THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 160 and THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 882, Applicants v THE PRINCE ALBERT MANAGEMENT ASSOCIATION, Respondent and THE CITY OF PRINCE ALBERT, Respondent

LRB File Nos. 229-24, 057-25 & 058-25; July 7, 2025
Chairperson, Kyle McCreary; Board Members: Hugh Wagner and Al Parenteau
Citation: *CUPE v PAMA*, 2025 SKLRB 29

For the Applicants, CUPE Locals 160 & 882:	Craig Thebaud
For the Respondent, The Prince Albert Management Association:	Tim Yeaman and Tim Earing
For the Respondent, The City of Prince Albert:	Kiley Bear and Kevin Yates

Reconsideration – Standing – Party with direct interest may apply for Reconsideration even if not a part of original decision

Reconsideration - Appropriate Bargaining Unit – Reconsideration granted as application should have been pursuant to s. 6-10 and was not brought within the time limits imposed by section

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** The Canadian Union of Public Employees, Local 160 ("Local 160") and the Canadian Union of Public Employees, Local 882 ("Local 882"), have separately applied for reconsideration of the Board's decision in LRB File No. 229-24 to find the Prince Albert Management Association ("PAMA") an appropriate unit for bargaining with the City of Prince Albert ("the Employer"). The decision is reported as *PAMA v Prince Albert*, 2025 SKLRB 9.

[2] Local 160 and Local 882 raise effectively the same argument. Both locals argue that they should have had notice of the proceeding in LRB File No. 229-24, that the bargaining unit found in that proceeding includes positions within their respective bargaining units, and the application in LRB File No. 229-24 should have been brought pursuant to s. 6-10 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (the "Act"), instead of s. 6-9. Local 882 also argues that some of the positions in the PAMA unit were under review for inclusion in Local 882.

[3] PAMA and the Employer oppose the application for reconsideration on the basis that Local 160 and Local 882 received notice of the application in LRB File No. 229-24 at Union Management meetings and that the positions that would be in the PAMA unit have been bargained out of the scope of Local 160 and Local 882.

[4] Local 160 is certified to represent employees of the Employer through a Board Order in LRB File No. 069-64, with the following scope:

> *All employees employed by the City of Prince Albert, Saskatchewan, including storekeepers and water meter readers, dog catcher and pounder keeper, except those employed in the Police and Fire Departments and those represented by Prince Albert Civic Employees' Local Union No. 882, NUPE, but excluding the following:*
>
> | | |
> |---|---|
> | *City Commissioner,* | *Personnel Director,* |
> | *City Clerk,* | *Comptroller,* |
> | *City Engineer,* | *Water Plant Superintendent,* |
> | *Assistant City Engineers,* | *General Foreman,* |
> | *City Solicitor,* | *Water Works Foreman,* |
> | *City Treasurer,* | *Streets Foreman,* |
> | *City Assessor and Tax Collector,* | *Garage Foreman* |
> | *Director of Social Service,* | *Sanitation Foreman,* |
> | *Director of Recreation,* | *Parks Foreman, and* |
> | *License Inspector and Collector,* | *City Physician.* |

[5] Local 160 argues that none of the positions in the PAMA unit are excluded from Local 160's certification order. Local 160 has a collective bargaining agreement with the Employer with an expiry date of December 31, 2021, and has a Memorandum of Agreement with the Employer on a new collective bargaining agreement which, if ratified, will expire on December 31, 2025. The collective bargaining agreement excludes many of the positions that would be in the potential PAMA unit.

