CONSTRUCTION AND GENERAL WORKERS' UNION LOCAL 180, Applicant v PNR RAILWORKS INC., Respondent

LRB File No. 211-24; April 16, 2025
Vice-Chairperson, Carol L. Kraft; Board Members: Randy Powers and Al Parenteau
Citation: *CGW Union Local 180 v PNR Railworks Inc.,* 2025 SKLRB 20

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Application for Certification – Union applied under General Division – Employer arguing application must be made under Division 13 of Part VI of the Act as vast majority of work is construction – Employer's argument contrary to Section 6-64(2) of the Act which provides that nothing in Division 13 precludes a union from seeking an order for a multi-trade unit or an all-employee unit – Board finds bargaining unit applied for to be appropriate – Union's Application granted

REASONS FOR DECISION

Background:

[1] **Carol L. Kraft, Vice-Chairperson:** These are the Board's Reasons for a Decision in relation to a Certification Application brought by Construction and General Workers Union, Local 180, ("Local 180" or "the Union") for a bargaining unit of employees of PNR Railworks Inc. ("PNR") filed with the Board November 5, 2024.

[2] Local 180 is a union under *The Saskatchewan Employment Act* (the "Act"). It is the designated bargaining agent for the trade divisions of labourers pursuant to Part VI, Division 13 of the Act. It is also certified for all employee bargaining units, including one of employees of A&B Rail Contractors Ltd., which is a rail contractor operating in the same industry as PNR.

[3] Local 180 applied to be certified for the following bargaining unit of employees of PNR:

> *All employees except office, clerical and those employed in the signals and communication division*

[4] PNR is a railroad contractor which operates in Alberta, Saskatchewan, British Columbia, Ontario and Quebec.

Evidence:

[5] The Union called one witness, Shane Sali. Sali is the Business Manager and Secretary Treasurer for Local 180. He has been in that role since May 1, 2020, and has been employed by Local 180 since 2014. He was initially hired to start the apprenticeship program and once that was completed, he moved on to dispatcher business agent and then finally to his current role.

[6] Prior to the working for Local 180, Sali worked as a labourer in construction. He is also a journeyperson crane operator.

[7] In examination in chief, Sali was asked about Local 180's experience with rail contractors. He said that Local 180 is certified for an all employee bargaining unit for employees of A&B Rail Contractors Ltd., which is a rail contractor operating in the same industry as PNR. He said a recurring collective bargaining agreement applies to them and it is bargained through Local 92 in Alberta.

[8] Based on his interaction with A&B Rail, he said that the work typically performed by them is railway maintenance and construction.

[9] Sali was referred to an employee list for PNR. It described the trade disciplines of the workers listed therein as labourers, trackman, foreman and operator. Sali was asked how the list from PNR compares to the workers from A&B Rail, and he said it was identical.

[10] PNR called one witness, Larry McKay ("McKay"). McKay is the General Manager of PNR. He has been in that position since 2019. Prior to PNR, McKay had completed a 36 year career with CN Rail in a number of positions within the engineering group, where he started out as a labourer and worked his way up through management and various positions in management, ending up as Manager of Safety and Training for CN for North America.

[11] McKay described his division within PNR as "track". He testified that he takes care of construction, inspection, maintenance and repairs. From a rail contracting perspective, he said they do anything that has rail, from Class 1 railroads, CN and CP in western Canada, to multitude of industrial customers across the West, to light rail transit in Calgary and Edmonton.

[12] With respect to the signal and communications division, McKay testified that he is not responsible for this division and they do not report to him. He said they did not have people based

in Saskatchewan and that there is a handful or less of people who work in Saskatchewan on an "as job basis".

[13] McKay was asked in examination in chief what work PNR was performing on November 4, 2024, the date of the Application. First, he described the CN Jansen BHP Job which involved the construction of 28.6 miles of a spur track to connect CN's mainline to the BHP Potash mine site ("BHP Jansen"). The agreement between PNR and Canadian National Railway Company regarding this work was made February 22, 2024. He said that 30 to 31 people were working on this project.

[14] McKay was asked whether these employees were doing any maintenance work. He said that they were doing "zero" maintenance work. He said the BHP Jansen site was 100% construction. He said there was one day when they needed to borrow two people to come down to work on a broken rail, but all work at BHP Jansen was construction.

[15] Second, McKay described a project for Nutrien at the Cory location. He said they had eight or nine employees doing construction work there. He said it was a large construction job involving six tracks and 12 to 13 turnouts. He said this job started in the fall of 2023 and continued until late January 2024, when they shut down for winter. They came back to work again in the Spring of 2024.

[16] Third, he described a smaller construction job for Secure Energy just outside of Saskatoon. This involved a small track of 400 to 500 feet which had been out of service. PNR installed new ties and a double switch point in order for the track to be opened up to CN to switch for Secure Energy.

[17] Fourth, he described work for Nutrien at the Allan location. McKay said they were finishing up at Allan so a small group, six or seven people, were installing new anchors on a track in order to get the track up to standard requirements. He said this job started some time in June 2024 and carried on until mid November 2024. He said it has not yet started up again because there is still a significant amount of snow out there. He said they hope to start up again at the end of April 2025.

[18] Fifth, he described work arising from a three year contract signed in September 2024 with Evraz. He said they have five people on site. They are responsible for repairing defective track materials and for doing some maintenance as well. They also bring in someone once a month to do inspections for a couple of days.

[19] McKay described the job classifications of the 41 employees on the list of employees PNR sent to the Board. He said they have machine operators that operate various equipment, on and off track; labourers who operate hand tools, power tools, some small equipment on track; mechanics who help do all the repairs of all the equipment. He said the "trackmen" classification is similar to the "labourer" classification. He described it as "trackmen/labourer".

[20] McKay was asked whether employees might do construction and maintenance work on particular projects, or whether it would depend on what type of assignments they have. He said the nature of the rail contracting business, from PNR's perspective, is that people need to be very versatile, so the more training and experience that an employee can bring to the table, the more it benefits PNR and its customers. He said:

> *We're all over the map as far as when we can do things, it saves us and the customer from a timing perspective – to be able to, instead of having to bring in a construction crew, take out a maintenance crew, vice versa, everybody just basically works on everything, so we augment the crew based on the work and what the customer is looking for on a regular basis – it's a day to day basis.*

[21] When asked how many projects PNR had in Saskatchewan at the present time, McKay said they have one person driving to the BHP Jansen job that morning to check out the crossings and they have five people at Evraz doing maintenance.

[22] In cross examination, McKay was asked to clarify the difference between a labourer and operator. He said an operator typically is someone who has spent enough time on a certain machine to be proficient in operating that machine, and they've had someone sign off within their group that they can do that. Then the labourers or track people, as they're working to become operators, they'll have time when they can get into a machine and they'll be mentored and be able to slowly learn how to operate equipment as well, so kind of a natural progression.

[23] McKay said it was part of PNR's business model to use both operators and labourers and that their work is very much interchangeable.

[24] When asked if it was fair to say that PNR does not have separate construction or maintenance groups, McKay testified that they have people who specialize in that and are more proficient, but they certainly have flexibility and people move from one to the other.

[25] In his sworn Reply to the June 7, 2024 certification application (LRB File 099-24), McKay stated the following:

> *"[D]ue to the nature of PNR's business, there is significant fluidity between maintenance and construction projects, as well as fluidity between employee classifications. A construction industry certification would unduly fragment PNR's employees in Saskatchewan, introduce unnecessary labour relations difficulties and disruptions, and would be incredibly difficult for PNR to manage on a day-to-day basis.*

[26] When asked if this had changed since he gave that sworn evidence, McKay said "the fluidity is very much the same."

[27] In that same Reply, McKay stated: "While PNR is engaged in limited construction activities, PNR's business is more aptly characterized as railway maintenance or rehabilitation rather than railway construction."

[28] When asked if PNR's business changed substantially since that time, McKay said it had changed. He said that from June 7, 2024, they took on a major component of track construction. He said that last year was their biggest year in over 11 years because of track construction.

Argument on behalf of PNR:

[29] By way of background, PNR notes that the Union has filed a total of three Applications for Bargaining Rights with respect to PNR's Saskatchewan operations between February and November, 2024. The first application was filed in February 2024 pursuant to the general provisions of the Act (the "First Application"), and the second was filed in May 2024 pursuant to the construction industry provisions (i.e. Division 13) of the Act (the "Second Application"). The instant application is again filed pursuant to the general provisions of the Act.[1]

[30] PNR argues that the relevant time frame to consider the nature of the work performed by employees of PNR was at the date of the application for certification, namely, November 5, 2024. PNR argues that except for a small portion of maintenance work, the work performed by PNR was construction work. Accordingly, it argues that the proposed bargaining unit is inappropriate given that it was made outside of Division 13 of Part VI of the Act. It says an all employee unit under the General Division of the Act is inappropriate.

[31] PNR argues that because the Second Application was made less than 12 months prior to the current application, that Local 180 is statutorily barred from applying to certify under Division

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[1] PNR's application to the Board pursuant to s. 6-12(3) of the Act requesting that the Board refuse to direct a vote in the present application was denied: *Construction & General Workers' Local Union No. 180 v PNR Railworks Inc.*, 2024 CanLII 120015 (SK LRB).

13 of the Act pursuant to section 6-12(3) of the Act. Therefore, PRN argues, Local 180's application for certification ought to be dismissed.

[32] PNR argues that the bargaining unit applied for is inappropriate for the following reasons:

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a. That the vast majority of the work performed by PNR's employees on and around the date the certification application was filed was construction work; and

b. Given that PNR's work in Saskatchewan consists of a mix of both construction and maintenance (i.e. non-construction) work, and that PNR's employees may be engaged in either construction and maintenance work minute-by-minute, the applied for bargaining unit would result in significant administrative difficulties (if not impossibilities) and labour relations instability, and is therefore inappropriate.

[33] PNR further argues that the Board's usual practice with respect to non-construction industry bargaining units is to define such bargaining units with reference to the specific municipalities where the work was performed, and that there are no reasons to deviate from that practice in this case should the Board find that a non-construction bargaining unit would be appropriate.

Relevant Statutory Provisions:

[34] The relevant provisions from the Act are as follows:

> ***Acquisition of bargaining rights***
> ***6-9****(1) A union may, at any time, apply to the board to be certified as bargaining agent for a unit of employees appropriate for collective bargaining if a certification order has not been issued for all or a portion of that unit.*
>
> *(2) When applying pursuant to subsection (1), a union shall:*
>
> *(a) establish that 45% or more of the employees in the unit have within the 90 days preceding the date of the application indicated that the applicant union is their choice of bargaining agent; and*
>
> *(b) file with the board evidence of each employee's support that meets the prescribed requirements.*
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> ***6-11****(1) If a union applies for certification as the bargaining agent for a unit or a portion of a bargaining unit or to move a portion of one bargaining unit to another bargaining unit, the board shall determine:*
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> *(a) if the unit of employees is appropriate for collective bargaining; or*

(b) in the case of an application to move a portion of one bargaining unit to another bargaining unit, if the portion of the unit should be moved.

(2) In making the determination required pursuant to subsection (1), the board may include or exclude persons in the unit proposed by the union.

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

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

(a) the employer and union make an irrevocable election to allow the supervisory employees to be in the bargaining unit; or

(b) the bargaining unit determined by the board is a bargaining unit comprised of supervisory employees.

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

(a) continues to be a member of a bargaining unit until excluded by the board or an agreement between the employer and the union; and

(b) is entitled to all the rights and shall fulfil all of the responsibilities of a member of the bargaining unit.

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

(7) In making the determination required by subsection (1) as it relates to the construction industry within the meaning of Division 13, the board shall:

(a) make no presumption that a craft unit is the more suitable unit appropriate for collective bargaining; and

(b) determine the bargaining unit by reference to whatever factors the board considers relevant to the application, including:

(i) the geographical jurisdiction of the union making the application; and

(ii) whether the certification order should be confined to a particular project.

Representation vote

6-12*(1) Before issuing a certification order on an application made in accordance with section 6-9 or amending an existing certification order on an application made in accordance with section 6-10, the board shall direct a vote of all employees eligible to vote to determine whether the union should be certified as the bargaining agent for the proposed bargaining unit.*

(2) Notwithstanding that a union has not established the level of support required by subsection 6-9(2) or 6-10(2), the board shall make an order directing a vote to be taken to determine whether a certification order should be issued or amended if:

(a) the board finds that the employer or a person acting on behalf of the employer has committed an unfair labour practice or has otherwise contravened this Part;

(b) there is insufficient evidence before the board to establish that 45% or more of the employees in the proposed bargaining unit support the application; and

(c) the board finds that sufficient evidence of support mentioned in clause (b) would have been obtained but for the unfair labour practice or contravention of this Part.

(3) Notwithstanding subsection (1), the board may refuse to direct the vote if the board has, within the 12 months preceding the date of the application, directed a vote of employees in the same unit or a substantially similar unit on the application of the same union.

DIVISION 13
Construction Industry
Subdivision 1
Preliminary Matters for Division
Purpose of Division

6-64*(1) The purpose of this Division is to permit collective bargaining to occur in the construction industry on the basis of either or both of the following:*

(a) by trade on a province-wide basis;

(b) on a project basis.

(2) Nothing in this Division:

(a) precludes a union from seeking an order to be certified as a bargaining agent for a unit of employees consisting of:

(i) employees of an employer in more than one trade or craft; or

(ii) all employees of the employer; or

(b) limits the right to obtain an order to be certified as a bargaining agent to those unions that are referred to in a determination made by the minister pursuant to section 6-66.

(3) This Division does not apply to an employer and a union with respect to a certification order mentioned in subsection (2).

(4) If a Unionized employer becomes subject to a certification order mentioned in subsection (2) with respect to its employees, the employer is no longer governed by this Division for the purposes of that bargaining unit.

(5) If there is a conflict between a provision of this Division and any other Division or any other Part of this Act as the conflict relates to collective bargaining in the construction industry, the provision of this Division prevails.

Interpretation of Division
6-65 *In this Division:*

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

(i) means the industry in which the activities of constructing, erecting, reconstructing, altering, remodelling, repairing, revamping, renovating, decorating or demolishing of any building, structure, road, sewer, water

> *main, pipeline, tunnel, shaft, bridge, wharf, pier, canal, dam or any other work or any part of a work are undertaken; and*
>
> *(ii) includes all activities undertaken with respect to all machinery, plant, fixtures, facilities, equipment, systems and processes contained in or used in connection with a work mentioned in subclause (i), but does not include maintenance work;*

Analysis and Decision:

[35] The sole issue before the Board is whether the bargaining unit applied for is appropriate. While PNR argues that the certification application must be brought under Division 13 of Part VI of the Act because the majority of the work being performed by PNR at the date of the application was construction, the Board finds that the jurisprudence is clear that all employee units are appropriate units in construction: *Communications, Energy and Paperworkers Union of Canada v. J.V.D. Mill Services Inc*., 2011 CanLII 2589 (SK LRB) ("*JVD Mill*") at para 139.

