



HEALTH SCIENCES ASSOCIATION OF SASKATCHEWAN, Applicant v SASKATCHEWAN HEALTH AUTHORITY, Respondent, SEIU-WEST, Respondent, CANADIAN UNION OF PUBLIC EMPLOYEES, Intervenor and SASKATCHEWAN GOVERNMENT EMPLOYEES' UNION, Intervenor

LRB File No. 220-18; July 30, 2021

Vice-Chairperson, Barbara Mysko; Board Members: Mike Wainwright and Jim Holmes

Counsel for the Applicant, Health Sciences Association of Saskatchewan:	Gary L. Bainbridge, Q.C.
Counsel for the Respondent, Saskatchewan Health Authority:	Paul L. Clemens
Counsel for the Respondent, SEIU-West:	Michael MacDonald
Counsel for the Intervenor, Canadian Union of Public Employees:	Val Harvey / Jake Zuk
Counsel for the Intervenor, Saskatchewan Government Employees' Union:	Andrea C. Johnson

Delay filing Application – No Question of Failure to Meet Statutory Timelines – Failure to Plead Estoppel at Earliest Opportunity.

Application for Employee Determination – Section 6-104 of *The Saskatchewan Employment Act* – Social Services Worker – In-Scope of Bargaining Unit of SEIU-West – No Question about Status as Employee – Not a New Position – Improper Application for Review of Scope.

Appropriateness of Bargaining Unit – Social Services Worker is not a Social Worker – Belongs in Provider Union Bargaining Unit.

REASONS FOR DECISION

Introduction:

[1] Barbara Mysko, Vice-Chairperson: These are the Board's Reasons for Decision in relation to an application for an employee determination, pursuant to subclause 6-104(2)(i) of *The Saskatchewan Employment Act* [Act]. The overall context involves the complex multi-bargaining unit structure of health sector labour relations. The application was brought by the Health Sciences Association of Saskatchewan [HSAS] in relation to an established position referred to

as a social services worker. The position is within the SEIU-West bargaining unit. HSAS asks the Board to make a determination with respect to the appropriateness of this placement.

[2] At the outset of the hearing, the Board granted full standing to SEIU-West and direct interest intervenor standing to both CUPE and SGEU. These three unions will be referred to collectively as the provider unions.

[3] In 2015, there was a job review request for a position affecting five employees at the West Winds Primary Health Centre in the Healthy Mother Healthy Baby program in what was then known as the Saskatoon Health Region. The request was to change the community outreach and education worker to a social services worker position. The request was granted. Then, in January 2017, an HSAS member came across a job posting for a social services worker at West Winds. HSAS undertook a review of the position's duties and came to the conclusion that the duties were indistinguishable from those of the social worker position, which is an HSAS position, and that the position therefore falls within HSAS's bargaining unit.

[4] HSAS filed a grievance respecting the placement of the position. SEIU-West, CUPE, and SGEU objected to the jurisdiction of the arbitrator, asserting that the matter fell within the exclusive jurisdiction of this Board. The arbitrator, in an award dated September 21, 2018, declined jurisdiction to hear the grievance. The arbitrator observed that if she were to assume jurisdiction and find that the Employer had breached the collective agreement by posting a position as belonging to SEIU-West instead of posting it as belonging to HSAS, that this would likely result in a removal of members of the provider unions and the placement of those members in HSAS. The arbitrator decided that she did not have jurisdiction to impose on a union under whose collective agreement she was not appointed to interpret a decision that may significantly affect its membership.

[5] In 2020, the Board heard and decided a related matter in which HSAS had applied for an order that the position of child life therapist is properly in-scope of the HSAS bargaining unit: *Saskatchewan Health Authority v Health Sciences Association of Saskatchewan*, 2020 CanLII 37240 (SK LRB) [Child Life Therapist case]. The Child Life Therapist case outlines the history of the reorganization of health sector labour relations in the 1990s, including the resulting statutory regime (at paras 7 to 25). The statutory regime, and the related certification orders, are unique to the health sector.

[6] The Board will recount this history in brief. In the 1990s, the Government of Saskatchewan established a commission to examine the organization of labour relations between health sector employers and employees in Saskatchewan [Dorsey Commission]. The Dorsey Commission issued its recommendations and *The Health Labour Relations Reorganization (Commissioner) Regulations [HLRRC Regulations]* were enacted thereafter.

[7] The HLRRC Regulations set out the appropriate bargaining units for health support practitioners and health support providers, including by defining each of those terms. The definition of health support practitioner in the HLRRC Regulations consists of a list of occupations (Table C) and consists of those positions that require, as a minimum, registration pursuant to an Act giving the exclusive right to use a title or description of an occupation that is on that list (Table C). By contrast, the health services provider units are referred to in the Dorsey Report as all-employee units subject to listed exclusions from those units.

[8] On July 22, 1997, the Board granted an order certifying HSAS as the representative for health support practitioners employed by certain district health boards and certain health sector employers, in LRB No. 114-97. Following a number of amendments, the latest order certifying HSAS, dated January 30, 2013, reads:

(a) *That all employees employed by the employers listed in paragraph (c) and functioning as a:*

...Social Worker...

or who are in a position that requires, as a minimum, registration pursuant to an Act giving the exclusive right to use a title or description of an occupation listed above, but not including students of one of the occupations listed above nor interns or assistants to an employee described above, and further not including employees in positions listed in Schedule I attached hereto, constitute an appropriate unit of employees for the purpose of bargaining collectively;

...

[9] SEIU-West, CUPE, and SGEU are considered health services provider unions, and are certified in a manner that reflects that status. The certification order for SEIU-West in LRB File No. 204-02, as applied to the former Saskatoon Regional Health Authority, is dated October 28, 2002, and defines health services provider as follows:

d) "health services provider" means an employee, but does not include a health support practitioner or a nurse, as both terms are defined in s. 2(h), (i), (j) and (k) of The Health Labour Relations Reorganization (Commissioner) Regulations, a chiroprapist, a chiropractor, a dentist, a duly qualified medical practitioner or an optometrist, or those

management classifications excluded by Memorandum of Agreement between the parties or as directed by an Order of the Board.

[10] The certification orders for CUPE and SGEU contain similar wording.

[11] The definitions contained in the HLRRRC Regulations state:

2 In these regulations:

...

(g) "health services provider" means an employee of a health sector employer, but does not include a health support practitioner, a nurse, a chiropodist, a chiropractor, a dentist, a duly qualified medical practitioner or an optometrist;

(h) "health support practitioner" means an employee of a health sector employer who:

(i) is functioning in one of the occupations listed in Table C; or

(ii) is in a position that requires, as a minimum, registration pursuant to an Act giving the exclusive right to use a title or description of an occupation listed in Table C; but does not include a student of one of the occupations listed in Table C, or an intern or an assistant to an employee described in subclause (i) or (ii);

[12] By way of further background, all of the regional health authorities were merged into the Saskatchewan Health Authority in 2018.

Evidence:

[13] Kevin Glass [Glass] and Maureen Kraemer [Kraemer] testified on behalf of HSAS.

[14] Glass is the Labour Relations Officer [LRO] for HSAS. There are approximately 32 classifications which fall within the certification order, as well as other unique classifications subject to agreements outside of the CBA. There are at least 12 of those. Most of the classifications have legislated title protection and are subject to regulation – for example, occupational therapists, social workers, and dieticians. Social workers require licensing to practice, are subject to regulatory rules, are bound by a Code of Conduct and standards of practice, and are subject to professional discipline. All HSAS social workers are registered social workers.

[15] The CBA consists of an education-based compensation scheme subject to some exceptions. In addition to the education-based differentials, there are also differentials based on market supplements [MSs] and market adjustments [MAs].

[16] For the social workers, there is an opportunity to move into a more senior position, which allows for a bump in wages. There are other classifications that require a social work degree, for example, the assessor/coordinator, addictions counsellor, and the mental health therapist. There are also some supervisory positions in the province, but none that pertain to social workers at this time. Social workers can be “seniors” which is like a supervisory role.

[17] Unlike the provider bargaining units, job descriptions in HSAS are not provincially applicable. HSAS is no longer involved in the provider group joint job evaluation [JJE] process. HSAS does not receive notification of or review job descriptions for the provider bargaining units. It does receive new or revised job descriptions for positions within the CBA. The CBA requires the Employer to forward a copy of new or revised job descriptions to SAHO and HSAS at least thirty days prior to any required posting. Titles and rates of pay are subject to negotiation between SAHO and HSAS for any new occupational group, classification, or position and any reclassification.

[18] The social services worker position existed around the time of Dorsey. Glass was advised that it had been excluded from HSAS because it did not require a degree in social work. He believed that the requirement for a degree marked a change that brought the job into alignment with the HSAS social worker. As well, the duties of assessment, treatment, direct patient care, and counselling are common to both positions.

[19] HSAS does not make it a practice to review provider union job descriptions. If Glass has a concern he reaches out to the Employer for a job description. However, Glass was copied on a letter from HSAS to the Saskatoon Health Region, dated July 3, 2009, in which HSAS advised that it had recently been made aware that the Region had a classification named “Social Service Worker”, and that the job description sets out duties and responsibilities of a social worker within the HSAS bargaining unit. HSAS requested remittance of union dues on the basis that the position came within the scope of its bargaining unit, and served Notice of Intent to Bargain Rates of Pay for the classification. Failing remittance of dues, HSAS claimed that it would have no alternative but to seek an unfair labour practice determination from this Board. The letter was copied to multiple members of HSAS’s executive council. HSAS took no action with respect to this position until filing the grievance.

[20] Glass cannot promise whether HSAS would recognize seniority should the position end up in the HSAS bargaining unit.

[21] Glass has not worked as a social worker. He knows a little bit about all of the HSAS professions but is not confident with respect to a social worker's scope of practice.

[22] Kraemer works as a social worker at Mental Health and Addiction Services with the SHA in Weyburn. She has been in her current position since 2000. She has served on the Saskatchewan Association of Social Workers (SASW) Provincial Council in various roles since 1978, and is currently the Vice President of the Southeast branch. She has also served on the Board of the Canadian Association of Social Workers (CASW). During her term as Saskatchewan Director on the national board, she served on the National Social Policy Committee and the Professional Issues Committee.

[23] In HSAS's bargaining unit there are approximately 500 individuals within the social worker classification. There are about 440 individuals with the social work degree but not working as a social worker. These include mental health therapists, addiction counsellors, and assessor/coordinators.

[24] Social work is a diverse profession without a uniform job description. A social worker identifies and treats a person in an environment. The SASW has developed a document describing the social work profession. It defines social work as follows:

What is Social Work?

Social work is a profession concerned with helping individuals, families, groups and communities to enhance their individual and collective well-being. It aims at helping them develop their skills and the ability to use their own resources and those of the community to resolve problems. Social work is concerned with individual and personal problems but also with broader social issues such as poverty, unemployment and domestic violence.

In a socio-political-economic context which increasingly generates insecurity and social tensions, social workers play an important and essential role.

[25] SASW describes what social workers do:

Social workers provide services as members of a multidisciplinary team or on one-to-one basis with the client. The duties performed by social workers vary depending on the setting in which they work.

...

In health settings such as hospitals & long term care facilities, social workers are members of the treatment team. They provide a link between the team and the family as well as with community resources. In these settings they contribute to the care, treatment and rehabilitation of the elderly, those with physical or mental illness and the care of persons with disabilities.

In health and community services centres, social workers are involved in the provision of counseling to individuals or families and in providing services to seniors. Some work as community developers helping citizens to identify their needs and proposing ways of meeting these needs. Others may assist with parent-child relationships and marriage counseling. The services may be offered on an individual basis or in groups.

[26] The CASW has also developed a definition of social work performed within the context of primary health care, which reads as follows:

1. *What is Social Work?*

Social work is a profession that focuses upon improving the health and social well-being of individuals, families, groups and communities. Social Workers believe in the rights and dignity of all individuals and to the achievement of social justice. Social workers work with people to assess, resolve, prevent or lessen the impact of psych-social, physical and mental health related issues.

[27] The same document describes the roles that a social worker might assume as including assessor, enabler, facilitator, mediator, consultant leader, counsellor/therapist, planner, supervisor, advocate, advisor, organizer, researcher, manager, educator/teacher, policy analyst, evaluator, program developer, and community developer. It asserts that the “social work profession has a history of interdisciplinary collaboration and a commitment to the importance of early intervention, prevention and health promotion.”

[28] Social work is a protected title. However, the scope of practice is not exclusive to social workers, nor protected.

[29] The CASW has prepared a lengthy statement on scope of practice for the purpose of fostering a growing understanding of the social work profession. It is prepared “as a consultation document” that can be used “in part or whole to assist in meeting the information needs of diverse audiences”. According to the statement, the scope of social work has defining elements, such as “practice domain” (person-in-environment), “practice preparation”, “practitioners”, and “practice methods”. Under the “practitioner” heading, there is a discussion about registration and licensure:

In Canada, social work registration is regulated by designated provincial bodies. The registration process promotes ethical practice and serves to protect social work consumers by making certain that practitioners are competent to provide services. Recently, there has been a growing trend toward licensure for social workers in other jurisdictions and it is proposed that the CASW follow this lead...

[30] In evidence is a document outlining Standards of Practice for Registered Social Workers in Saskatchewan, effective March 1, 2020. The following is noted with respect to maintaining registration:

- (a) *A social worker shall identify him/herself to clients as a registered social worker. When asked, a social worker shall provide to the client information regarding the social worker's education and experience, and show the client her/his professional identification when appropriate to do so.*
- (b) *A social worker whose registration is suspended or cancelled for any reason will cease using the title of social worker until reinstated.*

[31] An authorized practice endorsement allows a social worker to diagnose, but an individual has to have an MSW to be eligible to take the national exam for this purpose.

[32] Around the time of the Dorsey Commission, there was a social services worker position working in the department. A degree was not required of the position. Post-Dorsey, a degree was required, but that individual continued in the role without one and then retired in 2006. The employer then changed the position to a social worker position. In 2006, the incumbent of the position performed the exact same duties as Kraemer.

[33] Kraemer reviewed the job posting in issue here and suggested that it appeared to be a social worker job. All of the job duties could be performed by a social worker. The only difference would be the requirement for registration. An individual cannot work as a social worker unless registered, or unless hired on the condition of being eligible for registration and having made the commitment to obtain registration within a defined time period.

[34] There are many other positions within the HSAS bargaining unit that are similar to the social services worker but are treated as social workers. Kraemer selected a number of positions based on these similarities, and identified the similarities as including direct patient care, assessment, crisis intervention, counselling, working with families, and community care plans. There is a wide variety of social worker job descriptions within HSAS. The nature of the job depends on the setting or the clientele.

[35] Depending on the clientele being served, certain types of activities may not be included in a job description. This does not mean that the position is not a social worker. Clients come to social workers at different points of care. A different professional on a multidisciplinary team might conduct the assessment of the client. If it is the social worker who performs the risk assessment, it consists of a clinical judgment based on the worker's education and background.

[36] Kraemer has no first-hand knowledge of the West Winds position or the care team. She was unaware that social services workers still existed until this case came about.

[37] Sarah Pannell [Pannell], Jacki Veregin [Veregin], and Marianne Didowycz [Didowycz] testified on behalf of the SHA.

[38] Pannell has been with the SHA and its predecessors for over 12 years. At present, she is a registered nurse [RN] working full time for the West Winds Healthy Mother Healthy Baby program.

[39] Healthy Mother Healthy Baby is a medium to high risk program that receives clients by referral. Clients must be pregnant and must meet certain criteria to be eligible. Criteria include homelessness or insecure housing, unsafe living conditions, poverty, domestic violence, financial concerns, co-morbidities, age, and nutrition status. The program does not replace pre-natal care from a physician, nurse practitioner or midwife, but within the program, the RN is the lead. There is also a nutritionist on the team, who is within the HSAS bargaining unit. The nutritionist receives referrals from the RN or the social services worker.

[40] At the outset, the RN receives the referral, contacts the client and arranges the intake assessment. At intake, the RN performs a risk assessment to determine whether the client is eligible for the program. Eligibility depends on a sufficiently high risk assessment, however, the RN can use clinical judgment to override the score and bring the client on to the program. Sometimes the RN makes referrals before assigning the client's care to the social services worker. In other cases, the RN maintains the care of the client and does not assign the client to a worker at all. Otherwise, the RN assigns the client to one of the social services workers, who follows the client through gestation. At around 36 to 38 weeks' gestation, the social services worker discharges the client from their care, and then the RN performs the post-natal assessment, for which the RN is solely responsible.

[41] As the care progresses through the pregnancy, the social services worker presents the client at case conferences where the RN is present. The RN prepares the care plan which is reviewed at the conference, and the social services worker provides an update on the client's situation which may or may not require the RN to adjust the care plan. Through the conference, the RN may delegate tasks to the worker based on the client's needs, for example, providing milk coupons, assessing the client's food security, recommending community resources and programs, and providing resources and education. The worker may also monitor mental health as well as alcohol and drug use. Depending on the outcome of the conference, the level of care may change.

[42] The RN also provides informal support to the worker. A client could contact the worker with questions, for example, about specific care plan items. The worker might check in with the RN for this purpose.

[43] The social services worker follows the patient. The worker books appointments and performs sessions with the client without the presence of the RN. The worker fulfills the tasks as assigned. The worker has to use independent judgment in circumstances as they arise.

[44] The worker teaches the client about various pregnancy-related topics, and broader topics, such as finances and income support; performs outreach, including by attending the client's home; is involved in advocacy, for example, where the client has been denied benefits; and performs some ongoing and supportive counselling, including through the use of motivational interviewing. When necessary, the worker makes referrals, for example, to a social worker, to the Open Door Society, or to the Fetal Alcohol Syndrome Program. Other duties include administering the Edinburgh Postnatal Depression Scale.

[45] At West Winds, the workers do not develop treatment plans or conduct comprehensive mental health assessments, as per the 2005 job description.

[46] Pannell explained her understanding of the worker's training requirements. The BSW allows the social services worker to understand and respond to various social determinants of health. The Edinburgh is the only formal assessment tool used by the worker. This is a relatively self-directed, non-diagnostic tool. Otherwise, the worker assesses their surroundings and performs point of care risk assessments (eg, are you safe to proceed if the house is on fire?). The worker is trained in ASIST suicide first aid - the same training used by a variety of professions.

[47] Pannell spoke to the scope of practice for registered nurses, which includes, as per the Saskatchewan RN Association's Interpretation of the RN Scope of Practice, dated February 10, 2015 (at 1), the coordination of health care and the execution of comprehensive assessments.

[48] Veregin is the manager of the program and is employed by SHA. Prior to assuming this role, she was working as a nutritionist. She has no social work training.

[49] Veregin acknowledged that Indigenous women often associate social workers with trauma. On the other hand, many of the program's clients are involved with social workers outside of the program, including through referrals from within the program. West Winds does not need or want social workers to do the role. They are "more" than what the program needs. The program

is grassroots - it is intended to work with women within the community and to meet the clients where they are at. It is not intended to serve as a therapeutic environment. The women need to be lifted up, motivated and supported.

[50] Veregin stated that social services workers do not implement a treatment plan; they use a care plan developed by an RN by monitoring, teaching and following up.

[51] Didowycz is employed by SAHO as a consultant for classification and job evaluation. She described the JJE process and the rating system within the provider unions' units.

[52] Ratings are based on the minimum training deemed appropriate by the joint committee, taking into account the Saskatchewan educational context. The provincial job descriptions are intended to reflect any environment in which the positions are to work and for that reason they are broadly worded.

[53] There are many occupations that share job duties with the social services worker. In 2000, it was decided that the BSW was the most appropriate education for the social services worker. When the provincial review occurred, there was no information to suggest that the qualifications needed to be changed. The BSW is a requirement for other jobs; education is not "owned" by jobs.

[54] Various jobs within the provider unions overlap in duties with jobs that fall within the HSAS bargaining unit, for example, an emergency medical responder, an occupational & physical therapist assistant, or a speech & language pathologist assistant. There are also many roles within the provider unions that work in the human services field, for example, the aboriginal health coordinator.

[55] The social services coordinator requires a BSW. This position is responsible for the administration of the Saskatchewan Assistance Plan for certain clients. Job duties include managing case management plans, conducting assessments, approving eligibility, providing advocacy, and advising clients about their rights.

[56] From Didowycz's perspective, the relationship between the recreation therapist and recreation coordinator is analogous to the relationship between the social worker and the social services worker. The recreation therapist is a practitioner who carries out assessments and the recreation coordinator carries out the care plan that is developed by the recreation therapist.

[57] SEIU-West called Russell Doell [Doell] as a witness.

[58] Doell explained that SEIU-West's CBA is based on a seniority system. There is no existing reciprocal agreement with HSAS to recognize the seniority of social services workers.

[59] Doell has been involved in the JJE process since its inception in or around 1999. The development of job bundles was achieved through significant consultation with the membership. There is also a maintenance process which provides for reclassifications and a provincial review to fine tune the job descriptions.

[60] The 2005 job description is the original job description. The 2018 job description resulted from the provincial review process.

[61] The rating given to a job depends on a number of predetermined factors, one of which is education. This includes required certification. The education factor depends on the minimum qualification required to perform the job.

[62] A maintenance request generally consists of an edited job description, a job review request form, a job fact sheet, and possibly a comparison job description. If certification were requested for the job, this would likely be indicated in the job fact sheet. However, the determination about the appropriate education based on key work activities and minimum qualifications lies with the maintenance committee. On the job fact sheet in this case, the response provided to the question as to whether any provincial, national, or professional certification was mandatory was "no". The maintenance assistant does the research that is required to make such a determination. The committee has to weed through the submissions. Some of the applicants embellish their job duties, and others underestimate their value to the workplace.

[63] At the three-party meeting with respect to the maintenance request for the community outreach and education worker, Doell had asked whether there was going to be a registration or certification issue. Didowycz responded that there was nothing on the rating rationale indicating such a requirement. The meeting notes disclose this additional exchange:

Marianne - email was sent last Thursday indicating the rationale for the requesting of a reclassification. They are in Job #047 – Community Outreach and Education Worker there are five employees and they are requesting to move to Job #039 – Social Services Worker. Job #039 is a Social Worker with a degree and Job #047 is an Aboriginal Social Work certificate but is actually diploma hours. What I am seeing is that they are saying the education is not appropriate for what they need these employees to be doing, is that right Barry?

Barry - yes, the clientele and how this program has evolved is they really need someone with more of a social work background. The contacts they have, the type of cases that they are looking at and the interventions that they want them to get involved in was much more aligned to the Social Services Worker. The original question from the manager was what do I have to do to make these jobs Social Workers? I told her that there were lots of issues here because you are crossing boundaries but there is a job in JJW called Social Services Worker. I told her to take a look at it and see if it meets your needs. She worked with the staff they looked at and they decided that it did so this is the re-class that they have asked for.

Positions of the Parties:

HSAS

[64] There is one small difference between this position and that of the social worker – a social worker is subject to the statutory requirement to be registered and to be licensed to practice. This difference is not sufficient to distinguish the two positions and to justify placement of the social services worker within the provider bargaining unit. The key to whether a position falls within the practitioner bargaining unit is whether it is “functioning” as one of the positions set out in Table C. Social worker is one of the positions listed in Table C. The social services worker is functioning as a social worker and therefore, it falls squarely within the practitioner unit. The Employer has taken a position that has long belonged to HSAS, renamed it, and altered its registration requirements “ever so slightly” so as to enable it to place the position within the provider units.

SHA

[65] This application should be dismissed on the basis of delay. The social services worker existed prior to the commencement of the work of the Dorsey Commission. The position is well-established and is properly placed within the provider units. HSAS has been aware, since at least 2009, of the current manifestation of this position. There is no reason why this application should be permitted to proceed at this late stage.

[66] Furthermore, HSAS has brought its application pursuant to the wrong statutory provision. There is no question whether this position satisfies the definition of “employee” under the Act. Instead, it is evident that HSAS is attempting to amend a Board order. To succeed with such an application, HSAS is required to establish a material change in circumstances and to rebut the presumption that the position falls with the all-employee units. HSAS has failed to satisfy either of these requirements. Since 2009, there has been no material change in circumstances. Nor is there any compelling labour relations reason to rebut the presumption.

[67] The Board should consider the job description within the context of the work that the role performs, which includes its responsibilities within the Healthy Mother Healthy Baby program. The position does not perform work within the scope of practice of a social worker. The RN is the most responsible practitioner with respect to the care plan. The social services worker provides outreach, advocacy, counselling, and external referrals. The worker is performing the duties of a health support provider. The worker's community of interest aligns with that of the provider units.

SEIU-West

[68] HSAS ought to be precluded from bringing this application due to inaction and delay.

[69] Alternatively, HSAS has brought this application under the wrong provision. Section 6-104 does not give the board the authority to amend a certification order or to remove employees from a bargaining unit or determine if a bargaining unit is appropriate.

[70] There are boundaries around the relevant bargaining units to prevent exactly the type of scope dispute before the Board. The provider unit is a large, default unit. Employees are presumed to belong to this unit. The HSAS bargaining unit is a carve-out unit. Scope disputes between these parties are not common precisely because of the clear boundaries that have been drawn between the relevant units.

[71] The social services worker is not a social worker. A social worker is a position with a protected title. A social worker needs to be registered with the SASW. A social services worker does not have title protection nor is it required to be registered. A social services worker performs duties that are different than that of a social worker.

[72] Given that the position is not a social worker, HSAS should have applied for an amendment of the certification order. In that event, the Board would consider whether a material change has occurred and whether an amendment of the certification order is necessary. There has been no material change in circumstances, and it is not necessary to amend the order.

SGEU

[73] Based on the ten-year delay, HSAS has demonstrated its tacit agreement to the placement of this position within the provider units. HSAS should not be permitted to amend its certification order, as it has not satisfied the required test, which includes proof of a material change in circumstances.

[74] In the alternative, HSAS has failed to demonstrate that placement of the position within its unit satisfies the factors to be considered in multi-bargaining unit cases. HSAS has failed to rebut the presumption that the position should be placed within the all-employee unit.

[75] Finally, SGEU has serious concerns about industrial stability if the application is allowed, and to a greater extent than in relation to the Child Life Therapist case. Granting the application could create a precedent for the erosion of the larger, more inclusive unit, after HSAS has tacitly agreed through inaction to the inclusion of the position in the provider unit.

CUPE

[76] CUPE adopts the positions of the Respondents and SGEU. There are presently no social services worker positions working within the CUPE unit.

Applicable Statutory Provisions:

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

6-103(1) *Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.*

(2) *Without limiting the generality of subsection (1), the board may do all or any of the following:*

(a) conduct any investigation, inquiry or hearing that the board considers appropriate;

(b) make orders requiring compliance with: (i) this Part; (ii) any regulations made pursuant to this Part; or (iii) any board decision respecting any matter before the board;

(c) make any orders that are ancillary to the relief requested if the board considers that the orders are necessary or appropriate to attain the purposes of this Act;

(d) make an interim order or decision pending the making of a final order or decision

6-104(1) *In this section:*

...

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

...

(i) subject to section 6-105, determining for the purposes of this Part whether any person is or may become an employee or a supervisory employee;

...

[78] The following provisions of the HLRRRC Regulations are applicable:

2 *In these regulations:*

...

(g) "health services provider" means an employee of a health sector employer, but does not include a health support practitioner, a nurse, a chiropractor, a dentist, a duly qualified medical practitioner or an optometrist;

(h) "health support practitioner" means an employee of a health sector employer who:

- (i) is functioning in one of the occupations listed in Table C; or
 - (ii) is in a position that requires, as a minimum, registration pursuant to an Act giving the exclusive right to use a title or description of an occupation listed in Table C;
- but does not include a student of one of the occupations listed in Table C, or an intern or an assistant to an employee described in subclause (i) or (ii);

...

4(1) The appropriate unit prescribed in this section is prescribed as the appropriate unit for bargaining collectively between health sector employers and health support practitioners.

(2) There is to be one multi-employer appropriate unit respecting health support practitioners composed of:

- (a) all health support practitioners who are employed by a district health board or by a health sector employer listed in Table B; and
 - (b) all health support practitioners who:
 - (i) are employed by a health sector employer listed in Table A; and
 - (ii) on the day these regulations come into force, are represented by a trade union for the purposes of bargaining collectively.
- ...

Analysis:

Preliminary Issue – Delay:

[79] The first issue is whether HSAS's application should be dismissed on the basis of delay. HSAS argues that this issue was not properly raised by the parties, and therefore, it does not lie with the Board to dismiss its application on this basis. Although this issue was raised in oral argument at the outset of the hearing, it was not explicitly pleaded. HSAS states that the delay argument is rooted not in any statutory timelines but in the defense of estoppel and, in the absence of an explicit pleading, the parties cannot now come before the Board and rely on this defense.

[80] Four separate replies were filed in response to HSAS's application. The replies outline the factual background, which includes the length of time during which the position has been in existence. However, not one of the replies explicitly pleads estoppel as a defense to HSAS's application. On the other hand, SHA, in its opening statement, argued delay on the basis that HSAS had been aware of the existence of this position since 2009. The respondents and intervenors argued delay in their closing submissions.

[81] To determine whether delay can be claimed as a defense to the application, it necessary to point out that there are no statutory deadlines that apply to the application filed by HSAS. HSAS has not filed an unfair labour practice application, despite the suggestion contained in its 2009 letter. Therefore, the applicable principles are those that are rooted in the common law, and in particular, the defense of estoppel. The assessment of the estoppel defense would begin with a consideration of whether HSAS had made a clear and unequivocal representation, even through

silence or inaction, in the face of a longstanding practice of maintaining the position in the provider bargaining units.

[82] The parties did not provide HSAS with sufficient notice of this argument. The parties did not plead estoppel in their replies. Nor were there any attempts to amend the pleadings prior to the date of the hearing. All of the parties were represented by counsel. There was a significant period of time between filing and the hearing of this proceeding.

[83] The respondents and intervenors are not entitled to rely on the defense of estoppel as a defense to the application, which was intended to be a complete defense. It should have been pleaded at the earliest opportunity.

Jurisdiction of the Board:

[84] The next question is whether the Board has jurisdiction to grant the order being sought.

[85] HSAS seeks a determination as to whether the position falls within the existing HSAS bargaining unit as set out in the certification order. For this purpose, HSAS has relied on subclause 6-104(2)(i) of the Act, the purpose of which is clear, that is, to determine for the purposes of Part VI whether any person is or may become an employee or a supervisory employee. The definition of “employee” is contained at section 6-1 of the Act.

[86] There is no question before the Board as to whether the person in the position is an employee. The position has been placed in-scope of the SEIU-West bargaining unit. The only question is whether the position has been placed in the appropriate bargaining unit. Even so, HSAS states that subclause 6-104(2)(i) can be relied upon for the purpose of determining whether a position is placed in the appropriate bargaining unit in a multi-bargaining unit workplace.

[87] In support of this argument, HSAS relies on *CUPE v University of Saskatchewan and ASPA*, [2000] SLRBD No 7, LRB File No. 218-98 [*CUPE v University of Saskatchewan*], at paragraph 46. There, CUPE alleged that the University had committed an unfair labour practice by transferring positions from CUPE to ASPA without the agreement of CUPE. The Board considered the application of section 5(m) of *The Trade Union Act*, which is the predecessor to subclause 6-104(2)(i).

[88] In its reasons, the Board made the following comments, which provide context for the paragraph cited in HSAS’s brief:

[45] ...A major change in the Board's approach to such disputes is recorded in *Service Employees' International Union, Local 333 v. St. Paul's Hospital (Grey Nuns) Saskatchewan and Health Sciences Association of Saskatchewan*, [1991] 2nd Quarter Sask. Labour Rep. 78 LRB File Nos. 130-90, 205-90, 003-91 and 004-91 at 80 where the Board set out a new procedure as follows:

The Board realizes that in the past Employers have applied for an order transferring a classification from one unit to another and, while the application was pending, treated the position as though the Board had already ordered the transfer. Regardless of how this practice arose, it is in the best long-term interest of all parties if it is no longer followed. In our view, in light of the addition of Section 5(m) to The Trade Union Act in 1983; and in light of the Board's willingness to expeditiously hear these applications outside of the open period, there is no longer any need to resort to this form of unilateral action.

If negotiations fail, or time does not permit the parties to negotiate the issue fully, employers can obtain a ruling from the Board in a timely fashion under Section 5(j), (k) and (m). This process is more in keeping with the objects of The Trade Union Act to encourage labour relations stability and harmony through collective bargaining rather than a practice based upon unilateral employer action, conflict and unfair labour practice applications.

[46] Section 5(m) permits the Board to make provisional orders respecting scope before or after a position has been filled by an employer. Such an Order becomes a final Order after the passage of one year if no request is made to vary the provisional Order.

[47] Although the excerpt above from the *St. Paul's Hospital (Grey Nuns)* case refers to the problem of transferring a classification from one bargaining unit to another, the factual situation described in the case involved the placement of a newly created position.

[48] In *Saskatchewan Government Employees' Union v. Wascana Rehabilitation Centre*, [1991] 3rd Quarter Sask. Labour Rep. 56, LRB File Nos. 199-90 and 234-90, the Board held, at 59, that "where a new position is created in an 'all employee' unit, it remains in the bargaining unit unless excluded by order of the Board or agreement of the parties". An employer is required to bargain collectively with the Union in order to obtain agreement on an exclusion, or apply to the Board for an amended certification Order pursuant to s.5(j), (k) or (m) of the Act. At 59 of its decision, the Board referred to its earlier decision in *St. Paul's Hospital (Grey Nuns)* as follows:

In that case, the Board heard a dispute between two competing unions regarding which of them represented a new position created by the employer. One unit was described as "all employees", while the second consisted essentially of exclusions from the all-employee unit. In those circumstances, the Board held that newly created positions would belong to the "all-employee" unit until such time as the Board found otherwise or the parties agreed.

[49] Finally, in *Canadian Union of Public Employees, Local 21 v. City of Regina; Regina Civil Middle Management Association v. City of Regina*, [1998] Sask. L.R.B.R. 464, LRB File Nos. 023-95 and 037-96, the Board set out the procedure for determining jurisdictional disputes between two unions in the following terms:

In attempting to determine the proper assignment of newly created positions in multi-bargaining unit structures, employers have an obligation to discuss the assignment with the unions affected and to refer any dispute pertaining to the assignment to the Board if an agreement cannot be

reached. The Board would encourage employers to seek expedited hearings of such applications or to request pre-hearing conferences with the Board Vice-Chairperson or Registrar to determine if an informal assessment of the position by the Board office could assist in resolving the matter.

[50] In the present case, the University's practice of unilaterally assigning new positions to the ASPA bargaining unit, rather than to the CUPE bargaining unit, based on its understanding of the effect of the certification Orders, runs afoul of the principles stated in the St. Paul's Hospital case and the City of Regina case....

[89] The Board in *Saskatchewan Government Employees' Union v Wascana Rehabilitation Centre*, [1991] 3rd Quarter Sask Labour Rep 56 [*Wascana Rehabilitation Centre*], which is cited in *CUPE v University of Saskatchewan*, explained the reasoning behind its reliance on sections 5(j) and (m) of *The Trade Union Act*, in particular, in exclusion applications:

*In many cases, in the past, the employer felt constrained to take unilateral action because of its inability to reach agreement with the union and because it could not await the "open" period under Section 5(k) of the Act in order to make an amendment application. The Board reiterates its intention, as indicated in *CUPE v. Regina General Hospital (supra)*, to hear "new position" exclusion applications, where no agreement can be reached, in an expeditious manner pursuant to Section 5(j) or (m) of *The Trade Union Act*.*

[90] The Board has heard applications for the determination of bargaining unit placement in a multi-unit workplace pursuant to section 5(m) of *The Trade Union Act* in the absence of a question about whether the person met the definition of "employee". Examples of such cases include *University of Saskatchewan v Canadian Union of Public Employees, Local 1975 and Administrative and Supervisory Personnel Association*, [2001] Sask LRBR 388 and *City of Saskatoon v Canadian Union of Public Employees, Local 59 and Saskatoon Civic Middle Management Association* [1998] Sask LRBR 321, LRB File No. 232-97. In both of these cases, in particular, the positions in question were newly created positions.

[91] In *Saskatchewan Polytechnic and Saskatchewan Institute of Applied Science and Technology Faculty Assn., Re*, 2015 CarswellSask 228, the Board received an application for a simple amendment that contained an additional request to determine the placement of a new position. The Board made the determination but did not refer in its reasons to section 6-104 of the Act or any other statutory provision or suggest that any objection had been raised to its authority or jurisdiction.

[92] In the recent Child Life Therapist case, the Board commented on the appropriateness of relying on subclause 6-104(2)(i) for purposes of determining the placement of a position in a multi-

unit workplace in the absence of a question about whether the person is or may be an “employee”. That case involved a newly created position. This case does not.

[93] The principles that apply to the placement of a newly created position in a single unit workplace are well-established, arising from the duty of good faith collective bargaining: *Wascana Rehabilitation Centre; Donovel v Saskatchewan Joint Board, Retail, Wholesale and Department Store Union*, 2006 CanLII 62948 (SK LRB). The Board has previously outlined a similar expectation, adjusted to fit the circumstances of a multi-unit workplace, as described in *CUPE v University of Saskatchewan*. The principles that apply to applications to amend a certification order are also well-established: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, Local 496 v Beeland Co-operative Association Limited*, 2018 CanLII 91973 (SK LRB).

[94] HSAS concedes that the position has been within the provider union units for many years, but says that it was not notified of the existence of the position by the Employer, and that, because the position might reasonably fall within its unit, it should have been. HSAS rather boldly relies on Article 2 of the CBA as a “documentary basis for [its] claim”, even suggesting that the situation resulted from “private contractual discussions...to which HSAS was not notified nor a party”. Article 2 states:

...
Where the Employer creates a new position which might reasonably fall within the scope of this bargaining unit or makes changes to the description of a position that may affect the inclusion or exclusion of the position within the scope of this agreement, the Employer will inform the union.