[6] Local 882 is certified to represent employees of the Employer through a Board Order in LRB File No. 118-22, with the following scope:

> *(59) that all employees employed by the City of Prince Albert, Saskatchewan, except:*

1. *Airport Manager*
2. *Assessment Manager*
3. *Assistant Director of Financial Services*
4. *Assistant Parks Manager*
5. *Battalion Chief*
6. *Business Systems Analyst*
7. *Capital Projects Manager*
8. *Chief Building Official*
9. *City Assessor*
10. *City Clerk*
11. *City Manager*
12. *City Solicitor*
13. *Communications Manager*
14. *Confidential Secretary*
15. *Coordinator – Health, Safety and Environment*
16. *Corporate Information Officer*
17. *Corporate Legislative Manager*
18. *Deputy Fire Chief*
19. *Director of Community Services*
20. *Director of Corporate Services*
21. *Director of Financial Services*
22. *Director of Planning & Development Services*
23. *Director of Public Works*
24. *Economic Development Manager*
25. *Engineering Services Manager*
26. *Executive Assistant*
27. *Executive Assistant – Financial Services*
28. *Facilities Manager*
29. *Finance Analyst*
30. *Finance Manager*
31. *Fire Chief*
32. *Fleet Manager*
33. *Golf Course Superintendent*
34. *Human Resources Coordinator*
35. *Human Resources Consultant*
36. *Information Technology Manager*
37. *Manager of Performance Management and Benchmarking*
38. *Marketing & Sponsorship Coordinator*
39. *Mechanical and Building Maintenance Manager*
40. *Network Support Officer*
41. *Operations Manager*
42. *Parks Manager*
43. *Payroll Manager*
44. *Planning Manager*
45. *Project Coordinator*
46. *Project Manager – Roadways*
47. *Purchasing Agent*
48. *Records Coordinator*
49. *Recreation Coordinator*

50. Recreation Manager
51. Roadways Manager
52. Sanitation Manager
53. Special Projects Manager
54. Surface Works Manager
55. Transportation & Traffic Manager
56. Utilities Manager
57. Waste Water Treatment Plant Manager
58. Water & Sewer Manager
59. Water Treatment Plant Manager

and those employed by the Prince Albert Board of Police Commissioners, those represented by the International Association of Fire Fighters Local 510, and those represented by the Prince Albert Civic Employees' Local Union No. 160, CUPE

[7] Local 882 identifies the following positions as included in the PAMA unit and not excluded from Local 882's certification order:

Fleet and Procurement Manager
Senior Utilities Manager
Senior Accounting Manager
Innovation & IT Manager
Manager of Planning and Development
Manager of Community and Well Being
Parks Operations Manager
Business Systems Team Lead
Corporate Information Manager
Health, Safety & Environment Coordinator
Infrastructure Systems Team Lead
Purchasing Manager
Financial Operations Manager
Bylaw Services Manager
Solutions Hub Manager
Infrastructure Systems Analyst
General Manager – EARC
Arts & Culture Manager
Maintenance Coordinator
Business & Sponsorship Manager
Asset and Data Manager
Audit Manager
Confidential Secretary (Human Resources)
Executive Assistant Mayor and City Manager
Recreation Coordinator Alfred Jenkins
Recreation Coordinator Aquatics
Recreation Coordinator Arts

[8] The Application in LRB File No. 229-24 represented that no other union claimed to represent any of the employees in the bargaining unit applied for.

[9] The Board cannot accept the full level of overlap identified by Local 882 without further evidence, as for example, Recreation Coordinator is number 49 in the Board's order and may arguably cover three of the positions Local 882 claims as not being excluded. To resolve this issue and the disputed scope of Local 882 cannot be done on the record before the Board. As this matter is being determined without further evidence beyond the application and replies, the focus of the analysis will be on Local 160's certification order as the conflict between the scope of that certification order and the proposed unit is clear on the record before the Board.

Relevant Statutory Provisions:

[10] The underlying application was made pursuant to s. 6-9, which reads:

> ***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.*

[11] Local 160 and Local 882 argue the application should have been made pursuant to s. 6-10, which reads:

> ***Change in union representation***
> ***6-10****(1) If a union has been certified as the bargaining agent for a bargaining unit, another union may apply to the board to be certified as bargaining agent:*
>
> > *(a) for the bargaining unit; or*
> >
> > ***(b) for a portion of the bargaining unit:***
> >
> > > ***(i) if the applicant union establishes to the satisfaction of the board that the portion of the bargaining unit that is the subject of the application should be separately certified as a unit appropriate for collective bargaining;*** *or*
> > >
> > > *(ii) if the applicant union is certified as the bargaining agent in another bargaining unit with the same employer or, in circumstances addressed in Division 14, with two or more health sector employers as defined in section 6-82 and the applicant union establishes to the satisfaction of the board that the portion of the bargaining unit that is the subject of the application should be moved into the other bargaining unit.*

(2) When making an application pursuant to subsection (1), a union shall:

(a) establish that:

(i) for an application made in accordance with clause (1)(a), 45% or more of the employees in the bargaining unit have within the 90 days preceding the date of the application indicated that the applicant union is their choice of bargaining agent; or

(ii) for an application made in accordance with clause (1)(b), 45% or more of the employees in the unit of employees proposed to be established or proposed to be moved from one bargaining unit to another 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.

(3) Subject to subsection (4), an application pursuant to subsection (1) must be made not less than 60 days and not more than 120 days before:

(a) the anniversary date of the effective date of the collective agreement; *or*

(b) if a collective agreement has not been concluded, the anniversary date of the certification order.

(4) With respect to an application made pursuant to subclause (1)(b)(ii), the application must be made not less than 60 days and not more than 120 days before:

(a) the anniversary date of the effective date of any of the collective agreements with an employer mentioned in that subclause; or

(b) the anniversary date of the effective date of any of the certification orders governing an employer mentioned in that subclause.

Reconsideration

Analysis and Decision:

[12] The Board has frequently relied on the test for reconsideration set out in *Remai Investment Corp. v Saskatchewan Joint Board, R.W.D.S.U.,* [1993] SLRBD No 50 (Sask LRB), LRB File No. 132-93 [Remai], at 4-5:

Though the Board has the power under Section 5(i) to reopen decisions it has arrived at, this power must be exercised sparingly, in our view, and in a way which will not undermine the coherence and stability of the relationships which the Board seeks to foster.

. . .

In the three jurisdictions we have alluded to above - Canada, British Columbia and Ontario - the recognition of the need to balance the claim for reconsideration against the value of finality and stability in decision-making is reflected in the procedures adopted by labour relations tribunals. In all of them, the procedure followed in connection with an application for reconsideration departs from the procedure employed for other kinds of applications. In

all three cases, the applicant is required to establish grounds for reconsideration before a decision is made whether a rehearing or some other disposition of the matter is appropriate.

We have concluded that such a two-step approach is appropriate in cases of this kind. We do not agree with counsel for the Employer that we were mistaken in requiring that an applicant who seeks reconsideration of a decision of the Board must persuade us that there are solid grounds for embarking upon that course.

. . .

In other jurisdictions, particularly in British Columbia, there has been extensive discussion of the criteria which labour relations boards might use to determine whether an applicant has been able to establish that there are grounds which justify the reopening of a decision. In their decision in the case of Overwaitea Foods v. United Food and Commercial Workers, No. C86/90, the British Columbia Industrial Relations Council set out the following criteria:

> *In [Western Cash Register v. International Brotherhood of Electrical Workers, [1978] 2 CLRBR 532], the Board articulated four criteria in which it would give favourable consideration to an application for reconsideration. Subsequent decisions (Construction Labour Relations Association of British Columbia, BCLRB No. 315/84, and Commonwealth Construction Co. Ltd., BCLRB No. 61/79, [1979] 3 Can LRBR 153), added a fifth and sixth ground:*
>
> *1. If there was no hearing in the first instance and a party subsequently finds that the decision turns on a finding of fact which is in controversy and on which the party wishes to adduce evidence; or,*
>
> *2. if a hearing was held, but certain crucial evidence was not adduced for good and sufficient reasons; or,*
>
> *3. if the order made by the Board in the first instance has operated in an unanticipated way, that is, has had an unintended effect on its particular application; or,*
>
> *4. if the original decision turned on a conclusion of law or general policy under the Code which law or policy was not properly interpreted by the original panel; or,*
>
> *5. if the original decision is tainted by a breach of natural justice; or,*
>
> *6. if the original decision is precedential and amounts to a significant policy adjudication which the Council may wish to refine, expand upon, or otherwise change.*

