The decision in the Application to Amend will have no effect on any of the proposed intervenors. While the proposed intervenors are interested in the outcome of the Application to Amend, that is not the same as having a sufficient interest in the outcome. None of the proposed intervenors has satisfied the Board that it has a sufficient interest in the outcome to be granted intervenor status. The fact that they might face a similar argument in a different case does not satisfy this criterion. To hold otherwise would significantly water down the Board's standards for reviewing intervention applications, and open itself up to a flood of intervention applications. Such an approach would not be in the interests of the Board or the labour relations community.

[44] *There must exist the reasonable prospect that the process will be advanced or improved by their addition as an intervenor. This includes demonstrating that, as an intervenor, they will bring a new perspective or special expertise to the proceedings that would not be available without their participation. Merely echoing the position of one or more of the parties indicates they will not provide the requisite value:* None of the proposed intervenors has satisfied the Board that it has a special expertise that it could bring to this matter. While some of them would bring a different perspective, it would be a different perspective to the application of the law generally, not the application of the law to this Application. None of the proposed intervenors has satisfied the Board that the hearing of this matter will be advanced or improved by its addition as an intervenor. The parties and CUPE are represented by experienced, specialized lawyers who are more than capable of putting the necessary evidence and arguments before the Board that it will need to make a decision on the Application to Amend.

[45] *As an intervenor they cannot seek to increase the number of issues the parties themselves have included in the proceeding:* All of the proposed intervenors seek to increase the number of issues before the Board in the Application to Amend.

[46] *Adding them as an intervenor must meet the goals and objectives identified by Rule 1-3 such that the issues raised by the litigation will be heard with reasonable dispatch and the matter*

will not be overwhelmed with procedure by virtue of their inclusion as an intervenor: The goals and objectives identified in Rule 1-3 are summarized in subsection (1): "The purpose of these rules is to provide a means by which claims can be justly resolved in or by a court process in a timely and cost effective way." Adding four intervenors who have no interest in the issue before the Board in this Application – whether a bargaining unit at the University should be amended – will clearly derail the hearing of that issue. The Application will not be considered in a timely and cost effective way for the parties if the proposed intervenors are granted leave to intervene.

[47] *Adding them as an intervenor must not unduly prejudice one of the parties:* While one party consents to the intervenors participating as public law intervenors, and the other takes no position, the delay and extension of the hearing of the Application that would result from the addition of intervenors would prejudice the parties.

[48] *The intervention should not transform the court into a political arena:* In *R v Latimer*, the Court of Appeal stated, when considering this criterion: "This case has given rise to some public debate in respect of matters which are more moral or political than legal, and more properly dealt with by Parliament than by the courts. I am satisfied that the applicants intend to confine themselves to matters of law."[14] None of the applicants indicated an intention to make submissions that strayed beyond matters of law.

[49] The Board has not called the Application to Amend a test case because it is not a test case. Some of the proposed intervenors appear to base their arguments on the assumption that because the Board has issued one decision interpreting the supervisory employee provisions that it can never consider that issue again. Not only does the Board consider and reconsider past decisions in every matter it hears, the law is clear that the Board is not bound by its past decisions. While consistency in decision-making is optimal, different factors in different workplaces may lead to different results.

[50] The Board granted intervenor status to two unions for the hearing of *Saskatoon Public Library Board* despite its misgivings as to whether they met the standard[15], because it considered that matter a test case. That does not mean that every time the supervisory employee provisions are considered by the Board, intervenors must be involved.

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[14] 1995 CanLII 3921 (SK CA) at page 3.

[15] *Saskatchewan Government Employees Union*, 2016 CanLII 74494 (SK LRB), paras 20 and 23.

[51] The Board recently noted the following in considering intervention applications:

> *[25] The Board endorses the following comments made in Construction Workers Union, CLAC Local 151 v Ledcor Industrial Limited, 2018 CanLII 53123 (SK LRB) ("Ledcor"):*
>
> > *[20] By definition, an intervenor is a stranger to on-going litigation before an administrative tribunal or a court. As such, allowing such a party to participate in the litigation, especially private litigation, is an unusual, if not an extraordinary, occurrence. It is precisely for this reason that applications to intervene must be carefully scrutinized, and when deciding them this Board should exercise its discretion to grant intervenor standing sparingly, mindful of the particular factual matrix of the case under consideration.*
>
> *. . .*
>
> *[43] Public law standing "is premised on a finding that there is a 'public' law aspect to the dispute, giving it significance beyond its immediate parties[.]"5 The Board agrees with the applicants that there is a public law aspect to the present dispute. The applicants have raised concerns with the continuing stability of the registration system and the operation of the Plan for resolving jurisdictional disputes. It is clear that these are public law issues with significance beyond the immediate parties.*
>
> *[44] Furthermore, this the first case in which a craft union, subject to a Ministerial Order, has applied for an all-employee bargaining unit in the construction industry in Saskatchewan. This Board has exercised a certain flexibility in granting intervenor status in matters that have the potential to break new ground.*[16]

[52] The granting of intervenor status is discretionary and is exercised sparingly. It is an unusual, if not extraordinary, occurrence. The Board is not convinced that any of the proposed intervenors are required for the purposes of deciding the Application to Amend. Accordingly, all of the applications for intervenor status are dismissed.

[53] This is a unanimous decision of the Board.

[54] The Board thanks the proposed intervenors and the University for their helpful Briefs of Law, which have all been considered in making this Decision.

DATED at Regina, Saskatchewan, this **6th** day of **August, 2019.**

LABOUR RELATIONS BOARD

Susan C. Amrud, Q.C.
Chairperson

[16] *IBEW, Local 2038 v IABSRI, Local 771*, 2019 CarswellSask 124 (SK LRB)