[36] The Union bears the onus on a certification application to establish that the proposed bargaining unit is appropriate: *International Union of Operating Engineers, Hoisting & Portable & Stationary, Local 870 v KDM Constructors*, 2021 CanLII 77359 (SK LRB) [*KDM*], at para 62.

[37] It is well established that in assessing the appropriateness of a bargaining unit, the Board's task is not to determine whether the bargaining unit applied for is the most appropriate bargaining unit, but whether it is an appropriate bargaining unit: *International Brotherhood of Electrical Workers, Local 2038 v Tron Construction & Mining Inc*., 2023 CanLII 27425 (SK LRB) [Tab 1] ("Tron") at para. 48.

[38] Local 180 applies to be certified for the following bargaining unit of employees of PNR:

> *All employees except office, clerical and those employed m the signals and communication division.*

[39] Local 180 is a union under the Act. It is the designated bargaining agent for the trade divisions of labourers pursuant to Part VI, Division 13 of the Act. It is also certified for all-employee bargaining units, including one of employees of A & B Rail Contractors Ltd., a rail contractor operating in the same industry as PNR.

[40] PNR is a railroad contractor which operates in Alberta, Saskatchewan, British Columbia, Ontario and Quebec. Local 180's sister Local No. 92 is the certified bargaining agent for a

bargaining unit in Alberta which largely parallels the one applied for. PNR operates under a modified version of a collective agreement previously negotiated by A & B Rail in Alberta.

[41] PNR's track work (the work of the subject bargaining unit) includes a mix of construction, repair, maintenance and service work, both across sites and in some cases within the same site.

[42] The primary trades within the bargaining unit applied for are labourers, trackmen and equipment operators. The location and nature of PNR's work varies depending on which projects it is performing at a particular time, and is not limited to any particular plant, shop or municipality.

[43] PNR performs separate communication and signal work through another division, and also has office and clerical staff. These employees are not proposed to be included in the scope of the bargaining unit, and there was no evidence to suggest their work overlaps meaningfully with that of bargaining unit members or that an appropriate bargaining unit should include them.

[44] The Board's agent has conducted a vote via electronic means in December 2024 (the "Vote"), and the Vote remains to be tabulated. Local 180 took no issue with the employee list that had been supplied by PNR, and neither party filed an Objection to the Conduct of Vote or Counting of Ballots after the conclusion of the voting period.

General Certification:

[45] The bargaining unit applied for is an all-employee unit under the general certification provisions of the Act, subject only to the exclusions described above. PNR's position appears to be based largely on the misapprehension that a general certification must exclude construction work. PNR argues that because the majority of the work performed by PNR at or around the time of the Union's certification application was construction work, that the Union should have applied under Division 13 of Part VI of the Act.

[46] This argument is, however, contrary to s. 6-64 of the Act and the decisions of the Board regarding s. 6-64 of the Act. Section 6-64 allows for the organization of construction workers under the general provisions of the Act as follows:

> ***6-64****(2) Nothing in this Division:*
>
> > *(a) precludes a union from seeking an order to be certified as a bargaining agent for a unit of employees consisting of:*
> >
> > > *(i) employees of an employer in more than one trade or craft; or*
> > > *(ii) all employees of the employer; or*

> *(b) limits the right to obtain an order to be certified as a bargaining agent to those unions that are referred to in a determination made by the minister pursuant to section 6-66.*
>
> *(3) This Division does not apply to an employer and a union with respect to a certification order mentioned in subsection (2).*
>
> *(4) If a unionized employer becomes subject to a certification order mentioned in subsection (2) with respect to its employees, the employer is no longer governed by this Division for the purposes of that bargaining unit.*

[47] In *JVD Mill* the Board interpreted the predecessor to these provisions. The Board concluded at para. 115 that the effect of the legislation was to introduce the option to allow for units other than craft units as appropriate for collective bargaining within the construction industry, and further held at para 133 (following a decision of the British Columbia Industrial Relations Council) that craft unions were entitled to apply for certification under the general provisions.

[48] That principle was applied in the context of a mixed workplace in *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, Local 179 v. Reliance Gregg's Home Services*, 2018 CanLII 127680 (SK LRB), reconsideration allowed on other grounds 2019 CanLII 120618 (SK LRB). While the applicant union argued that the bargaining unit should be certified pursuant to Part VI, Division 13, the Board held at para. 47 that it was equally appropriate for such a unit to be certified under the general procedure:

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

[49] Applying this reasoning, the Board held that the appropriate bargaining unit was the one which could be certified under the general certification procedure, such as to avoid separating bargaining units based on the nature of the work performed: para. 56, 66.

[50] The Board has thus determined as a matter of both principle and practice that a bargaining unit respecting employees of an employer which performs both construction and non-construction work may be appropriate.

[51] In *Tron* at para. 49, the Board referred to the relevant legal principles for determining whether a proposed bargaining unit is appropriate outlined in *North Battleford Community Safety Officers Police Association v City of North Battleford*, 2017 CanLII 68783 (SK LRB):

> ***[54]*** *Not surprisingly, the Board has considered this issue in numerous cases, many of which were cited by both the Applicant and the City. The brief review which is undertaken here is not intended to be exhaustive. Rather, it will provide a general over-view of the relevant considerations this Board should take into account when determining what qualifies as an appropriate bargaining unit in a particular situation. For present purposes, the Board has identified four (4) relevant legal principles.*
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> ***[55]*** *First, the Board should scrutinize the bargaining unit that has been proposed by the union in question from the perspective of whether it is appropriate for purposes of future collective bargaining with an employer. The central question is whether it is an appropriate unit, not the optimal one. In Canadian Union of Public Employees v Northern Lakes School Division No. 64 [Northern Lakes School Division], the Board framed this inquiry as follows:*
>
> > *The basic question which arises for determination in this context is, in our view, the issue of whether an appropriate bargaining unit would be created if the application of the Union were to be granted. As we have often pointed out, this issue must be distinguished from the question of what would be the most appropriate bargaining unit.*
> >
> > *The Board has always been reluctant to deny groups of employees access to collective bargaining on the grounds that there are bargaining units which might be created, other than the one which is proposed, which would be more ideal from the point of view of collective bargaining policy. The Board has generally been more interested in assessing whether the bargaining unit which is proposed stands a good chance of forming a sound basis for a collective bargaining relationship than in speculating about what might be an ideal configuration.*
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> ***[56]*** *Second, generally speaking the Board's preference is for larger, broadly based units so as to avoid issues of certifying an under-inclusive unit. In Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v O.K. Economy Stores (A Division of Westfair Foods Ltd.) [O.K. Economy] a case cited by both the Applicant and the City, former Vice-Chairperson Hobbs explained this preference as follows at page 66:*
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> > *In Saskatchewan, the Board has frequently expressed a preference for larger and few bargaining units as a matter of general policy because they tend to promote administrative efficiency and convenience in bargaining, enhance lateral mobility among employees, facilitate common terms and conditions of employment, eliminate jurisdictional disputes between bargaining units and promote industrial stability by reducing incidences of work stoppages at any place of work (see [United Steel Workers of America v Industrial Welding (1975) Limited, 1986 Feb. Sask. Labour Rep. 45]). . . .*
> >
> > *This does not mean that large is synonymous with appropriate. Whenever the appropriateness of a unit is in issue, whether large or small, the Board must examine a number of factors assigning weight to each as circumstances arise.*
>
> ***[57]*** *Third, this Board has identified, and regularly applied, a number of relevant factors, of which size of the proposed unit is but one, to determine whether the proposed unit is an appropriate unit for purposes of bargaining collectively with the employer. Those factors were helpfully enumerated in O.K. Economy as follows, again at page 66:*

> *Those factors include among others: whether the proposed unit of employees will be able to carry on a viable collective bargaining relationship with the employer; the community of interest shared by the employees in the proposed unit; organizational difficulties in particular industries; the promotion of industrial stability; the wishes or agreement of the parties; the organizational structure of the employer and the effect that the proposed unit will have upon the employer's operations; and the historical patterns of organization in the industry.*
>
> *The Board recognizes that there may be a number of different units of employees which are appropriate for collective bargaining in any particular industry.*

[58] *Fourth, units that may be characterized as "under-inclusive" may be certified as appropriate in certain circumstances. The leading case on this issue appears to be Graphic Communications International Union, Local 75M v Sterling Newspapers Group, a Division of Hollinger Inc. [Sterling Newspapers Co.]. In this decision, former Chairperson Gray on behalf of the majority of the Board (Member Carr dissenting), reviewed the Board's prior jurisprudence on under-inclusive units, including authorities cited by counsel in this matter such as Canadian Union of Public Employees, Local 1902-08 v Young Women's Christian Association et al., and Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Saskatchewan Centre of the Arts. She summarized her analysis as follows at para. 34:*

> *From this review of cases, it would appear to the Board that under-inclusive bargaining units will not be considered to be appropriate in the following circumstances: (1) there is no discrete skill or other boundary surrounding the unit that easily separates it from other employees; (2) there is intermingling between the proposed unit and other employees; (3) there is a lack of bargaining strength in the proposed unit; (4) there is a realistic ability on the part of the Union to organize a more inclusive unit; or (5) there exists a more inclusive choice of bargaining units.*

[52] The Board agrees with the Union's assertion that in the present case each of the factors set out in *Sterling* favours a finding that the bargaining unit applied for is appropriate. The evidence in this regard is summarized by the Union as follows:

> *15. The evidence of Larry McKay confirmed that the work of the track division is separate from both that of office and clerical staff, and that of the communication and signal division. There are clear dividing lines between these groups of employees, and no evidence was presented of any intermingling.*
>
> *16. The bargaining strength of the proposed unit cannot reasonably be challenged, particularly since each of the alternative units proposed by PNR would be smaller. The evidence before the Board establishes that the unit applied for parallels both the organization of A & B Rail in Saskatchewan, and PNR itself in Alberta.*
>
> *17. Finally, there is no evidence to suggest that a more inclusive or more appropriate unit can realistically be organized. Shane Sali's unchallenged testimony was to the effect that in the course of organizing, PNR's payroll and office operations were offsite and no communications and signal employees were on the work sites being organized.*
>
> *18. Indeed, PNR's position does not suggest that any more inclusive bargaining unit is possible: to the extent it points to any other possibilities, they involve reduced geographic jurisdiction or scopes of work. The bargaining unit applied for by Local 180 is actually the*

> *largest of the units proposed before the Board, and thus the most appropriate unit within the meaning of the Sterling test.*

[53] PNR argued that given its work in Saskatchewan consists of a mix of both construction and maintenance (i.e. non-construction) work, and that PNR's employees may be engaged in either construction and maintenance work minute-by-minute, the applied for bargaining unit would result in significant administrative difficulties (if not impossibilities) and labour relations instability, and is therefore inappropriate. PNR does not elaborate on such administrative difficulties or labour relations instability. On the contrary, the evidence suggests administrative efficiencies and labour relations stability would be more difficult if the bargaining unit was confined to construction under Division 13. In this regard, the Board notes, for example, the evidence of Mr. McKay, referred to in paragraph 25 herein.

Work to be Considered:

[54] While McKay characterized the vast majority of the work done by PNR as construction, as opposed to maintenance, McKay also gave evidence that due to the nature of PNR's business, there is significant fluidity between maintenance and construction projects, as well as fluidity between employee classifications. Based on his testimony, it is apparent that it is important to the efficiency of the business to utilize and encourage this flexibility. In any event, based on the principle set out in the above cases, the question of whether PNR performed more construction or maintenance work at any particular time is largely immaterial. Even if PNR's work consisted primarily or even entirely of construction work, the Act and the Board's precedents allow for a bargaining agent to be certified under the general provisions.

[55] Further, the Board does not limit its analysis to the work being performed on the date of a certification application as argued by PNR. Instead, it looks to a period of time preceding the application which is "reasonably representative of normal responsibilities": *JCT Industrial Inc. v United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada,* 2022 CanLII 122753 (SK LRB) at para. 95.

[56] PNR has performed work in Saskatchewan for a number of years, including both construction and maintenance work depending on what had been awarded to it. McKay testified that while PNR had taken on a substantial amount of additional construction work between June and November 2024, that difference was a departure from its usual work patterns.

[57] Moreover, even in the time frame immediately prior to the Certification Application, the fact that the work actually performed by PNR includes both construction and maintenance work was recognized by McKay in the course of his evidence, despite his applying a significantly more strict test for maintenance work than that applied by the Board. (See in this respect *United Association of Journeyman and Apprentices of the Plumbing and Pipefittng Industry of the United States and Canada, Local 179 v Andritz Hydro Canada Inc.,* 2021 CanLII 4217 (SK LRB) at para. 109-110.)

[58] In particular, Mr. McKay recognized both PNR's three-year contract at Evraz and the scope of one statement of work with Nutrien as consisting largely or entirely of maintenance work.

Geographic Scope:

[59] *JVD Mill* also addressed the question of what geographic scope was appropriate for an all-employee unit of construction industry employees, under circumstances where the certification application was based on current work at a single site (as well as prior work at one further site). The Board held as follows at para. 175-176 in holding that a province-wide certification was appropriate:

> *Province-wide bargaining has been the norm in the construction industry for many years now. Employees are accustomed to being able to move freely throughout the province without regard to changes that may occur in the nature of their. bargaining relationship by virtue of a change in the location of their employment in the Province. It also allows employers to know with some certainty the terms on which they may tender for work throughout the Province and understand the various costs for manpower resultant therefrom.*
>
> *There is no compelling argument to confine this certification as suggested by the Intervenors. Certifications under the CILRA are generally province-wide and contracts negotiated are similarly province-wide. Employees who are members of the Intervenor Unions have the benefits of province-wide mobility and stability in their employment situation. Construction workers in a non-trade union should enjoy that same mobility and stability of employment situation.*

[60] Following this reasoning, the Board rejected the applicant union's argument that site-specific certifications were appropriate in *United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 179 v Yorkton Plumbing and Heating Ltd./YPH Mechanical*, 2019 CanLII 43226 (SK LRB). The Board held in keeping with *JVD Mill* that province-wide certifications are "the norm" for construction work, subject only to the geographic jurisdiction of a union and the ability to make a determination to the contrary based on the *Sterling* factors discussed above: para. 83-84.

[61] The evidence before the Board is that there are no limitations on the geographic scope of PNR's work in Saskatchewan other than where it is awarded work to perform. Aside from an office at the Evraz facility (whose staff would be excluded from the bargaining unit in any event), PNR does not have any permanent plant or shop of such a nature as to warrant a site-specific certification. To the contrary, its work - whether in construction or maintenance - is of precisely the temporary, itinerant nature which normally results in construction work resulting in province-wide certifications. Accordingly, the Board finds that a province-wide certification is appropriate.

Conclusion:

[62] Based on all of the evidence presented, and taking into account all of the foregoing, the Board concludes that a certification for the bargaining unit proposed by the Union should issue.

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

[64] As a result, with these Reasons, an Order will issue that the Application for Certification in LRB File No. 211-24 is granted.

DATED at Regina, Saskatchewan, this **16th** day of **April, 2025.**

LABOUR RELATIONS BOARD

Carol L. Kraft
Vice-Chairperson