[13] The Canadian Industrial Relations Board applies similar considerations on reconsideration, as discussed by the Federal Court of Appeal in *Rana v. Teamsters, Local Union No. 938*, 2020 FCA 190 (CanLII):

> *[9] Mr. Rana has also failed to demonstrate any reviewable error in the reconsideration decision. Reconsideration is an exceptional remedy. As the Board here recognized (citing Buckmire v. Teamsters Local Union 938, 2013 CIRB 700 at paras. 37-44), the main grounds on which the Board may reconsider a prior decision of a panel are:*

> *(1) new facts that the applicant could not have brought to the attention of the original panel and which would likely have caused the Board to arrive at a different conclusion;*
>
> *(2) an error of law or policy that casts serious doubt on the interpretation of the Code or Board policy; and*
>
> *(3) a failure of the Board to respect a principle of natural justice or procedural fairness.*

[14] While Local 882 and Local 160 both claim a breach of natural justice, the Board declines to reconsider on that basis. The lack of notice is contested by the Employer and would require an oral hearing to determine whether the locals receive notice from the Employer.

[15] The Board finds that the first criterion is met for reconsideration. The matter was determined without an oral hearing and it turns on an implied finding of fact that the employees in the potential unit were not already certified by the Board and that section 6-9 was available to PAMA as a method of certification. Or applying the test from the federal jurisprudence, Local 882 and Local 160 have brought new facts before the Board that they could not have brought at the first hearing as they were not a party to it. The scope of the Local 160 certification order likely would have caused the Board to arrive at a different decision.

Standing

[16] PAMA challenges the standing of Local 160 and Local 882 to seek reconsideration of the decision as they were not parties to the original decision and lack sufficient interest in the proceeding. The Board's power to reconsider its decisions is pursuant to s. 6-115 of the Act:

> ***No appeals from board orders or decisions***
> ***6-115****(1) Every board order or decision made pursuant to this Part is final and there is no appeal from that board order or decision.*
>
> *(2) The board may determine any question of fact necessary to its jurisdiction.*
>
> *(3) Notwithstanding subsections (1) and (2), the board may:*
>
> *(a) reconsider any matter that it has dealt with; and*
> *(b) rescind or amend any decision or order it has made.*
>
> *(4) The board's decisions and findings on all questions of fact and law are not open to question or review in any court, and any proceeding before the board must not be restrained by injunction, prohibition, mandamus, quo warranto, certiorari or other process or proceeding in any court or be removable by application for judicial review or otherwise into any court on any grounds.*

[17] The Board has adopted a procedure for reconsiderations that are initiated by application under s. 20 of *The Saskatchewan Employment (Labour Relations Board) Regulations*, RRS c S-15.1 Reg 11 (the "Regulations"):

> ***Application for reconsideration***
> *20(1) In this section, "application for reconsideration" means an application pursuant to subsection (2).*
>
> *(2) An employer, union or other person directly affected by a decision or order of the board may apply to the board to reconsider that decision or order.*
>
> *(3) An application for reconsideration must: (a) be in writing; and (b) be filed and served within 20 days after the date of the decision or order with respect to which reconsideration is sought.*
>
> *(4) An application for reconsideration must contain the following information:*
>
> > *(a) the full name and address for service of the party making the application for reconsideration;*
> >
> > *(b) the file number of the decision or order with respect to which reconsideration is sought;*
> >
> > *(c) the reasons the applicant believes the board ought to reconsider its decision or order;*
> >
> > *(d) a summary of the law on which the applicant intends to rely.*
>
> *(5) An application for reconsideration must be served by the applicant on any other parties named in the decision or order with respect to which reconsideration is sought.*

[18] The Regulations permit an employer, union or other person directly affected by a decision to bring an application for reconsideration. This permits parties that did not participate in the original hearing to bring an application for reconsideration if they can establish that they are directly affected by the decision. The Board finds that even without the overlap issue, a union that is already certified with an employer is directly affected by another union being potentially certified in the same workplace. The direct effect is the impact on bargaining scope and the potential for jurisdictional disputes that accompany an increased number of unions in a workplace. The Board finds that both Local 160 and Local 882 have standing to bring an application for reconsideration in this case.

Should the Application have been brought pursuant to Section 6-10

[19] The fundamental issue for the Board was whether the Board erred in law and in policy in processing PAMA's application pursuant to s. 6-9 and not s. 6-10. PAMA represented in its application that there was no union that claimed to represent the employees it sought to represent.

The Board processed the application under s. 6-9 of the Act. However, based on this Board's analysis in *Regina Exhibition Association Limited v Canadian Union of Public Employees*, 2024 CanLII 48251 (SK LRB) ("*Regina Exhibition Association Limited*"), where there is an existing certification order for some of the positions sought, the application must be made pursuant to s. 6-10.

[20] The requirement to apply under s. 6-10 where an existing certification order, even when the position have been excluded from the unit through bargaining, relates to first the wording of the sections and secondly to respect for the exclusive bargaining rights granted by a certification order. This was discussed by the Board in *Regina Exhibition Association Limited*:

> *[68] Pursuant to clause 6-13(2)(a), if a union is certified "as the bargaining agent for a bargaining unit", it has "exclusive authority to engage in collective bargaining for the employees in the bargaining unit and to bind it by a collective agreement until the order certifying the union is cancelled".*
>
> *[69] The union's exclusive authority is the foundation of the negotiating relationship with the employer and the rights and obligations that the union has in relation to the employees. Due to the union's exclusive authority, it is an unfair labour practice for the union to fail or refuse to engage in collective bargaining "respecting employees in a bargaining unit if a certification order has been issued for that unit":*
>
> > ***6-63****(1) It is an unfair labour practice for an employee, union or any other person to do any of the following:*
> >
> > *…*
> >
> > *(c) Ito fail or refuse to engage in collective bargaining with the employer respecting employees in a bargaining unit if a certification order has been issued for that unit;*
>
> *[70] CUPE suggests that, at the time of the certification order being issued, the Employer and RWDSU could not possibly have contemplated the creation of the surveillance officer position, and therefore, the certification order should be given less weight in delineating the scope of RWDSU's exclusive authority to collectively bargain. However, Wascana Rehabilitation and Donovel make clear that a position upon its creation is assigned to an all-employee bargaining unit, subject only to agreement or Board order. Whether the parties might have contemplated the creation of a particular position at the time of the certification order is of no consequence.*
>
> *[71] It would be impossible to administer inclusions and exclusions from all-employee units on the basis of what the parties might have contemplated at the time of the order. As explained by the Board in Wascana Rehabilitation, a critical consideration in opting for the "all-employee method was to avoid the endless applications which arose every time the employer reorganized, changed position titles or created new positions".[21] The all-employee method provides for certainty and practicality upon the creation of positions, and with that certainty and practicality, a degree of protection of employees' rights.*
>
> *[72] A related set of purposes underlies the exclusive authority of a union to collectively bargain for the employees included in the certification order. As the Employer points out:[22]*

. . .

> 10. *By way of explanatory example, if the CUPE Application were allowed to proceed, RWDSU could thereafter apply, with the requisite proof of support, to organize the managerial employees or confidential capacity employees within the purview of the existing bargaining units for which CUPE is the certified bargaining agent (or successor bargaining agent).*
>
> 11. *An employer responding to a certification application in such a scenario would be put to the task of justifying and defending the facts and legal conclusions supporting the out of scope status of the managerial or confidential capacity of the excluded employees, both to another union and before the Board.*
>
> 12. *Such a situation depends upon the underlying legal conclusion that bargaining rights are, in fact, not exclusive and that orders of the Board are not final and determinative.*
>
> 13. *As a matter of policy, there would be no certainty and therefore no benefit or purpose to negotiating the scope of a bargaining unit, let alone seeking the determination of the same by the Board, as another union could seek to represent the excluded employees. There would be no finality to the Board's orders and no stability to approved bargaining units.*

[73] It is not imperative that the Board be aware of the parties' reasons for excluding the surveillance officers. The Board has taken the approach of respecting the line drawn by the parties "unless there are other indications that the exclusion of positions relates to an issue of appropriateness".[23] As explained in SGEU:[24]

> *76 It is not always possible to know with certainty the grounds on which positions were excluded unless the Board has actually heard evidence and ruled on the inclusion or exclusion of positions from the bargaining unit. There is always a great deal of give and take in the design of bargaining units, both at the time of certification and on amendment applications. In many amendment applications, the Board simply rubber stamps agreements reached between parties during collective bargaining. This is not to say that the Board does not take its overall duty for determining who is and is not an "employee" seriously; however, it does recognize the fluidity both of the definition of "employee" and the application of the definition to the facts of each work place.*

[74] Even an agreement that positions were not employees does not necessarily prevent the parties from later coming to an agreement that the positions are employees:

> *…As a result, we find that SGEU and the Government may agree to alter the list of excluded positions, the effect of which is to include the 673 positions in the bargaining unit. The positions were originally excluded on grounds that they performed functions of a managerial or confidential basis in relation to the Government's labour relations. The parties now agree that the positions are "employees" under the Act, and, as such, they fall properly within the intended scope of the certification Order…*

[75] If a certification order has been issued for all or a portion of the unit applied for, the application by a union who is not a party to that certification order is, in its essential character, a raid of the existing unit, and must therefore be made pursuant to section 6-10,

which allows for a certification application "[i]f a union has been certified as the bargaining agent for a bargaining unit"

[21] The question for this reconsideration is, did the board err by considering PAMA's application under s. 6-9. The Board finds that it did. While the conflict with Local 882's order is unclear and would require further hearing to determine, the conflict with Local 160's order is patent.

[22] The order in LRB File 069-64 is for an all-employee unit with relatively limited exclusions. The applied for unit clearly falls within the existing certification order for Local 160. The fact that Local 160 has subsequently bargained a different scope is irrelevant for whether the application is pursuant to s. 6-9 or s. 6-10. The Board has granted Local 160 the exclusive right to represent the employees as defined in the certification order, and that includes the right to bargain positions in and out of scope. Another union may apply to represent all or a portion of a certified unit, but it must be done in compliance with s. 6-10.

Was the Application Brought Within the Open Period

[23] The Board has noted that PAMA's application was considered pursuant to s.6-9. CUPE has asked for the application to be reconsidered pursuant to s. 6-10 on notice to the unions claiming conflicting scope. However, to do so, PAMA's application would have to be procedurally compliant with s. 6-10.

[24] PAMA's application was not procedurally compliant with s. 6-10, that is, it was not brought within the open period. Pursuant to s. 6-10(3), an application under s. 6-10 must be brought not more than 120 days before and not less than 60 days before the anniversary date of the collective bargaining agreement. The effective date of the collective bargaining agreement is January 1, meaning the open period opened on September 3, 2024, and closed on November 2, 2024. PAMA's application was filed on November 19, 2024, which is outside of the open period.

[25] PAMA's application for certification which should have been considered to pursuant to s. 6-10 is not compliant with mandatory pre-conditions to the filing of the application. The Board cannot consider an application that does not meet the statutory conditions for filing and should not have considered it in the first place. The decision in LRB File No. 229-24 must be vacated and the underlying application dismissed.

[26] In dismissing the underlying application, the Board has the discretion to prevent a similar application from being brought for a period. The Board declines to make such an order in this

case as delaying adjudicating the competing representational rights does not promote the purposes of the Act. The Board declines to make an order pursuant to s. 6-111(1)(m). PAMA may bring an application pursuant to s. 6-10 during the open period. If that application is brought, the Board will address the arguments of the parties about prospective scope at that time.

[27] As a result, with these Reasons, Orders will issue that the Application for Reconsideration in LRB File No. 057-25 and 058-25 are granted, the application for certification in LRB File No. 229-24 is dismissed, and the Order of the Board in LRB File No 229-24 dated February 28, 2025, is rescinded.

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

DATED at Regina, Saskatchewan, this **7th** day of **July, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson