Saskatchewan
Labour Relations Board

TECHNICAL SAFETY AUTHORITY OF SASKATCHEWAN, Applicant v SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Respondent and UNIFOR, LOCAL 649, Respondent and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2067, Intervenor

LRB File No. 028-24; September 19, 2024
Vice-Chairperson, Carol L. Kraft; Members: Hugh Wagner and Allan Parenteau

Counsel for the Applicant, Technical Safety Authority of Saskatchewan:	Michael Phillips
Counsel for the Respondent, Saskatchewan Government and General Employees' Union:	Perry D. Erhardt
Counsel for the Respondent, Unifor, Local 649:	Blake Scott
Counsel for the Intervenor, International Brotherhood of Electrical Workers, Local 2067:	Dan LeBlanc

Representation Vote – Application by Successor Employer to amend its certification orders with SGEU and Unifor – Large disparity in size of two bargaining units – Unifor seeking a representation vote – SGEU seeking an order that Unifor bargaining unit be swept-in into larger SGEU bargaining unit – Board choosing not to exercise its discretion to order a vote where there is a large disparity in size of competing bargaining units – Board ordered that Unifor bargaining unit be swept-in into SGEU bargaining unit.

REASONS FOR DECISION

Background:

[1] Carol L. Kraft, Vice-Chairperson: This matter arises out of an application by the Employer for the consolidation of two bargaining units.

Facts:

[2] The parties filed an Agreed Statement of Facts from which the following summary is drawn:

[3] The Technical Safety Authority of Saskatchewan ("TSASK") has applied pursuant to sections 6-104(2)(f), (g) or (h) of *The Saskatchewan Employment Act,* SS 2013, c S-15.2 (the "SEA") for an order to amend certification orders with the Saskatchewan Government and General

Employees' Union ("SGEU") in LRB File No. 119-05 and with Unifor, Local 649 ("Unifor") in LRB File No. 035-21.

[4] TSASK is a not-for-profit corporation established pursuant to *The Technical Safety Authority of Saskatchewan Act*, SS 2010, c T-9.2, carrying on operations concerned with the registration, inspection, certification and licensing of safety-sensitive equipment on a fee-for-service basis for the Province of Saskatchewan.

[5] Effective July 1, 2010, TSASK became the successor employer to the Government of Saskatchewan in respect of a group of employees represented by SGEU. The business transferred from the Government of Saskatchewan on that date consisted of the registration, inspection, certification and licensing of persons operating equipment regulated by *The Boiler and Pressure Vessel Act,* 1999, SS 1999, c B-5.1, the *Passenger and Freight Elevator Act,* RSS 1978, c P-4, and *The Amusement Ride Safety Act,* SS 1986, c A-18.2 ("Hazardous Equipment").

[6] As a result, SGEU is the certified bargaining agent of a group of employees employed by TSASK pursuant to certification order LRB File No. 119-05 (the "SGEU Bargaining Unit"). The SGEU Bargaining Unit is comprised of classifications responsible for both conducting Hazardous Equipment inspection, and those engaged in supporting administrative, clerical and/or customer service classifications.

[7] Notwithstanding the fact that certification order LRB File No. 119-05 continues to refer to the Government of Saskatchewan as bargaining agent, all parties to this proceeding agree that TSASK has succeeded the Government of Saskatchewan as the employer for the employees in the SGEU Bargaining Unit for the purposes of the SEA and that the certification Order in LRB File No. 119-05 continues to apply with necessary modification as between TSASK and SGEU.

[8] The terms of transfer between the Government of Saskatchewan and TSASK were carried out pursuant to a Safety Standard Agreement dated June 30, 2010. The Agreement contains a Letter of Understanding between TSASK, SGEU and the Public Service Commission (PSC) that contemplates, *inter alia,* that TSASK could seek a separate bargaining unit of employees represented by SGEU, on at least 90 days' notice to SGEU. Notice was provided by TSASK to SGEU on November 1, 2023.

[9] From approximately 2010 to the present, the terms and conditions of employment of employees in the SGEU Bargaining Unit have been bargained collectively between the PSC on behalf of the Government of Saskatchewan and SGEU.

[10] On or about February 1, 2021, TSASK became the successor employer to the Saskatchewan Power Corporation ("SaskPower") of two bargaining units of employees of the Gas and Electrical Inspection Division of SaskPower. One of the former SaskPower bargaining units consists of employees in classifications conducting gas and electrical inspections, represented by the International Brotherhood of Electrical Workers, Local 2067, pursuant to certification order LRB File No. 007-21 ("IBEW") (the "IBEW Bargaining Unit").

[11] IBEW and TSASK are parties to a collective agreement in respect of the IBEW Bargaining Unit.

[12] IBEW was granted direct interest intervenor standing in this matter (LRB File No. 046-24). IBEW and TSASK reached an agreement to apply to the Board to amend the bargaining unit description in LRB File No. 007-21 in order to clarify its scope as a result of these proceedings.[1] The joint application to amend filed by IBEW and TSASK is LRB File No.169-24.

[13] The other former SaskPower bargaining unit consists of employees in administrative, clerical and/or customer service classifications supporting the gas and electrical inspection functions of TSASK represented by Unifor, Local 649 pursuant to certification order File No. 035-21 ("Unifor") (the "Unifor Bargaining Unit").

[14] Unifor and TSASK are currently parties to a collective agreement applicable to the Unifor Bargaining Unit with a term from January 1, 2017 to December 31, 2022.

[15] As of the date of TSASK's application, there were 38 employees in the SGEU Bargaining Unit and 10 employees in the Unifor Bargaining Unit.

[16] As of the date of the Agreed Statement of Facts, September 3, 2024, there are approximately 36 employees in the SGEU Bargaining Unit and 6 Employees in the Unifor Bargaining Unit.

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[1] At the commencement of the hearing in this matter on September 10, 2024, the Board determined it would grant the consent order filed by TSASK and IBEW in LRB File No. 169-24 pursuant to subclause 6-104(2)(g) of *The Saskatchewan Employment Act,* and IBEW withdrew from the Hearing.

[17] TSASK, SGEU and Unifor agree that TSASK's acquisition of, and responsibility for, gas and electrical inspection functions in the Province of Saskatchewan constitutes a material change, and that this material change necessitates an amendment to each of the SGEU Bargaining Unit and Unifor Bargaining Unit, consolidating them into a single bargaining unit, including separation of the SGEU Bargaining Unit from the remainder of the Government of Saskatchewan bargaining unit.

[18] TSASK, SGEU and Unifor further agree that TSASK's acquisition of, and responsibility for, gas and electrical inspection functions has resulted in the creation of a new component of TSASK's operations, resulting in the planned integration of the administration, clerical and/or customer service duties that support the registration, inspection, certification and licensing programs for both Hazardous Equipment inspection and gas and electrical inspection.

[19] In order to facilitate this integration, TSASK has taken steps, or immediately plans to take steps, that include, *inter alia,* consolidating its operations into a centralized location in Regina, the creation of new classifications responsible for the administrative, clerical and/or customer service classifications between Hazardous Equipment and gas and electrical inspection functions.

[20] TSASK, SGEU and Unifor agree that the employees of the SGEU Bargaining Unit and the employees of the Unifor Bargaining Unit share a community of interest, the particulars of which include, *inter alia,* overlapping duties, qualifications and classifications, and interchangeable functions in a centralized location.

[21] TSASK, SGEU and Unifor agree that the SGEU Bargaining Unit and the Unifor Bargaining Unit ought to be consolidated into one bargaining unit (the "Consolidated Unit").

[22] TSASK, SGEU and Unifor further agree that the resulting Consolidated Unit is appropriate for bargaining collectively.

Applicable Statutory Provisions:

[23] The following provisions of the *SEA* are applicable:

> ***6-4****(1) Employees have the right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing.*
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> *(2) No employee shall unreasonably be denied membership in a union.*

. . .

6-18*(1) In this Division, "disposal" means a sale, lease, transfer or other disposition.*

(2) Unless the board orders otherwise, if a business or part of a business is disposed of:

> *(a) the person acquiring the business or part of the business is bound by all board orders and all proceedings had and taken before the board before the acquisition; and*
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> *(b) the board orders and proceedings mentioned in clause (a) continue as if the business or part of the business had not been disposed of.*

(3) Without limiting the generality of subsection (2) and unless the board orders otherwise:

> *(a) if before the disposal a union was determined by a board order to be the bargaining agent of any of the employees affected by the disposal, the board order is deemed to apply to the person acquiring the business or part of the business to the same extent as if the order had originally applied to that person; and*
>
> *(b) if any collective agreement affecting any employees affected by the disposal was in force at the time of the disposal, the terms of that collective agreement are deemed to apply to the person acquiring the business or part of the business to the same extent as if the collective agreement had been signed by that person.*

(4) On the application of any union, employer or employee directly affected by a disposal, the board may make orders doing any of the following:

> *(a) determining whether the disposal or proposed disposal relates to a business or part of a business;*
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> *(b) determining whether, on the completion of the disposal of a business or part of the business, the employees constitute one or more units appropriate for collective bargaining;*
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> *(c) determining what union, if any, represents the employees in the bargaining unit;*
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> *(d) directing that a vote be taken of all employees eligible to vote;*
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> *(e) issuing a certification order;*
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> *(f) amending, to the extent that the board considers necessary or advisable:*
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> > *(I) a certification order or a collective bargaining order; or*
> >
> > *(ii) the description of a bargaining unit contained in a collective agreement;*
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> *(g) giving any directions that the board considers necessary or advisable as to the application of a collective agreement affecting the employees in the bargaining unit referred to in the certification order.*

(5) Section 6-13 applies, with any necessary modification, to a certification order issued pursuant to clause (4)(e).

. . .

Issues:

[24] Unifor and SGEU agree that the Board's jurisprudence in successorship cases is relevant and applicable to the circumstances of the present case. Both parties further agree that the circumstances in which the Board will order a representation vote in the context of a successorship are set out in *Teamsters Canada Rail Conference v Big Sky Rail Corp,* 2015 CanLII 19985 (SK LRB) ("Big Sky Rail").

[25] Finally, Unifor and SGEU agree that the "multiple bargaining agents" rule set out in *Big Sky Rail* applies in this case.

[26] Thus, the issues to be determined are:

a. whether a representation vote should be ordered; or
b. whether the employees in the Unifor Bargaining Unit should be swept-in into the SGEU Bargaining Unit.

Unifor's Argument:

[27] Unifor argues that a representation vote in this matter should be ordered to address which bargaining agent, Unifor or SGEU, shall represent the employees in the Consolidated Unit and which collective agreement should apply to those employees. Unifor notes that one of the two bargaining agents will lose their bargaining rights, and, absent a representation vote, the affected employees may be deprived of their choice of preferred bargaining agent.

[28] Unifor submits that the "multiple bargaining agents" rule set out in *Big Sky Rail* applies in this case. At paragraph 22 the Board stated:

> ***[22]*** *…An examination of the Board's decision reveals that representational votes are only conducted in successorship applications in three types of circumstances:*
>
> 1. ***Multiple Bargaining Agents:*** *These circumstances arise where, following the transfer of obligations, there will be two bargaining agents representing the same classifications or positions and it is not possible or appropriate to maintain two separate bargaining units because of extensive intermingling of employees and/or where there is no discrete skill or geographic or other boundary that can be used to separate the two bargaining units. In these circumstances, the normal practice of the Board would be to conduct a representational vote of affected employees. The representational question that employees will be asked to determine is which of the two bargaining agents they wish to be represented by in the future…*

[29] Unifor relies upon the following cases in support of its position: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Saskatoon Co-operative Association Limited and United Food and Commercial Workers, Local 1400*, 2018 CanLII 68443 (SK LRB) *("Saskatoon Co-op*") and *Service Employees International Union – West v Saskatchewan Health Authority and Extendicare (Canada) Inc.,* 2023 CanLII 113192 (SK LRB) ("Extendicare") at paras 217-230.

[30] Unifor acknowledges that an established exception to the "multiple bargaining agents" rule articulated in *Big Sky Rail* occurs where a relatively small number of unionized employees are to be integrated into a much larger unit of employees (e.g. see: *Estevan Coal Corporation et al. v U.M.W.A. Local 7606,* [1998] Sask LRBR File No. 186-96 (SKLRB) ("*Estevan Coal"); United Steelworkers of America v A-1 Steel & Iron Foundry Ltd. Et al and International Molders & Allied Workers Union, Local 83,* [1985] Oct Sask Labour Report 42.

[31] Unifor notes that in Ontario, this rule has been rationalized on the basis that the union with the significantly smaller membership numbers would have no realistic possibility of succeeding on a vote and a vote would therefore be disruptive to labour relations (*IB of TCW & H of A, Local 647 v Silverwood Dairies,* [1980] OLRB Rep 1526, [1981] 1 Can LRBR 442 (*"Silverwood Dairies").*

[32] Unifor argues that it is not possible to predict the outcome if a vote is ordered, and the Board should not presume to decide matters for employees. While there are more SGEU members involved, once all employees are fully apprised of the respective collective agreements that Unifor and SGEU have with the Employer, the result may well be that employees choose Unifor. We do not know. Unifor points out that this Board has acknowledged that it is not the Board's role to speculate about the outcome or to take a paternalistic view to decide which option would be in the employees' best interests. (*Saskatoon Co-op* at para 195; *Extendicare* at para 213).

[33] Unifor also argues that depriving the employees of choice is potentially more disruptive to labour relations than ordering a vote. Unifor suggests that offering the employees an opportunity to consider their options in a new environment appears to be more conducive to fostering healthy labour relations than any potential disruption or instability caused by a vote. In fact, Unifor argues, absent a vote, employees may feel embittered or ignored by not getting an opportunity to vote.

[34] Unifor argues there are good reasons for departing from *Estevan Coa*l where the Board opined in *obiter* that if a trade union represented less than 25% of a combined workforce, a representative vote would not be necessary.

[35] First, the Board's case law since *Estevan Coal* has not followed that *obiter* or set a hard and fast threshold

[36] Second, *Estevan Coal* predates *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 (CanLII), [2015] 1 SCR ("*Mounted Police"),* and the 25% threshold does not accord with the guidance from the Supreme Court of Canada in *Mounted Police* on the importance of employee choice.

[37] Third, the rationale used by the Board to support its opinion is not persuasive, i.e. the Board rationalized a 25% threshold on the basis of an analogy that the opportunity to vote following an amalgamation of bargaining units is similar to a vote on a raid application. *The Trade Union Act* at the time of *Estevan Coal* required that a raiding union demonstrate 25% support for its application in order for a vote to be directed (now 45% under s. 6-10(2)(a)(ii) of the *SEA).* Unifor argues the raid analogy is weak at best. In a raid circumstance, employees of one union have lost confidence in their bargaining agent to such a degree as to take steps to express their interest to be represented by a different bargaining agent in the form of membership support. There is no analog in this case where there is no suggestion that employees of either Unifor or SGEU have lost confidence in their bargaining agents. The consolidation in this case arises from the efforts of the Employer to reorganize and integrate operations. Those decisions by the Employer have nothing to do with employee choice.

[38] Fourth, a lower threshold is in keeping with the lower thresholds adopted in other Canadian jurisdictions, including Alberta and Ontario.

[39] Unifor asserts that section 6-4(1) of the SEA sets out the legislative object and purpose of Part VI of the SEA, namely the fundamental right of employees to join a union and bargain collectively through the union of their own choosing. Section 6-4(1) provides:

> *6-4(1) Employees have the right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing.*

[40] Unifor argues that affording employees the opportunity to decide for themselves which union they wish to have serve as their bargaining agent furthers the fundamental purpose of Part VI of SEA, section 6-4(1) in particular.

[41] Unifor argues that the freedom of association enshrined in section 2(d) of the *Charter* is relevant to the application. Unifor says that although it has not filed a formal constitutional challenge in this matter, the Board must still be attentive to the constitutional guarantees and the values that underlie them set out in the Charter. It relies upon *Saskatoon Co-op* at para 173 and *Law Society of British Columbia v Trinity Western University,* 2018 SCC 32 (CanLII) at para 46.

[42] Unifor submits that the law and rationale identified in *Mounted Police*, is a relevant consideration in this case and supports a representation vote in the circumstances. In that case the Supreme Court of Canada held that an essential ingredient of "meaningfully pursuing collective workplace goals" enshrined by section 2(d) entails a degree of employee choice. At para 85 it stated:

> *[85] The function of collective bargaining is not served by a process which undermines employees' rights to choose what is in their interest and how they should pursue those interests. The degree of choice required by the Charter is one that enables employees to have effective input into the selection of their collective goals….*
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> *[86] Hallmarks of employee choice in this context include the ability to form and join new associations, to change representatives, to set and change collective workplace goals and to dissolve existing associations. Employee choice may lead to a diversity of association structures and to competition between associations, but it is a form of exercise of freedom of association that is essential to the existence of employee organizations and to the maintenance of the confidence of members in them.*

[43] Unifor also relies on *Saskatoon Co-op* at para 187 for support of its submission that the role of "employee choice" identified in *Mounted Police* may be a relevant consideration in successorship cases where a representation vote may be appropriate.

[44] With respect to the numbers of employees in each of the bargaining units, Unifor argues that the number of employees eligible to vote should be the number as of the date of the Employer's Application, February 5, 2024. At that time there were 10 employees in the Unifor Bargaining Unifor and 38 in the SGEU Bargaining Unit. The employees in Unifor's Bargaining Unit therefore comprises 20.80% of the resulting Consolidated Unit.

[45] As of the date of the filing of the Agreed Statement of Facts, September 3, 2024, the numbers were 6 employees in the Unifor Bargaining Unit and 36 employees in the SGEU

Bargaining Unit. The employees in Unifor's Bargaining Unit therefore comprises 14.28% of the resulting Consolidated Unit.

[46] Unifor argues that the date of the Employer's application is the relevant date for determining the number of employees in order to avoid any concerns of artificial gerrymandering.

SGEU's Argument:

[47] SGEU notes that it represents approximately 36 employees who would be affected by the Amendment while Unifor represents only 6 of the would-be affected employees.

[48] SGEU further argues that a representational vote is not required and that the logic found in *Big Sky Rail* can be applied to order that the employees represented by the Unifor Bargaining Unit, which is significantly smaller than the SGEU bargaining unit, be swept into the SGEU Bargaining Unit.

[49] SGEU argues that the present circumstances are analogous to the facts in *Extendicare* where two separate bargaining units represented employees with similar functions and roles with the same employer. In that case, the Board recognized, at para 134, that it has the discretion to "terminate the rights of the union with a claim to only a small percentage of intermingled employees."

[50] SGEU relies on *Unifor Canada, Local 594 v Consumers' Co-operative Refineries Limited,* 2015 CanLII 43766 (SK LRB) (*"Co-operative Refineries")* at para 23 regarding when a representation vote is appropriate:

> *Furthermore, a representational vote will generally be conducted to determine the wishes of the affected employees….The exception being, if the number of employees to be added to a large bargaining unit is relatively few, the Board has the option of granting the amendment without conducting a representational vote of the affected employees.*

[51] SGEU also relies upon *Saskatoon Co-op* for the proposition that the Board has considered a split of 80% versus 20% between the size of the unions to be a loose threshold for ordering a representational vote. It also notes that *Estevan Coal* suggests a threshold of 25% versus 75%. SGEU says that even at the lower threshold, the Board is not obligated to order a representational vote as the employees in the Unifor Bargaining Unit represent only approximately 14% of the affected employees and there is no evidence before the Board that any of the unusual circumstances contemplated in *Saskatoon Co-op* are present.

[52] In *Saskatoon Co-op* a representation vote was held despite the smaller bargaining unit being approximately 13% of the employer's employees, as the vast majority of the employees in United Food would not be affected by the outcome of a vote as discussed by the Board at paras 190-193:

> ***[190]*** *Second, the Board is of the view that the threshold for determining whether a representation vote should be directed which has been identified by other Boards' is not particularly realistic here. It is plain that the Employer's commercial empire employs a great number of employees against which the small number of employees at the Circle Drive Store pale in comparison. However, to compare these two stark (2) numbers is not an appropriate measurement, in our view, which perhaps may also explain why counsel for the two (2) unions involved in this case favoured a vote of only those employees at the Circle Drive Store.*
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> ***[191]*** *This is because the vast majority of the current employees of the Employer who are represented by UFCW are in no way affected – directly or indirectly – by what might happen at the Circle Drive Store. As noted above currently that location is an "island" in the "sea" UFCW represented stores. Were all of the Employer's employees to cast ballots, this would swamp the votes of those employees at the Circle Drive Store.*
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> ***[192]*** *In some ways, this case is analogous to Headway Ski[124]. There the Board determined that following a successorship the 11 employees working at Mount Blackstrap Ski Resort should be exempted from SGEU's certification Order in order to ensure those employees were not held hostage "to the wishes of some 13,000 Government employees"[125]. To be sure, the Board did not order a vote; however the motivation for exempting the 11 workers from the certification Order is the same as what motivates us to do exactly that in the circumstances of this case, i.e. to ascertain the true wishes of the small group of affected employees.*
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> ***[193]*** *Third – and this is where employee choice becomes most relevant – the employees at the Circle Drive Store as a group should be afforded the opportunity to decide which union they want to serve as their collective bargaining agent. As already stated, RWDSU has represented the workers at that location for decades. Indeed, in the course of the hearing the Board heard evidence that at least two (2) employees have worked at the location, and been RWDSU members since 1971. At no time did the Board hear evidence to suggest that the representation RWDSU provided to those workers was less than exemplary. In these unusual circumstances, it is the Board's considered view that the workers currently employed at the Circle Drive Store should have direct input into the decision as to which union should be certified as their collective bargaining agent.*
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> ***(footnotes omitted)***

[53] SGEU argues that the "unusual circumstances" found in *Saskatoon Co-op* necessitated a vote despite the large disparity between the sizes of the bargaining units as the Board determined that the employees represented by the larger bargaining unit would not be affected by the representation vote. That is not the case in the present circumstances, as a representation vote would equally affect the employees in the SGEU Bargaining Unit as it would the employees in the Unifor Bargaining Unit.

[54] With respect to the employees' *Charter* rights, SGEU asserts the following at para 24 of its Brief of Law:

> *24. A significant consideration in United Food[2], and in the cases from which it cites (see: Mounted Police Association of Ontario v Canada (Attorney General), 2015 SCC 1 (CanLII) was the Charter rights of employees in being able to have their choice of bargaining unit. In the present case, there is no indication that the employees have not already done so, as TSASK's Application is from the perspective of an employer who is seeking to streamline its negotiation processes and have a single bargaining unit for its own convenience.*

[55] SGEU argues that all of the employees are represented.

[56] SGEU argues it would be appropriate for the Board to order that the SGEU Bargaining Unit be certified as the appropriate bargaining unit, without the need for a representation vote, and the Unifor Bargaining Unit be swept-in into the SGEU Bargaining Unit.

[57] Finally, SGEU argues that there can be some disruption to the work place in carrying out a vote and that there is less disruption without a vote.

Analysis:

[58] The circumstances in which the Board will order a representation vote in the context of a successorship are set out in *Big Sky Rail*. The Board in *Big Sky Rail* specifically states that while there are various circumstances where a representational vote could be ordered by the Board in finding a successorship, "doing so is not required in most cases". The Board stated:

> ***[23]*** *As noted above, there are various circumstances where a representational vote could be ordered by the Board following a finding that a sale or transfer of a business had occurred. On the other hand, doing so is not required in most cases. As this Board has noted in many decisions, successorship is a legislative vehicle to ensure that collective bargaining rights survive changes in the ownership and control of a business. The goal of the successorship provisions in The Saskatchewan Employment Act (as it was with The Trade Union Act) is the seamless transfer of collective bargaining obligations into the hands of a new owner of a previously organized business if there has been a sale or transfer of that business.* There can be little doubt that this Board sees successorship as a vehicle for the preservation, not expansion, of collective bargaining rights. *Thus, successorship applications are examined to determine whether or not any previously unrepresented employees are being intentionally or unintentionally "swept into" the bargaining unit and/or whether or not sweeping-in is pragmatically unavoidable. If a successorship application will have the effect of sweeping-in new employees, the Board's practice is to conduct a representational vote unless the number of employees being swept-in is very small in relation to an "overwhelming" number of employees in the existing*

[2] *Saskatchewan Co-operative Association Limited and United Food and Commercial Workers, Local 1400,* [2018] SLRBD No 33, 2018 CanLII 68443 (SK LRB) ("Saskatchewan Co-operative Assoc")

> *bargaining unit*[9]*. In all other scenarios, either a representational vote will be conducted or the bargaining unit will be restricted to avoid the sweeping-in effect.*
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> (Emphasis added)

[59] SGEU argues that a representational vote is not required and that the logic found in *Big Sky Rail* can be applied to order that the employees represented by the Unifor Bargaining Unit, which is significantly smaller than the SGEU bargaining unit, be swept into the SGEU Bargaining Unit. SGEU submits that this Board supported this approach in *Saskatoon Co-op.*

[60] SGEU argues that the case law has established if a trade union represents less than a threshold of 20% or 25% a representative vote would be unnecessary. At the time of filing the Agreed Statement of Facts, there were 6 members in the Unifor Bargaining Unit and 36 members in the SGEU bargaining unit. Unifor there represents 14.2% of the consolidated unit. SGEU argues that there are simply too few employees in the Unifor Bargaining Unit to warrant a representation vote. While SGEU recognizes there may be special circumstances where a vote is ordered when the threshold is not met, there are no such unique or special circumstances in this case.[3]

[61] This Board agrees with SGEU. While this Board may not have yet settled upon a firm threshold which must be satisfied before it will direct a representation vote in circumstances of a successorship[4] this Board, and others, have declined to order a vote in cases where it is appropriate to do so if there was a significant disparity in the membership of the competing unions.[5] Therefore, while the Board retains discretion to order a representation vote for the purpose of determining which bargaining again will retain bargaining rights, the Board has generally speaking, not exercised this discretion where there is a "large disparity" in the size of the intermingled groups.

[62] As stated in *Community Highlands*, a decision of the Ontario LRB referred to in *Saskatoon Co-op* at paras 179 to 181: "the purposes of the Board's practice is a recognition of the realities of holding a representation vote where the vast majority of a bargaining unit's employees are represented by a particular bargaining agent." The Ontario LRB stated that it is "rare" for the

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[3] An example of such special circumstances is found in *Saskatoon Co-op*
[4] *Saskatoon Co-op Assoc* at para 182
[5] *Saskatoon Co-op*, at para 182. *Community Living Central Highlands v CUPE, Local 4603*, 2017 CarswellOnt 1668, [2017] OLRB Rep 22; *I.A.M. & A.W., Local 99 v O.E.M. Remanufacturing Co*., 2011 CarswellAlta 23, [2011] Alta LRBR 1, at para 195.

Board to order a vote when one trade union represents 80% of the intermingled unit of employees and that the *Mounted Police* decision does not change this. It said:

> *In my view, the [Mounted Police] decision has not altered this practice. Leaving aside that [Mounted Police] took place with completely different facts, that decision does not explicitly mandate representation votes in every case where an opportunity to order one arises or where employees' unions are changing regardless of other labour relations considerations. The purposes of the Board's practice is a recognition of the realities of holding a representation vote where the vast majority of a bargaining unit's employees are represented by a particular bargaining agent outside of an already legislative prescribed opportunity to change or get rid of unions (in the open period) and not to unduly disrupt the workplace when the result seems clear. Even if the Board was wrong about a likely outcome of the holding of a vote in a particular instance, unlike in the [Mounted Police], there is nothing to prevent employees later approaching another union, or any union might choose (in this case CUPE), from filing an application for certification to represent these employees during the open period, or for that matter to simply terminate the bargaining rights of any union (eg. OPSEU). Again, in my view, the [Mounted Police] decision does not mandate the timing of employee choice, but only that employee choice be available.*

[63] Unifor suggests a vote must nonetheless be ordered because we must be attentive to the *Charter* and employee choice.

[64] The Board agrees that the fundamental freedom of association enshrined in section 2(*d*) of the *Charter* is a relevant factor to consider in successorship cases as discussed in *Saskatoon Co-operative Assoc.* However, as this Board explained in *Extendicare,* while the Board in *Saskatoon Co-op* found that employee choice as identified in *Mounted Police* may be a relevant fact to consider in successorship case', "it did not decide that in all cases involving dual unionism a run-off vote is necessary."[6] Employee choice is not an absolute. Vice-Chair Mysko stated:

> ***[223]*** *Furthermore, the majority of the Supreme Court in Mounted Police made clear that employee choice is not an absolute, but is complementary to employee independence, both of which need to be considered "globally" to determine the "constitutional compliance of a labour relations scheme"[7]. If freedom of employee choice of bargaining agent was absolute, designated bargaining agent models (not preceded by votes) would not be constitutionally permissible. And, as explicitly stated by the majority, the "designated bargaining model …offers another example of a model that may be acceptable".[8]*
>
> *…*
>
> ***[225]*** *Moreover, it is not the case that the Board has not considered employee choice as "a relevant factor". The existing certification orders have been granted within a majoritarian regime. In the present case, employee choice of the CUPE bargaining unit has been considered, as was outlined in the Dorsey Report:*

[6] Para 222

[65] In *Saskatoon Co-op* this Board found that the threshold for determining whether a representation vote should be directed was "not particularly realistic".[9] There, the Board found that comparing the two "stark numbers" in the competing bargaining units was not an appropriate measure because the vast majority of the current employees of the employer who were represented by UFCW were in no way affected by what happened at the particular store at issue. As SGEU argues, that is not the case here.

[66] Unifor also argues that depriving the employees of choice is potentially more disruptive to labour relations than ordering a vote because, absent a vote, employees may feel embittered or ignored by not getting an opportunity to vote. The Board finds that there is no evidence to support this. It is merely argument and speculation.

[67] Unifor also argues that the number of employees eligible to vote should be the number as of the date of the Employer's Application (10 in the Unifor Bargaining Unifor and 38 in the SGEU Bargaining Unit). The employees in Unifor's Bargaining Unit therefore comprises 20.80% of the resulting Consolidated Unit. The parties also point out that as of the date of the filing of the Agreed Statement of Facts, the numbers were 6 for Unifor and 36 for SGEU. The employees in Unifor's Bargaining Unit therefore comprises 14.28% of the resulting Consolidated Unit.

[68] Unifor suggests that the date of the Employer's application is the relevant date for determining the number of employees in order to avoid any concerns of artificial gerrymandering. However, there was no evidence to suggest any sort of employer gerrymandering between the time of the Employer's Application and the date of the Agreed Statement of Facts.

Decision and Orders:

[69] The Board has determined that there are no special circumstances to depart from its general policy that only persons who were employed upon the date the application was filed and who remain employed until the date of the vote, are eligible to vote: *HSA of Saskatchewan and Royal University Hospital (Re)* 1993 CarswellSask 730, [1993] S.L.R.B.D. No. 53, [1993] 3rd Quarter Sask. Lab. Rep. 128, 20 C.L.R.B.R. (2d) 284. As stated by the Board in that case: "the general policy serves to keep the representation issue in the hands of the employees who have a legitimate interest in it…". Accordingly, the appropriate numbers to use are those that exist at the time of the filing of the Agreed Statement of Facts.

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[9] Para 190

[70] However, and in any event, whether the number is 20.80% or 14.2%, the number of employees being "swept-in" is very small in relation to the number of employees in the existing SGEU bargaining unit. The Board finds that this number does not require that a vote be ordered.

[71] The Board finds that there are no special or unique circumstances in the present case to cause the Board to order a vote where there is a significant disparity in the membership of the competing unions.

[72] Unifor and SGEU had agreed that whatever the outcome of the within application that each employee ought to be able to retain seniority and it ought to be dovetailed under the terms of the collective agreement that will ultimately be applied.

[73] This Board has held that where it orders that two or more bargaining units shall be combined, the Board acts to strike a "fair and reasonable compromise" for affected employees by dovetailing seniority lists: *Estevan Coal* at paras 19-20, *Extendicare* at paras 231-232; *Wolf Willow Lodge* at p. 8, *Saskatchewan Co-operative Assoc* at para 199.

[74] The Board has determined that it is appropriate for it to make an order for the dovetailing of seniority on the merger of the two bargaining units, and such an order will be made in this instance.

[75] For the foregoing reasons, the Board will make an Order pursuant to subsection 6-18(4) of *SEA*, that the SGEU bargaining unit be certified as the appropriate bargaining unit without the need for a representation vote, and the Unifor bargaining unit be swept-in into the SGEU bargaining unit.

[76] The Board therefore orders that the SGEU Order LRB File No. 119-05 and Unifor Order LRB File No. 035-21 be rescinded and replaced with a single certification order in favour of SGEU for a bargaining unit described as follows:

> (a) that all employees of The Technical Safety Authority of Saskatchewan in the Province of Saskatchewan, excluding those represented by the International Brotherhood of Electrical Workers, Local 2067 with respect to the Order in LRB File No. 169-24 and the following employees: Chief Executive Officer, Vice-President, Corporate Services and Chief Financial Officer, Chief Inspector, Manager-Boiler and Pressure Vessel Safety Services, Manager-Elevator and Amusement Ride Services, Manager-Electrical Inspections, Manager-Gas Inspections,, Manager-Human Resources, Manager-Human Resources Projects, Design Survey Engineer, Human Resources Consultant, Compensation Specialist, and Human Resources Assistant, is an appropriate unit for the purpose of bargaining collectively;

(b) that SGEU a union within the meaning of *The Saskatchewan Employment Act,* represents a majority of employees in the bargaining unit set out in paragraph (a);

(c) that The Technical Safety Authority of Saskatchewan, the employer, bargain collectively with the union set out in paragraph (b), with respect to the bargaining unit set out in paragraph (a).

[77] The Board will issue an order that every employee covered by Board certification orders LRB File No. 119-05 and LRB File No. 035-21 is entitled to retain the seniority they have earned in their former appropriate bargaining unit and to have such seniority recognized and dovetailed under the terms of the SGEU collective agreement.

[78] The Board thanks the parties for the helpful submissions they provided, all of which were reviewed and considered in making a determination in this matter.

[79] This is a unanimous decision.

DATED at Regina, Saskatchewan, this **19th** day of **September, 2024.**

LABOUR RELATIONS BOARD

Carol L. Kraft
Vice-Chairperson