Yet, HSAS has not brought an unfair labour practice application complaining of the Employer’s unilateral placement of the position in the SEIU-West bargaining unit, nor an application to amend the certification order.

[95] If this application had been brought as an unfair labour practice application, the responding parties would have been put on notice that they were entitled to plead delay on the basis that HSAS had surpassed the 90-day timeline for the filing of an unfair labour practice application. Similarly, if an application to amend a certification order had been filed, HSAS would have been required to meet the test of necessity, and by extension, the test of material change in circumstances. Under the circumstances, rather than pleading delay based on a statutory timeline, the respondents and intervenors have pleaded that the position is not new, that the

Board lacks authority under subclause 6-104(2)(i), and that HSAS should have made an application for an amendment and met the applicable test.

[96] Granted, HSAS is not seeking an order for a declaration that an unfair labour practice has been committed, nor an amendment. But on its face, subclause 6-104(2)(i) does not provide the Board with the authority to make a bargaining unit determination. Section 6-103 does provide the Board with authority to make orders that are ancillary to the relief requested if necessary or appropriate to attain the purposes of the Act. Therefore, the Board may make a bargaining unit determination if it is ancillary to the relief that is requested. It is necessary for HSAS to ground its application in a statutory provision that provides the Board the authority to grant the order that it seeks. In the form in which the application has been filed, there is no provision that would serve as a basis for an ancillary determination of the appropriate bargaining unit placement.

[97] Furthermore, this application is inconsistent with the pattern of case law in which a determination of bargaining unit status has been made, in that there is no newly created position, nor any unfair labour practice allegation, application for an amendment, or agreement from the parties as to the scope of the dispute. Even if the Board could interpret subclause 6-104(2)(i) more broadly than it has, to do so in this case would undermine the Board's objective of promoting good faith collective bargaining and labour relations stability.

[98] The application of HSAS is akin to a request to clarify the scope of the Board's certification order, or to request an order for compliance with that order. The inference to be drawn from this application is that HSAS should be entitled to bring an application to enforce compliance with the duty to collectively bargain pursuant to clause 6-62(1)(d) of the Act without being required to satisfy the criteria for an unfair labour practice application. HSAS has not obtained the agreement of the affected parties to proceed in this fashion. In our view, this is an inappropriate use of subclause 6-104(2)(i).

[99] For the preceding reasons, the Board finds that the application should be dismissed.

Substantive Issue:

[100] If the Board had found that it could grant the remedy requested, it still would have concluded that the appropriate bargaining unit was SEIU-West. The reasons for this are straightforward.

[101] As the applicant, HSAS bears the onus, on a balance of probabilities, to establish that the order sought is appropriate. Through its application HSAS has asked the Board to clarify the

scope of its certification order, and to order that the parties comply with the terms of that order. That order adopts the language used in the HLRRC Regulations to define the scope of the health support practitioner unit, which is the unit represented by HSAS.

[102] This case is about whether an existing position properly falls within the existing classifications set out in the existing certification order. The application does not request an amendment of a certification order, and it is therefore distinct from *Health Sciences Association of Saskatchewan v Saskatchewan Association of Health Organizations*, 2011 CanLII 64023 (SK LRB) [the Midwives case]. Nor does the application involve a new position, and it is therefore distinct from the Child Life Therapist case. The factors to be considered when determining the placement of a new position between competing bargaining units are not directly applicable.¹

[103] Although the application is not a reference of dispute, it is otherwise most similar to the reference of dispute brought in *Health Sciences Association of Saskatchewan v Sunrise Health Region*, 2008 CanLII 87263 (SK LRB) [the Recreation Therapist case]. There, HSAS was claiming that the incumbents of specific positions known as recreation working supervisors were performing the duties of recreation therapists, which positions were within the scope of the HSAS bargaining unit. The recreation working supervisors were placed within the scope of the CUPE bargaining unit, and other similar positions were represented by SEIU-West.

[104] Unlike the current case, however, the Board in the Recreation Therapist case had the benefit of an MOA which had set the criteria for determining when a relevant position would fall within the HSAS bargaining unit and when that position would fall within the provider bargaining units. The Board was charged with the task, pursuant to the reference of dispute, of interpreting the MOA for the purpose of determining whether the position was a recreation therapist and therefore properly within the HSAS bargaining unit. It is noteworthy that the recreation therapist, at the time, was not a protected title profession or a licensed occupation (para 21).

[105] Here, there is no MOA. There is no agreement between the parties as to the meaning of social worker as that term is used in Table C of the HLRRC Regulations or in the certification order. The definition of the unit, contained in the HLRRC Regulations, includes two categories of employees – those who are functioning in one of the listed occupations and those who require, as a minimum, registration pursuant to an Act giving the exclusive right to use a title or description of a listed occupation. The issue raised in the current case relates to the first of these categories.

¹ See the factors as outlined in the Child Life Therapist case at paras 119-122.

According to the Dorsey Report, at 67, “[e]mployees in the listed occupations are included in the unit if they are employed and function in one of the listed occupations”. The question is what is meant by “functioning” in a listed occupation.

[106] The Dorsey Report describes the nature of the health support practitioner unit in the following terms, at 66:

This is a unit of specifically named occupations that have been accepted for exclusion from the all employee unit since the 1970's. The list includes some additional occupations that expand its reach across the spectrum of services from acute care to prevention. This gives the members of the unit and its bargaining agent an interest in, and a need to be sensitive to, the full range of health services. Some of the listed community based occupations may require further definition. In the absence of party agreements, the Labour Relations Board can give the precise definition.

[107] In *Health Labour Relations Reorganization (Commissioner) Regulations - Interpretative Ruling #4*, 1997 Sask LRBR 377, [1997] SLRBD No 33, LRB File No. 114-97 [*Interpretative Ruling #4*], at 3, the Board acknowledged the confusion caused by the expansion of the listed classifications beyond those which could be defined in terms of a statutory license:

The expansion of the listed classifications in Table C beyond a group which could be defined in terms of a statutory license to include a number of other occupations has naturally caused a certain amount of confusion.

[108] The recreation therapist, which fell within the category of positions listed in Table C, was not defined in terms of a statutory license. Unlike the recreation therapist, a social worker is defined in terms of its statutory license. Social worker is a title protected profession. No person, other than a person who is registered pursuant to section 21 of *The Social Workers Act*, may engage in the practice of social work by using the title “social worker”, as outlined in section 24 of that Act:

24(1) No person other than a member shall engage in the practice of social work by using the title “social worker”.

...

[109] Pursuant to section 5 of that Act, the membership of the SASW consists of those individuals who have been registered by the council of the association. The prohibition against the use of the social worker title has existed in *The Social Worker Act* since before the Dorsey Commission began its work. The inclusion of social worker in Table C of the HLRRC Regulations must be interpreted in a manner that is consistent with that Act.

[110] Although the title of social worker is protected, there is no protection over scope of practice. The scope of practice that is associated with but not exclusive to a social worker is broad, varied, and evolving. The broad definitions of social work developed by SASW and CASW are consistent with this. Social workers do not have one standard job description. There are many positions which, although they are not functioning in the occupation of social worker, perform functions that are very similar to those associated with social workers.

[111] For a position to fall within Table C, it is the function of the position that matters. This has been interpreted to mean that education and “credentials” do not matter. There is some support for this interpretation contained within the Dorsey Report. Certainly, the requirement that a social services worker hold a BSW does not mean that the position is a social worker. Nor does it matter that the original social services worker position did not require a BSW. But, as much as it has been said that credentials do not matter, the requirement for registration and licensing does matter if it is indicative of the functioning of the position. This requirement is uniquely indicative in the case of a position with no protection over scope of practice.

[112] Kraemer confirmed that an individual cannot work as a social worker unless registered, or unless hired on the condition of being eligible for registration and having made the commitment to obtain registration. This is consistent with the Standards of Practice for Registered Social Workers in Saskatchewan, which stipulates that a social worker shall identify to clients as a registered social worker and show the client professional identification when appropriate to do so. It explains the requirement that social worker positions within HSAS are to be registered.

[113] There is significant overlap in the duties of a social services worker with that of a social worker. All of the respondents and intervenors, and their witnesses, attempted to distance themselves from this fact. However, this does not mean that a social services worker is a social worker. A social services worker is not functioning in the social worker occupation unless registration is required of the position. The fact that an incumbent may be registered for some other purpose, including previous jobs or concurrent positions, is irrelevant. Therefore, there is no value to HSAS’s argument that the Board should draw an adverse inference from the failure of the provider unions to call a social services worker to testify at the hearing. Obviously, the Board prefers to hear from an incumbent about the duties of the position, however, the matter is straightforward.

[114] HSAS relies on *Interpretative Ruling # 4* to suggest that the Board’s focus should be on the primary obligations and functions associated with the position in question, and not on any

specific requirement for education or registration. In that case, the parties sought guidance from the Board as to whether certain positions fell within the assessor/coordinator or health educator classifications included in Table C and, therefore, came within the HSAS unit. The alternative was that the positions were functioning as nurses and, therefore, came within the SUN bargaining unit. In some cases, the positions being considered included as a requirement what was described as “nursing qualifications”.

[115] The Board relied on the following comment in the Dorsey Report, at 69, and decided that the focus of the language used in the HLRRC Regulations was on occupational groupings, and on functions associated with those occupations:

All of the possible indicia for bargaining unit distinction are fertile ground for ongoing debate. Job content, task performance, training requirements, prestige, socio-economic status, expertise, specialization, credentialization, commitment, ethics, standards, autonomy, organizational affiliation, importance to the public welfare, special relationship with fellow members of the occupation and the public interest and other factors simply serve to create degrees of differences. They do not meaningfully define predictable categories of occupations.

[116] SUN made the argument that where the requirement of the position was for nursing qualifications the position should be treated as a nurse and placed in the SUN bargaining unit. The Board rejected that argument. The Board found that it would defeat the objective of establishing province-wide terms and conditions of employment to base the dividing line for the classification on educational requirements.

[117] The Board’s conclusion must be considered within the context of that case. In the HLRRC Regulations, the language used to define a “nurse” is similar to the language used to define a health support practitioner:

*(i) “nurse” means an employee of a health sector employer who:
 (i) is a registered nurse or registered psychiatric nurse; and
 (ii) is functioning as a registered nurse or registered psychiatric nurse*

[118] Both the HSAS and SUN bargaining units are defined by one or more occupational groupings. The characteristics of these two units pose unique challenge for those positions that perform functions of both an assessor/coordinator and a nurse, or a health educator and a nurse. The Board was tasked with determining the dividing line. It concluded that the determining factor would be whether the position was functioning primarily as one of the listed occupations or primarily as a nurse.

[119] The current case does not present the same issue with respect to overlapping occupations. The provider units are not defined by listed occupational groupings, but rather, by those positions that do not belong in another unit. If a position does not come within HSAS or SUN, it falls within the provider units. If a social services worker is not functioning as a social worker, it comes within the provider units. To determine whether the position is so functioning, one must take into account *The Social Workers Act*. The dividing line between a social worker and a social services worker, as set out herein, promotes predictability and consistency, and therefore labour relations stability, within health sector labour relations.

[120] Finally, the lack of any reference in *Interpretative Ruling # 4 to The Registered Nurses Act, 1988* limits the utility of any further comparison with that case.

[121] The Employer in this case has decided that, for its purposes, there is no need for registration. The Employer has the right to manage its operation and to direct its work force. This is a qualitatively different conclusion than that which was drawn in the Child Life Therapist case, that is, that there was no compelling labour relations reason to consider the Employer's preference for a particular bargaining unit (paras 127-9). The Employer, by expressing its preference for no registration, has not usurped the role of this Board. It is irrelevant whether some or all of the incumbents are already registered.

[122] Furthermore, the Board does not view this preference as illegitimate or as masking anti-union animus. The Employer has taken into account the characteristics of the program and the needs of the clientele, and has decided that a registered social worker is not required for the role. The notes from the three-party meeting suggest, simply, that the Employer wanted to change the position to meet the needs of the program, and determined that the social services worker met those needs. The Employer had determined that the existing education was not appropriate for what the workers were doing. The reclassification from an outreach worker to a social services worker meant a change in education from an aboriginal social work certificate to a BSW. The Board does not interpret the words "social workers" to mean "registered social workers" in this context.

[123] Nor does the Board find that the transition to a social worker position at Mental Health and Addictions is indicative of anything other than a change in direction on the part of the Employer at the time.

[124] For all of the foregoing reasons, the application is dismissed.

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

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

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson