Saskatchewan
Labour Relations Board

CONSTRUCTION & GENERAL WORKERS LOCAL UNION, NO. 180, Applicant v KDM CONSTRUCTORS Inc., Respondent

LRB File No. 056-20; March 30, 2021
Vice-Chairperson, Barbara Mysko; Board Members: Aina Kagis and Laura Sommervill

Counsel for the Applicant, Construction & General Workers Local Union, No. 180: Keir Vallance

Counsel for the Respondent, KDM Constructors Inc.: Steve Seiferling

Certification Application – Division 13 – Construction Industry – Section 6-65 – Potash mine.

Work of Labourers on-site – Interpretation and Application of Construction Industry definition – Relevance of context – Lack of clear, convincing, and cogent evidence necessary to satisfy onus – Application dismissed.

REASONS FOR DECISION

Background:

[1] **Barbara Mysko, Vice-Chairperson:** These are the Board's Reasons for Decision in relation to a certification application filed on March 19, 2020 by Construction and General Workers Union, Local 180 [Union] for a bargaining unit of all labourers employed by KDM Constructors [KDM] employed within the boundaries of the Province of Saskatchewan. At the time of the application, the labourers were performing work on the site of the BHP Jansen Potash Project.

[2] KDM was incorporated in Saskatchewan in 2017. It is described on its website as a construction and maintenance company created in partnership with, and majority owned by, three First Nations: Kawacatoose First Nation, Day Star First Nation, and Muskowekwan First Nation. KDM is one of four companies making up the SECON group of companies. The remaining three companies are Tundra, CORE Industrial Services LP [CORE], and South East Construction [SEC]. A central goal for KDM is to improve employment prospects for people on the three First Nations.

[3] On April 8, 2020, a Direction for Vote was issued in relation to the certification application and an agent of the Board was appointed to conduct a representation vote to determine whether the employees wished to be represented by the Union for the purpose of collective bargaining.

The voting period was April 9 to April 30, 2020. There are 24 eligible voters listed on the Notice of Vote. At the hearing, the Union clarified that 12 of those employees are labourers and/or janitorial staff, and that those are the employees that the Union is seeking to represent.

[4] On February 18, 2020, the International Union of Operating Engineers, Local 870 [IUOE 870] filed a certification application seeking a bargaining unit including all Operating Engineers, Operating Engineer Apprentices, Mechanics and Mechanic Apprentices employed by KDM.[1] That matter was adjourned pending the outcome of the present hearing, with the consent of those parties.

Evidence:

[5] The Union called two witnesses: Colton Moisan [Moisan] and Frank Salagubas [Salagubas].

[6] Moisan's testimony was very brief. He is employed as a labourer with KDM. He was originally hired by SEC in 2018. He was recommended for the position. His duties with SEC involved work on the BHP site and included cutting grass, performing building inspections (inside and outside), helping other trades (for example, plumbers and pipefitters), shoveling snow, and spotting equipment. The other labourers did much the same work.

[7] In January 1, 2020, Moisan was transferred to KDM because BHP wanted a more diverse group of employees. The unionized trade workers were to keep working for SEC. The non-unionized workers were to transfer to KDM. With KDM he has worked only at the BHP site. He and the other labourers perform the same type of work as they did for SEC. Moisan testified that he has not observed any non-labourers spotting equipment or cutting grass. As for shoveling snow, he cannot say for sure.

[8] The next witness was Salagubas. Salagubas is a journeyman labourer and has been employed as a Union organizer since May 2018. In February 2020, he was involved in organizing this site. He explained which employees the Union is seeking to represent. The Union did not apply for the drivers on-site; Salagubas believes that they are operating engineers.

[9] Salagubas has not been at the BHP site but has been at the Atco trailer camp.

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[1] LRB File 028-20.

[10] In his role as an organizer, Salagubas works with the Saskatchewan Safety Council to provide safety training on reserve. The Union also has an apprenticeship program. He acknowledged that it is important to get Indigenous people into the workforce, but he believes that workers should be exposed to all parts of the trade.

[11] Salagubas explained the call-out process. When an employer makes a manpower request, the Union consults the out-of-work board. The board operates through a rotation system, prioritizing those who are qualified and are at the top of the board. Dispatch performs a call-out and the members respond to indicate whether they are capable of fulfilling the request. The Union attempts to satisfy employers' specific requests, including requests for Indigenous workers. Indigenous workers are given preference when requested. Although not a common type of request, Salagubas once received a call for his own reserve; of course, he took the job.

[12] If the Union cannot find an available and appropriate Union member, then the next step is to review the resumes of non-members. If a non-member is sent out to work, that person is put on probation for a period of 90 days. After 90 days, that person may pay a probationary fee and become a member and be added to the board. Benefits will then accrue. After six months, the member may transfer to any local in Canada.

[13] Generally, a person has to be working to join the hall. There are exceptions to this. Lately, for example, the Union has been training non-Union Indigenous people on the pipelines with the choice to join the hall or not. Salagubas is personally invested in the issue; he would like to see a fair ratio of Indigenous people working in the community.

[14] In case the certification application is granted, the International has agreed to significantly reduce the initiation fee for people already on the job. The probationary period would also be waived, and those employees would immediately become members. Following a dispatch, there is no maximum length of employment.

[15] Labourers perform a wide range of work including janitorial activities, shoveling, spotting equipment, and site services. At the BHP site, the labourers ensure that everything is clean and ready for the other trades to do their work. This is traditional labourer work (aside from mowing grass). Generally, labourers work both in maintenance and in construction.

[16] When Salagubas is on a job he cleans up after the trades. A clean work site is a safer work site. The fact is, the trades do only a certain amount of cleaning. They should keep their areas clean (although they do not always) but they are not sweeping floors down the hallway. If

a pipefitter throws a welding rod on the floor (something that should not be happening) Salagubas will pick it up.

[17] KDM called two witnesses: Chief Reg Bellerose [Chief Bellerose] and Nick Blackwell [Blackwell].

[18] Both witnesses spoke generally about the role of KDM in creating employment opportunities for First Nations people. KDM's goal is to hire, firstly, from one of the KDM First Nations, secondly, from other First Nations, and thirdly, female employees. Thereafter, KDM looks for local employees within a 100 km radius.

[19] KDM has at its disposal an export data hub, which is a web-based skills inventory for Indigenous people with the goal of improving job opportunities. People from within the three communities are able to review posted jobs found on the export data hub. Labour force development officers are working within each of the communities and are informed of available positions and may be able to forward appropriate resumes or contact potential applicants directly.

[20] KDM has entered into an opportunities agreement with BHP, allowing for community and economic development and education benefits, and has developed a document entitled Social Value Plan and Goals for 2020/21. The intention of the Plan is to support and enhance the three First Nations communities and additional primary Indigenous rights holders regional to the BHP project; to ensure clear and transparent lines of communication between BHP, KDM, and the communities; to ensure that the export data tool is embedded in stakeholder communication processes; and to implement and enhance KDM's local engagement strategies.

[21] Schedule 3 of the work package requires KDM to actively recruit any First Nations and Metis people in the trades; to work closely with partners in the trades to access and grow the current apprentices and workers from the First Nations and Metis community; and to make best efforts to ensure that no less than 30% of its personnel involved in the provision of the contracted services are First Nations and Metis, as measured by the percentage of hours worked.

[22] Chief Bellerose was the first KDM witness. He is a Vice President with KDM and is on the board. His role is strategic; he is not involved in daily operations.

[23] KDM is described in its corporate registry profile report as:

Electrical contractors and other wiring installation contractors, Construction, transportation, mining, and forestry machinery and equipment rental and leasing, Non-residential building construction, Other heavy and civil engineering construction

[24] Chief Bellerose testified that in preparing the profile report it was necessary to describe KDM in general terms to allow the company to evolve. Frankly, if there is a chance to make money KDM will do it.

[25] Currently KDM has people but no equipment. It sends people out to job sites.

[26] For those who live on reserve it is especially challenging to find work. It is difficult to transition from training to employment – from the classroom to the job site.

[27] According to Chief Bellerose, unionization would be a barrier to KDM's success. The main problems are pricing and the union hall system. The latter is a likely impediment to KDM's goal to enhance opportunities for First Nations communities. Besides, getting here has been difficult – the journey has been fraught with challenges related to the First Nations' struggle for local control as well as the challenges of maintaining communication and coordination among the First Nations. KDM was not anticipating having to work within the provincial labour relations system.

[28] Chief Bellerose spoke generally about a few past projects. In 2017, KDM worked on the Day Star Band Office demolition with CORE as a partner. KDM again partnered with CORE to perform pond remediation at the BHP site and to complete a Tent Relocation and Foundation Demolition (consisting of the relocation of a Norseman tent at BHP's site, removal of buried cables, and demolition of the concrete footings and pad). None of these projects were ongoing in March 2020.

[29] Currently, KDM is focused on the BHP site but remains open to other projects. BHP is committed to transitioning its relationship with KDM into the operations side of its business.

[30] The last witness was Blackwell. He is the Project Manager for KDM at the BHP site, reporting through SECON. He is involved in the daily operations. He is trained as a mining engineer.

[31] SEC managed the project before KDM did. SEC is unionized. KDM is non-union but has unionized subcontractors.

[32] The mine remains under construction and is not yet operational. Work is being performed on the shafts. The final liner is being installed, and this is expected to take another 10 to 14 months. The processing plant will also need to be constructed. By the end of 2021, Blackwell expects that there will be more certainty about whether the project will continue. The work package is held directly with BHP until the end of 2021.

[33] The camp is approximately one million square feet large. On-site, there are currently no permanent buildings - only modular ones. There are 2600 rooms.

[34] Blackwell spoke to KDM's work at the time of the application until present – captured within the work package. The work consists of "site services". The site services include road maintenance, grass cutting, snow clearing, de-icing, application of pesticides and herbicides, and general maintenance, including of the buildings, facilities, and assets of BHP.

[35] Road maintenance consists of both asphalt and gravel roads. Asphalt roads receive crack sealing and road painting. Gravel roads require grading, sloping, maintenance, and calcium chloride applications to reduce dust on major, high traffic roads. On less travelled roads, dust control is performed through water application. Roads and walkways are cleared of snow and ice, including all the bus routes, and some are sanded. Roads are used for getting around the site and for travelling from the camp to the working site. Road maintenance is primarily done with equipment like a grader or skid steer, so it would fall to the operating engineers.

[36] There is an expectation that much of the land will be kept neat and tidy. There is grass cutting, and pesticide and herbicide application. The snow melt is collected in ponds and so the workers pump the ponds to appropriate levels, and discharge the water into various discharge channels. KDM employees do ditch maintenance for erosion prevention, including seeding and top soiling. KDM has a subcontractor who performs pest control.

[37] KDM maintains the disposal well by performing tests and inspections as required; maintains the ponds by maintaining slopes, pumping out ponds, and supplying the pumps; and maintains the Shaft Waste and Effluent Facility (SWEF), which comprises the pond and the pile. The pile consists of the waste from the shafts during excavation. The liquid waste from the sewage treatment plant is pumped into the SWEF pond and is disposed of through the disposal well.

[38] KDM employees perform waste management (including non-hazardous and hazardous) and disposal of steel; maintenance of the fencing around the perimeter of the site and within those boundaries; and erection of digital signage which is used for notifications, for example, related to

weather events. KDM provides janitorial services on the operational site (not within the camp) and all of the satellite buildings, such as guard shacks and remote lunch rooms. KDM is responsible for the operation and maintenance of the on-site sewage treatment plant, water treatment plant (to ensure that there is potable water for the camp and all facilities on-site), and the fire water pump house, and for feeding the water system within camp.

[39] BHP has light vehicles on-site. KDM employees regularly fuel these vehicles, ensure that they are cleaned, and start them to maintain the battery charge in cold weather. Various pieces of stationary equipment also require diesel and KDM employees take care of this.

[40] KDM provides the busing through a subcontractor to transport employees from camp and the various parking areas around camp to site for them to perform their daily duties. KDM clears out the hydro vac wash pits; sets up and maintains the laydown areas for the various contractors on-site according to their requirements; ensures that there are stockpile management plans and necessary services, including the SWEF; maintains sufficient quantity for site aggregates such as sand, gravel, top soil and other materials; provides scaffolding services, when needed for example, to change light fittings or lights above the tanks, through the use of a subcontractor; and maintains warehouse facilities as well as the inventory in the various BHP facilities.

[41] A number of services are described in the work package as common site services; KDM is to provide these common services to BHP and other contractors within the site boundary. Services that may be required include the work on the hydro vac wash pits, the laydown areas, stock piles, and site aggregates, as well as site erosion control and scaffolding services.

[42] Blackwell spoke specifically to the work of the labourers, which includes:

a. Inspecting fire extinguishers monthly;
b. Regularly inspecting the permanent hoist houses;
c. Snow clearing on a daily basis in winter;
d. Sanding for the purpose of de-icing where necessary;
e. Grass cutting and weed control in the summer (they operate the mower and the herbicide tank);
f. Maintaining, fueling up, starting, and cleaning the trucks;
g. Performing spotting and confined space watch;
h. Demarcating drop or exclusive control zones;
i. Performing rigging and rotation of the hoist ropes;
j. Following hot work and performing fire watch;

k. Driving to collect or buy supplies;
l. Escorting delivery vehicles;
m. Assisting the trades;
n. Cleaning and painting (a high standard is required); and
o. Cleaning up in the maintenance shop.

[43] Also, labourers may be called upon to do inventory and to assist the janitorial staff if someone is ill.

[44] The labourers may perform many different functions within one day. They may start with a hoist house inspection in the morning, then some snow clearing or walkway maintenance, and then move on to spotting equipment and setting up an exclusive control area. Safety is everyone's problem. Everyone on-site is expected to own the safety hazards and take responsibility for them.

[45] Once the mine becomes operational, the disposal well will still be required and will remain on-site. Additional wells may be drilled depending on how much water or brine needs to be disposed of – Blackwell is not privy to this information. He does not know if the SWEF will remain in place.

[46] The employees' titles generally, but not exclusively, reflect their primary roles. Because of the variety of work, people are required to perform many functions. In many cases, employees will also do other work, especially when the circumstances require "all hands on deck".

[47] In his examination-in-chief, Blackwell suggested that anyone can do any of the work on any day, subject to qualifications. For instance, the water septic employees, after finishing their daily water septic duties, might fuel up or start a vehicle, drive it to the local car wash, wash it, and then drive it back to the site. If there is a heavy snow fall, it is all hands on deck. For instance, when the water septic employees collect their vehicles, they are expected to remove the snow from the site. When they remove the sewage or pump the water, they have to clear the snow build-up or spread salt or sand for de-icing. They may perform walkway maintenance, grass cutting, or painting. It is understood that the water septic employees will do other work.

[48] Managers also engage in cleaning and snow removal. For example, they might have to clean a conference room if the janitorial staff has not done it yet. They clean floors muddied by boots. In the sudden October 2020 blizzard, Blackwell cleared the sidewalk (with a shovel that is readily available) while a BHP superintendent cleared the deck. These were 20-30 minute

undertakings. It is difficult to say how often this happens. Blackwell acknowledged, however, that KDM tries to ensure that people have the appropriate clothing and tools. Management involvement in non-managerial activities amounts to the occasional cleaning and snow clearing (although the materials coordinator cleans the front after every snowfall).

[49] Lastly, safety coordinators might perform spotting when two spotters are required.

Arguments:

Union:

[50] The Union is specifically seeking a Division 13 certification, and expressly not seeking a non-Division 13 certification. It is seeking to represent the employees in both the labourer and janitorial classifications, as labourers. There is a community of interest within the proposed bargaining unit.

[51] In summary, there are four questions arising from this application.

[52] The first question is, “does the work fit within the maintenance exclusion?” The Union says that it does not. All of the current work is part of the construction of the mine, which is a multi-year project. It supports the workers’ camp, involves cleaning and maintaining temporary housing (which will likely be gone when construction is over), and includes clearing roads used for performing work on-site. On any construction site, especially one as large as this one, general clean-up work will be necessary. Much of KDM’s work will no longer continue once there is, as described by the Alberta Board in *J. Mason & Sons*, [1999] Alta LRBR 577 [*J. Mason*], an “existing facility”. Once there is an operational mine, it is entirely possible that the same type of work might be maintenance.

[53] The second question is, “what are the rules around hybrid units, that is, where an employer is performing both construction and maintenance work?” Even if some aspects of the work are maintenance work, it is still appropriate to certify the bargaining unit under Division 13. In *Atlas Industries*, [1998] SLRBD No 5 [*Atlas*], the Board made clear that it is not interested in applying a sliding scale approach. As in *Atlas*, all of the work, at a minimum, has a nexus to the construction work that is being performed. Finally, the Board should apply the maintenance exclusion narrowly, consistent with well-established principles of interpretation.

[54] The third question is, “is the proposed bargaining unit under-inclusive?” Here, the main issue is the level of intermingling among the employees. However, the intermingling is more

apparent than real. The involvement of managers and administrative personnel in labourer work consists of short, incidental tasks that would otherwise be performed by the labourer group. It is not regular or significant.

[55] The fourth question is, “is the proposed bargaining unit appropriate?” Granted, the employees are permanent. But, permanent employees are not necessarily excluded from Division 13. Nor is the proposed unit lacking in bargaining strength or effective representation. Every certification order has the effect of fettering, to some extent, an employer’s ability to organize its workforce. The fact that KDM is not a party to the provincial agreement is not determinative; this is true of every employer who is not currently certified under Division 13.

[56] The corporate profile and the past projects, while perhaps not determinative, do show that KDM has done construction in the past and likely will in the future.

KDM:

[57] KDM takes the position that the work in question is maintenance, and is therefore excluded from Division 13. The relevant time frame is the time of the application, based on the agreement in evidence, and does not include previous work or possible, future work. The relevant work is that which is being performed by the labourers, only. Even if the Board were free to consider the overall work on the project, there is a lack of evidence about the nature of that work.

[58] In assessing whether the work falls under the construction industry definition and whether the bargaining unit is appropriate for collective bargaining, the Board should consider KDM’s purpose and its infrastructure. KDM was established to provide opportunities for First Nations people who are under-employed. It does so by assigning various duties to employees to ensure a broad exposure and experience. A certification covering a narrow set of duties would be an impediment to KDM accomplishing its purpose. A bargaining unit limited to any group of employees other than all non-management employees is not appropriate.

[59] The export data hub and the labour force development officers are not tools to defeat unionization – rather, they are tools to promote KDM’s objectives, and are evidence that the appropriate unit, if any, falls under the general provisions, allowing the parties to negotiate an appropriate collective agreement. The Union’s hiring and dispatch system would undermine KDM’s infrastructure. Whereas KDM aims to provide opportunities that might otherwise not be available, the Union requires that a person be employed before becoming a member.

[60] If the Board adopts a broader framework that assesses the work on the overall site this will lead, in some cases, to a construction industry certification covering every single employee, including delivery drivers. Such a result would be absurd. Similarly, the Board should refrain from asking whether the work is being performed in support of a construction project. This question is vague and this approach would result in the very same type of work being characterized as either construction or maintenance depending on the context.

[61] KDM relies on principles derived from the case law in Alberta and Nova Scotia. First, in Alberta, the work in question would fall under the "small m" maintenance work which is excluded from the definition of construction work: see, *Construction Workers Union, CLAC Local 63 v Nason Contracting Group Ltd.,* 2017 CanLII 64948 (AB LRB) [*Nason*]. Second, according to the Nova Scotia Board's guidelines, the starting point for the Board's analysis is the agreement: *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, UA Local 56 v Ainsworth Inc*., 2011 CanLII 152214 (NS LRB) [*Ainsworth*]. In this case, the agreement makes clear that the work in question is maintenance work. Even if it did not, the work satisfies all of the remaining measures of maintenance work set out by the Nova Scotia Board.

[62] The Board should not be concerned about an employer moving in and out of Division 13. A union can hold both a Division 13 certification and a general certification for one employer dependent on the work being performed at the time of the application.

[63] In the alternative, if the Board decides that the work is construction, it must still decide whether the bargaining unit is appropriate.

[64] In *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, Local 179 v Reliance Gregg's Home Services,* 2018 CanLII 127680 (SK LRB) [*Reliance Gregg's*][2], the Board outlined the factors to consider in assessing whether the unit is under-inclusive, in particular, in the construction industry. KDM answers these questions as follows: there is not a discrete skill or other boundary separating the employees from one another; there is clear intermingling among the employees in different classifications; the unit would be fragmented and this would lead to a lack of bargaining strength; and, there is a realistic

[2] Reconsidered and overturned on other grounds in *Reliance Gregg's Home Services, A Division of Reliance Comfort Limited Partnership v United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada*, 2019 CanLII 120618 (SK LRB). The issue of the appropriate approach to hybrid units was not considered in the reconsideration decision.

ability to organize a more inclusive unit. Any one of these factors is sufficient to demonstrate that the unit is not appropriate.

[65] Lastly, pursuant to section 6-11 of the Act, the Board shall make no presumption that a craft unit is the more suitable unit appropriate for collective bargaining.

Applicable Statutory Provisions:

[66] The following provisions of the Act are applicable:

> ***6-9****(1) A union may, at any time, apply to the board to be certified as bargaining agent for a unit of employees appropriate for collective bargaining if a certification order has not been issued for all or a portion of that unit.*
>
> *(2) When applying pursuant to subsection (1), a union shall:*
> *(a) establish that 45% or more of the employees in the unit have within the 90 days preceding the date of the application indicated that the applicant union is their choice of bargaining agent; and*
> *(b) file with the board evidence of each employee's support that meets the prescribed requirements.*
>
> *. . .*
>
> ***6-11****(7) In making the determination required by subsection (1) as it relates to the construction industry within the meaning of Division 13, the Board shall:*
> *(a) make no presumption that a craft unit is the more suitable unit appropriate for collective bargaining; and*
> *(b) determine the bargaining unit by reference to whatever factors the board considers relevant to the application, including:*
> *(i) the geographical jurisdiction of the union making the application; and*
> *(ii) whether the certification order should be confined to a particular project.*
>
> *. . .*
>
> ***6-64****(1)The purpose of this Division is to permit collective bargaining to occur in the construction industry on the basis of either or both of the following:*
> *(a) by trade on a province-wide basis;*
> *(b) on a project basis.*
>
> *(2) Nothing in this Division:*
> *(a) precludes a union from seeking an order to be certified as a bargaining agent for a unit of employees consisting of:*
> *(i) employees of an employer in more than one trade or craft; or*
> *(ii) all employees of the employer; or*
> *(b) limits the right to obtain an order to be certified as a bargaining agent to those unions that are referred to in a determination made by the minister pursuant to section 6-66.*
>
> *(3) This Division does not apply to an employer and a union with respect to a certification order mentioned in subsection (2).*
>
> *(4) If a unionized employer becomes subject to a certification order mentioned in subsection (2) with respect to its employees, the employer is no longer governed by this Division for the purposes of that bargaining unit.*
>
> *(5) If there is a conflict between a provision of this Division and any other Division or any other Part of this Act as the conflict relates to collective bargaining in the construction*

industry, the provision of this Division prevails.

6-65 *In this Division:*

(a) ***"construction industry"****:*

(i) means the industry in which the activities of constructing, erecting, reconstructing, altering, remodelling, repairing, revamping, renovating, decorating or demolishing of any building, structure, road, sewer, water main, pipeline, tunnel, shaft, bridge, wharf, pier, canal, dam or any other work or any part of a work are undertaken; and

(ii) includes all activities undertaken with respect to all machinery, plant, fixtures, facilities, equipment, systems and processes contained in or used in connection with a work mentioned in subclause (i), but does not include maintenance work;

(b) ***"employers' organization"*** *means an organization of unionized employers that has, as one of its objectives, the objective of engaging in collective bargaining on behalf of unionized employers;*

(c) ***"project agreement"*** *means an agreement mentioned in section 6-67;*

(d) ***"representative employers' organization****" means an employers' organization that:*

(i) is the exclusive agent to engage in collective bargaining on behalf of all unionized employers in a trade division; and

(ii) if applicable, may be a bargaining agent to engage in collective bargaining on behalf of unionized employers that are parties to a project agreement;

(e) ***"sector of the construction industry"*** *means any of the following sectors of the construction industry:*

(i) the commercial, institutional and industrial sector;
(ii) the residential sector;
(iii) the sewer, tunnel and water main sector;
(iv) the pipeline sector;
(v) the road building sector;
(vi) the powerline transmission sector;
(vii) any prescribed sector;

*(f)****"trade division"*** *means a trade division established by the minister in accordance with section 6-66;*

*(g)****"unionized employee"*** *means an employee who is employed by a unionized employer and with respect to whom a union has established the right to engage in collective bargaining with the unionized employer;*

*(h)****"unionized employer"****, subject to section 6-69, means an employer:*

(i) with respect to whom a certification order has been issued for a bargaining unit comprised of unionized employees working in a trade for which a trade division has been established pursuant to section 6-66; or

(ii) who has recognized a union as the agent to engage in collective bargaining on behalf of unionized employees working in a trade for which a trade division has been established pursuant to section 6-66.

Analysis:

[67] The Union bears the onus to demonstrate that the proposed bargaining unit is appropriate.

[68] On a certification application, the question is not whether the unit is the most appropriate bargaining unit, but whether it is appropriate for collective bargaining: *G.C.I.U., Local 75M v Sterling Newspapers*, [1998] SLRBD No 65 (SK LRB); *Northern Lakes School Division No. 64 and CUPE, Re*, 1996 CarswellSask 862 (SK LRB) [*Northern Lakes*]. The Board has discretion to determine the description of an appropriate bargaining unit: *CUPE v Turning Leaf Services Inc*., 2017 CanLII 85455 (SK LRB); *Reliance Gregg's v Plumbers and Pipefitters*, 2019 CanLII 120618 (SK LRB).

[69] The Union has expressed a strong preference not to represent employees in a bargaining unit certified under the general provisions; therefore, it is the Board's view that such a bargaining unit would not be appropriate.

[70] The main question is whether a bargaining unit certified pursuant to Division 13 is appropriate. In considering this issue, the Board will determine, first, whether the work falls under the definition of "construction industry" in Part VI. In order to make this determination, the Board will begin by reviewing the relevant statutory provisions, being sections 6-64 and 6-65 of the Act.

[71] Section 6-64 of the Act sets out the purpose of Division 13, which is to permit collective bargaining to occur in the construction industry on the basis of trade on a province-wide basis or on a project basis. Nothing in the Division precludes a union from seeking an order for a multi-trade unit or an all-employee unit, nor limits the right to obtain a certification order to those unions referred to in a determination of the minister pursuant to section 6-66. If a certification order is issued for a multi-trade unit or an all-employee unit, then Division 13 does not govern the employer for the purposes of that bargaining unit.

[72] Next, section 6-65 states that construction industry means the industry in which the activities <u>of</u> constructing, erecting, reconstructing, etc. of any work or any part of a work are undertaken. In the absence of a definition, the specified terms outlined in subclause (i) are to be given their ordinary meaning. According to subclause 6-65(a)(ii), construction industry includes <u>all</u> activities undertaken with respect to all machinery, plant, fixtures, facilities, equipment, systems and processes contained in or used in connection with a work, but does not include maintenance work. The word "all" in reference to "activities" and in reference to machinery, etc. calls for a broad interpretation of "activities" and of each of machinery, plant, fixtures, facilities, equipment, systems and processes.

[73] The activities in the construction industry include “all activities” as described in subclause (ii). The activities are included if they have the necessary relationship with machinery, etc., and if machinery, etc. have the necessary relationship with the work or part of a work as expressed by the phrases “contained in” and “used in connection with”. The phrase “contained in” suggests that the necessary relationship is based on whether machinery, etc. exists within the limits of the work or part of a work. The phrase “used in connection with” suggests that the necessary relationship is based on the use of the machinery, etc. in relation to the work or part of a work.

[74] If the necessary relationship exists, then an activity will be included in the definition of construction industry unless the work is excluded for being maintenance work.

[75] What is maintenance work? Due to the absence of a definition of maintenance work in Part VI, maintenance work must receive its ordinary meaning, without any additions to or subtractions from that meaning.

[76] “Maintenance work” comprises two terms – maintenance and work. The use of the word “work” in reference to work that is excluded from construction industry is distinct from the use of the word “activities” in reference to activities that are included in construction industry. Applying the presumption of consistent expression, the Board can assume that the use of a different word implies a different meaning. So what is the difference between an activity and work in this context?

[77] An activity is a thing that a worker does. In subclause (i), the activities are qualified by a subsequent list – these are the activities “of”. The list is exhaustive. In subclause (ii), the activities are a broader set of activities, not constrained by the list in subclause (i), but instead defined in terms of their relationships.

[78] Work is a task or tasks that are to be undertaken. As opposed to activity, work implies a sense of responsibility. Work may arise from the expectations of the contract or the project. This is not to suggest that the contractual language should necessarily determine whether the work is construction industry or maintenance work. That is a different question. Rather, it is to suggest that there is a difference between work and activity, and the scope of work may result in various activities having to be done.

[79] There are two separate uses of the word “work” in the definition of construction industry. The other use is in relation to any building, structure, etc. or any other work or any part of a work. The presumption of consistent expression means that identical words are presumed to have the

same meaning. However, this presumption may be weakened in cases where "they are placed in different contexts and used for different purposes".[3]

[80] It is clear from the context that work in subclause (i) has a different meaning from work in subclause (ii). Work in subclause (i) does not refer to tasks to be undertaken. This interpretation would render subclause (i) meaningless. Instead, work in subclause (i) refers to the architectural or engineering constructions that are set out therein. However, it also implies that the other type of "work" is inherent to the existence of the constructed thing; the thing is not naturally occurring – it is constructed.

[81] In summary, an activity is a thing that a worker does, whereas work in the sense of maintenance work is a task or tasks that are to be undertaken.

[82] Having considered the meaning of work, the Board will next consider the meaning of maintenance and maintenance work.

[83] Prior to the statutory exclusion of maintenance work, the Court of Queen's Bench for Saskatchewan considered the meaning of the word "maintenance" in *Saskatchewan Construction Labour Relations Council, Inc. v Wright and Sanders*, 1982 CanLII 2686 (SK QB), [1982] 6 WWR 704 [*Wright and Sanders*]:

> *[23] Maintenance is defined in Webster's Third New International Dictionary as, "the labour of keeping something in a state of repair or efficiency". To maintain is to keep something in repair as in the upkeep of machinery and equipment to enable it to operate efficiently and in the manner in which it was designed to perform…*

[84] Although the focus in *Wright and Sanders* was to determine whether maintenance should be treated differently from construction, the Court outlined a definition that has proven relevant and useful in cases involving an existing maintenance exclusion. In *J. Mason*, the Alberta Board noted as follows:

> *40 In exploring the difference between new construction and maintenance, the CASCA Electric panel considered the reasoning of the Saskatchewan Court of Queen's Bench in an earlier 1982 decision. At that time, the Saskatchewan labour statute made no mention of "maintenance," and the word "construction" although used in the statute, was not a defined term. In determining what maintenance work is and whether it should be treated as something different from construction, the Saskatchewan Court stated in Saskatchewan Construction Labour Relations Council, Inc. v. Wright and Sanders, [1982] 6 W.W.R. 704 at 714-715:*

[3] *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis Canada, 2014) at 225 and 8.46.

> *Maintenance is defined in Webster's Third New International Dictionary as "the labour of keeping something in a state of repair of efficiency." To maintain is to keep something in repair, as in the upkeep of machinery and equipment to enable it to operate efficiently and in the manner in which it was designed to perform ...*
> *. . .*
> *An examination of all of the material including the definition contained in the project agreements, an examination of related statutes [which included the Court's review of Alberta's statute at the time] and interpretations of those statutes and interpretations placed upon the information by the industry, lead me to conclude that there is a dichotomy between maintenance and construction. Maintenance is work that sustains or keeps up an operating facility to enable it to continue to operate efficiently and as designed. It is work on an existing facility and not the creation of a new or expanded work or facility which will create increased production or design capabilities.*
>
> *41 The CASCA Electric panel was not only influenced by the words of the Saskatchewan Court but also by the meaning given to maintenance by various Ontario labour relations decisions discussed in CASCA Electric. That is, maintenance is work sustaining a facility's ability to operate efficiently and as designed. It is work done on existing equipment to keep it functioning properly. As also as CASCA Electric notes* [sic]*, Black's Law Dictionary describes the word "maintain" in this way:*
>
> > *the term is variously described as acts of repairs and other acts to prevent decline, lapse or cessation from existing state or condition; keep and repair; keep up; preserve.*
>
> *42 Admittedly, the cases discussed in CASCA Electric address the difference between new construction and maintenance. The Peace River Bridge work in question is certainly not new construction. Nonetheless, the dictionary definitions of "maintenance" remain of value….*

[85] It is necessary to read “maintenance work” harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature. Section 6-65 falls under Part VI of the Act. Part VI facilitates the right of employees, pursuant to subsection 6-4(1), to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing.

[86] Through subsection 6-64(2), the Legislature makes clear that a union is not precluded from seeking a certification order for multi-trade or all-employee bargaining units. This provision has encouraged greater flexibility in the composition of bargaining units for those employees who are working in the construction industry, beyond strictly craft unit bargaining. Prior to this change, “deviation from craft representation and the standard bargaining unit [was] relatively rare”: *International Brotherhood of Electrical Workers, Local 2038 v Tesco Electric Ltd.*, 2002 CanLII 52910 (SK LRB) [*Tesco*] at para 75. However, the Board had recognized that craft-based jurisdictional lines tended to be more relaxed in maintenance work and therefore had on some occasions allowed all-employee bargaining units when the employer was engaged in maintenance work: *Tesco* at para 76.

[87] The Board has a role to facilitate the right of employees to organize and to collectively bargain through a union of their own choosing. The Board also has a role to facilitate a healthy labour relations environment, which includes the promotion of harmony and stability in collective bargaining relationships. At times, the Board must work to strike a balance between facilitating employees' rights and promoting harmony and stability in collective bargaining relationships. As will become evident, this case raises the issue of the interdependence among the various trades that work on a construction project. This interdependence supports an interpretation of maintenance work that includes consideration of the overall project and that allows for certifications that take this into account.

[88] As mentioned, maintenance work is not defined. It is therefore not subject to the same stipulations that apply to construction industry under section 6-65. Similarly, in Alberta neither construction nor maintenance is defined in the legislation. There, the Board's Policy and Procedure Manual describes the relevance of context in differentiating between construction, non-construction, and maintenance:

> *Context: It is important to examine not just the work in question, but the context in which it is being performed. What is the overall purpose of the work and what is the scope of the overall project? What is the nature of the company doing the work?*
>
> Alberta Labour Relations Board, Construction vs. Non-Construction, Dec 1, 2002 at 2.

[89] In some cases – those involving work which, if taken alone, would not normally be considered construction – the Alberta Board has assessed whether the work was performed as an integral part of an overall construction project, and if so, then determined that the work was construction.

[90] In *J. Mason*, the Alberta Board considered whether the replacement of the protective coating on a bridge constituted construction work in the context of the applicable definition of "construction". The contract had been awarded as an ongoing effort to inspect and maintain bridges in the province. The Alberta Board determined that the sandblasting and recoating of the bridge were not "decoration" or "restoration" (which were both included in the definition of construction) but rather, maintenance work. The bridge had not ceased functioning; the work was performed to sustain the bridge's continued efficient functioning as described or to maximize the opportunity for same. It would prevent decline. The work was maintenance even though it did not fall into the Board's policy on maintenance contractors and standard maintenance bargaining unit descriptions.

[91] In assessing whether the work was construction work, the Board considered, at paragraphs 24 and 25, the reasoning in *IBEW Local 424 v Transwest Dynaquip Ltd.*, [1994] Alta LRBR 99 [*Transwest Dynaquip,* at 113 and 115]:

> *What is "construction work" is not just a function of the physical activity of the employee. Electricians run wire (to pick a very basic aspect of the job), but do so in many contexts. They may do so building products in a plant, installing plug-ins in a parking lot, building a pulp mill or refitting a barge. It is not the physical nature of the work that defines it as construction, but the context in which that work takes place. It is not just the skills involved, the training or the journeyman's qualifications that define the work as construction. These facts are important to the issue, but do not provide the full answer. Electricians can apply their skills equally to construction, to maintenance, or to manufacturing.*
>
> *…*
>
> *It is inappropriate to divide up work task by task and label each task as construction or non-construction. We must look at work in the full context within which it is performed. In a large construction project it is inevitable that, as part of the project, some work will be done that, if performed in isolation as a "stand alone" contract, would not be seen as construction. However, when performed as an integral part of an overall construction project, that work is nonetheless work done by "employers and employees engaged in the construction industry in respect of work in that industry."*
>
> (emphasis added in *J. Mason*)

[92] At paragraph 65 of the *Transwest Dynaquip* decision, the Board summarized the test in this way: "Thus, the decision about whether the particular work is or is not construction depends on the scope of that work in comparison to the overall project being undertaken as well as upon the nature of the work itself".

[93] In the course of its reasons in *J. Mason*, the Board made two noteworthy observations: first, that the work of the employees at the bridge was not part of a larger project, construction or otherwise (para 27); and, second, that while a "collective agreement may be of assistance, it is not determinative of whether work is construction or maintenance work for purposes of the Code" (para 29).

[94] The Union has raised a related, but slightly different issue in the context of so-called "hybrid" units – units consisting of employees who are working both within the construction industry and outside of the construction industry. In the Board's assessment of whether this unit should be certified under Division 13, the Union urges the Board to adopt the approach taken by the Board in *Atlas*, or at the least, distinguish from the circumstances that arose in *Reliance Gregg's*.

[95] In *Atlas*, the Board considered whether all or any aspects of fabricating work in the sheet metal trade were covered by the terms of what was then the governing construction industry legislation, the *CILRA*. The employees were engaged in both construction and non-construction activities but the fabrication work was the primary focus of their work. The employees fabricated systems used in industrial and commercial settings, sometimes installed the fabricated systems at the customers' sites, and also performed maintenance at those sites.

[96] The Board in *Atlas* observed that the statutory definition of "unionized employee" was unhelpful in determining whether the *CILRA* regime was intended to apply to employees not working directly on the construction site. The definition did not specifically require that the employer "be engaged solely or primarily in the construction industry" or "specifically address the situation where a unionized employer is engaged in both construction and non-construction work". All of these observations remain accurate when applied to the current legislation.

[97] The Board concluded that the stabilizing features of the legislative regime would be jeopardized if it adopted a sliding scale approach:

> *[27] The CILRA describes "construction industry" in terms of activities, not in terms of the primary or principal work performed by a business or enterprise. It is concerned with any employer who performs construction work and does not exclude employers from the operation of the CILRA based on the fact that a preponderance of their work falls outside the definition of the "construction industry". In our view, the overriding purpose of the CILRA which is to bring stability to the unionized construction sector would be jeopardized if employers who are engaged in construction work, such as installation and maintenance work, are excused from the provisions of the CILRA based on an assessment of the primary focus of their work.*

[98] The manufacturing of sheet metal systems "in and of itself" was not construction, but where there was a nexus between the fabrication work and the installation or maintenance of the systems, then the work would fall under the construction industry. The employer was engaged in the installation of sheet metal systems and in their maintenance, and therefore, there was a nexus between the fabrication and the installation or maintenance, and the employer was a unionized employer in the sheet metal trade division under the *CILRA*.

[99] The current definition of construction industry is identical to the definition considered in *Atlas*, except for the exclusion of maintenance work and the changes to the surrounding statutory provisions.

[100] Although *Atlas* was overturned on judicial review, a majority of the Court of Appeal allowed the appeal from the Court of Queen's Bench and restored the Board's decision: *Sheet Metal*

Workers' International Association, Local 296 v Atlas Industries Ltd., 1999 CanLII 12301 (SK CA) [*Atlas SK CA*]. The majority found that the Board's interpretation of the statute was one that the words could reasonably bear and, therefore, its decision was not patently unreasonable. On the other hand, Cameron J.A. expressed a dissenting opinion (para 9):

> *… the Board applied the statutory provisions to the effect that any connection, however slight or tenuous, between the activity of the employer and the construction industry compels adherence to the extraordinary collective bargaining regime established by The Construction Industry Labour Relations Act in preference to the ordinary regime provided for by The Trade Union Act. In my judgment, there must be some material connection, having regard for the peculiar characteristics of the construction industry, the unique nature of the labour relations challenges in this field of activity, and the purposes of The Construction Labour Relations Act. Otherwise, it makes no sense to bring this regime into play in preference to the other….*

[101] Then, in *Reliance Gregg's*, the Board considered the relevance of *Atlas* in the context of the current legislative regime. There, the Board found that *Atlas* should be "confined to its unique facts and time period during which it was decided" (para 37). The Board explained that "[s]ince the decision in *Atlas*, there have been significant changes to the legislation governing construction labour relations and the direction provided to this Board in respect to its choice of an appropriate unit of employees for collective bargaining". Furthermore, "[w]hen *Atlas* was decided, 'maintenance' was included within the definition of 'construction'. The majority of the work performed by employees of Atlas was "maintenance" work. Under the current statutory scheme, the bargaining unit found to be appropriate in *Atlas* could not be found so by this Board" (para 38).

[102] In *Reliance Gregg's*, the Board made the following observation about the union's argument that if any portion of work by an employer is construction work it can be certified under Division 13:

> *[47] Finally, if the interpretation proposed by the Union with respect to Atlas, that is, if any portion of work by an employer is "construction" work, it can be certified under Division 13 is correct, it begs the question as to whether the converse should also be true. It would follow logically from that conclusion that if any portion of the employer's work is not in "construction", then the Board can also define a unit outside the construction industry which is appropriate for collective bargaining.*

[103] In our view, Cameron J.A. was correct in stating that the statutory provisions are not to be construed such that "any connection, however slight or tenuous, between the activity of the employer and the construction industry compels adherence" to what is now the construction industry regime captured by Division 13 (at para 9). However, a careful reading of section 6-65, as outlined in the foregoing sections, prevents the Board from adopting such a blunt approach.

[104] The Board also agrees, as is implied by *Reliance Gregg's*, that the maintenance exclusion must be given some meaning and not rendered useless through an overly enthusiastic contextual analysis. But this does not mean that the context, including the context of the overall project, should be ignored. Besides, the Board in *Reliance Gregg's* seems to have recognized the relevance of context in assessing the appropriateness of a bargaining unit: see, paragraph 47.

[105] Furthermore, *Reliance Gregg's* provides limited assistance to the Board in assessing the question before it. The Board in *Reliance Gregg's* did not undertake an analysis of the activities to determine whether they were included in the construction industry, based on section 6-65, or assess the specific nature of any work to determine whether it fell within the maintenance work exclusion. Instead, it appears that the parties had accepted that both construction and maintenance work were being performed by employees of the employer.

[106] Therefore, having regard for the statutory provisions and the foregoing case law, the Board has concluded that the following principles should assist the Board in assessing whether an activity is included in the construction industry and whether work is excluded for being maintenance work:

a. The facts of a given case are important in determining the appropriate characterization of the activity or work in question. The Board must consider the activity or work in the context within which it is performed;
b. Whether an activity or work is included in the construction industry is not just a function of the physical activity of the employee. Seemingly similar activities or work, performed using similar skills, may be characterized differently depending on the context in which they are performed, having regard for the wording of the statutory provision; and
c. An activity or work that does not fit the image of construction industry work if performed as part of a stand-alone project may nonetheless be included within the construction industry due to the context within which it is performed, having regard for the wording of the statutory provision.

[107] Next, the Board will summarize the activities and the work under consideration in the current case.

[108] In summary, the work in question is described in the contract as "site services" which consists of cutting grass, shoveling snow, de-icing, performing building inspections, maintenance and cleaning of vehicles, performing spotting and space watch, demarcating drop or exclusive

control zones, performing rigging and rotation of hoist ropes, performing fire watch, collecting supplies, escorting delivery vehicles, painting, janitorial work, and assisting other trades.

[109] Most of the snow removal is performed by the labourers and operating engineers. The work package lists the following site areas based on a priority ranking as directed by BHP: all site roads, all site parking lots and access routes to all facilities and areas, all walkways, unless specifically noted otherwise, around all egresses of BHP's office complexes, laydown areas as directed by BHP, and other areas on-site as required.

[110] This work is being performed in the context of a larger site services package which involves such responsibilities as road maintenance, ground maintenance, waste management, pond maintenance, busing, stockpile management, maintenance of site aggregates, and various other services that maintain the site, including the camp. Although the work package repeatedly makes mention of "maintenance" work, the language of the agreement, while perhaps helpful, is not determinative of whether the work falls under the maintenance work exclusion.

[111] The work is being performed on a large industrial site. The mine remains under construction; it is not yet operational.

[112] The next step is for the Board to apply the statutory definition of construction industry to the activities and the work. However, in reviewing all of the evidence before it, the Board has identified a lack of clear, convincing, and cogent evidence with respect to the overall work on site, beyond that performed by KDM. Granted, the Board can accept that there is construction work taking place on the BHP site. However, the specifics of the construction work, and the relationship between that construction work and the activities of the labourers, are unclear.

[113] To illustrate this point, the Board will review the evidence with respect to the activities being performed by the labourers in relation to the evidence of the overall project.

[114] First, the "work", as that term is understood in subclause 6-65(a)(i), may include the shaft or part of the shaft, or another aspect of the mine. The activities performed by the labourers are to be assessed with respect to the machinery, etc. used in connection with the work. For the purpose of the current exercise, the Board will accept that the work is, simply, the mine.

[115] Next, snow removal and de-icing are activities undertaken with respect to a system (that is, a series of roads and walkways). It is clear that the roads and walkways are used to facilitate transport of workers from the work camp to the work site and within the site. However, there is

insufficient evidence to demonstrate that the system is contained in the work, being the mine. It is therefore necessary to consider whether the system is used in connection with the work.

[116] Here, there is a question about whether the connection intended by the phrase “used in connection with a work” means by implication “used in connection with the construction of a work” and that such an interpretation is not an impermissible reading in to the definition. For the current purposes, the Board will assume that the work is inclusive of the mine in its unfinished state, and that “used in connection with” may be interpreted broadly to include “used in connection with the construction of”.

[117] The Union relies in particular on the fact that the mine is not yet operating. Does that mean that the labourers’ work is necessarily being performed in support of the existing construction activities? The answer to this is not at all clear. When the trades travel in buses on the roads and then arrive at their destination, what specific work do they perform when they arrive? In what way are the roads being used in service of specific construction activities? To what extent do they support other activities, if any?

[118] Similar points may be made in relation to the following activities: maintenance and cleaning of vehicles, performing spotting and space watch, demarcating drop or exclusive control zones, performing rigging and rotation of hoist ropes, performing fire watch, collecting supplies, and escorting delivery vehicles.

[119] Labourers are maintaining and cleaning light vehicles. Even if those vehicles could be said to be “equipment”, what specifically are those vehicles being used for, such that they could be said to be used in connection with a work? When labourers perform spotting, space watch, fire watch, and demarcation of drop or exclusive control zones, to what end are these activities being performed? What is the connection to the work (the construction of the mine)? Or more specifically, what is the connection to the construction of the shaft or installation of the liner?

[120] To what end are the labourers engaging in the rigging and rotation of hoist ropes? Even if it could be said that hoist ropes have an obvious connection to construction, this is but one activity among many others.

[121] Perhaps the simplest illustration is in relation to the following. The labourers are assisting the trades. More often than not, the labourers assist the plumbers and pipefitters. But what specifically are the plumbers and pipefitters doing?

[122] The Board accepts that KDM is providing janitorial services on the operational site. But are all of the buildings being used specifically in service of the construction of the mine?

[123] Building inspections are similarly fraught. The inspections may be activities undertaken with respect to facilities, for example, hoist houses. But are the hoist houses used in connection with the construction of the mine?

[124] In our view, the general nature of the evidence about the overall project prevents the Board from being able to adequately perform a contextual assessment. Given the nature of the work being performed by the labourers, this is of particular concern. This is not a case in which the connection is obvious; therefore, the contextual assessment must be undertaken carefully.

[125] If the Board had found that the activities were undertaken with respect to machinery, etc. in connection with a work, and that the activities were in the nature of construction, the Board would then have had to consider whether the work was excluded for being maintenance work. This latter consideration requires an assessment of the ordinary meaning of maintenance work. Given the foregoing considerations, the extent to which the work is integrated into an overall construction project is a relevant factor for determining whether it is maintenance work. But again, without evidence of the necessary context, this assessment would not serve a useful purpose.

[126] The Union has argued that the labourers' work is being performed in support of the overall construction of the potash mine. The Board has found that the Union has not met its evidentiary onus. To be sure, the potash mine is a significant project for Saskatchewan and is well publicized, but the Board is limited to considering the evidence before it.

[127] Finally, it is possible that KDM's past projects are construction projects. However, these projects are not the focus of the application; it would not be appropriate for the Board to order certification of the bargaining unit on the basis of the past projects in the absence of a determination on KDM's current and likely most significant project to date.

[128] Given the conclusions that the Board has reached in the application of section 6-65, it is not necessary to consider the appropriateness of the bargaining unit any further.

[129] For the foregoing reasons, the application in LRB File No. 056-20 is dismissed.

[130] The Board is grateful to the parties, for both clarifying the issues that needed to be determined in this case, and providing helpful written and oral arguments.

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

DATED at Regina, Saskatchewan, this **30th** day of **March, 2021.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson