Saskatchewan
Labour Relations Board

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 1985, Applicant v WOODLAND CONSTRUCTORS LTD., CONSTRUCTION WORKERS UNION, CLAC LOCAL 151, Respondents and PROGRESSIVE CONTRACTORS ASSOCIATION OF CANADA and SASKATCHEWAN BUILDING TRADES COUNCIL, Intervenors

LRB File No.: 036-24; October 6, 2025
Chairperson, Kyle McCreary; Board Members: Hugh Wagner and Curtis Talbot, K.C.
Citation: *United Brotherhood of Carpenters & Joiners of America, Local 1985 v CLAC Local 151*, 2025 SKLRB 48

For the Applicant, United Brother of Carpenters & Joiners of America, Local 1985:	Jacob Axelrod
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For the Respondent, Construction Workers Union, CLAC Local 151:	Richard F. Steele and Carly Baker
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Partial Change in Representation – Board reviews case law on partial change in representation generally and in construction industry – Determines that policy against fragmentation applies to construction industry – Applicant union has not met its onus to demonstrate compelling labour relations reason for permitting partial change – Application dismissed

REASONS FOR DECISION

Background:

[1] Kyle McCreary, Chairperson: The question before the Board in this matter is when the Board should permit a partial change in representation of an all-employee unit in the construction industry. The United Brother of Carpenters ("Carpenters 1985") has applied for a bargaining unit under division 13 of "All carpenters and carpenter apprentices employed by Woodland Constructors Ltd. in the province of Saskatchewan" pursuant to Section 6-10(1)(b) of *The Saskatchewan Employment Act*, SS 2013, c S-15.1("the SEA"). If granted, this proposed unit would be a carve out, or partial raid, of the all employees unit Construction Workers Union, CLAC Local 151 ("CLAC") already has with Woodland Constructors Ltd. ("Woodland").

[2] CLAC was granted an all employees bargaining unit with Technical Workforce Inc. ("TWI") (the predecessor to Woodland) pursuant to the Board's order in LRB File No.: 173-16 dated October 7, 2016. CLAC made an earlier application for certification which is addressed in the decisions *Construction Workers Union (CLAC), Local 151 v. Technical Workforce Inc.*, 2016 CanLII 44644 (SK LRB), and *Construction Workers Union, Local 151 v Saskatchewan Labour Relations Board and Technical Workforce Inc.*, 2017 SKQB 197 (CanLII).

[3] Woodland was determined to be a successor employer to TWI in *Construction Workers Union, CLAC Local 151 v Technical Workforce Inc. and Woodland Constructors Ltd*., 2023 CanLII 97985 (SK LRB). The Saskatchewan Building Trades Council intervened in the successorship application. The Board issued the successorship order in LRB File No.: 015-23 certifying CLAC with Woodland on October 25, 2023.

[4] Carpenters 1985 filed the within application on February 15, 2024.

[5] CLAC filed a reply on February 29, 2024

[6] Woodland filed a reply on March 1, 2024.

[7] The Board directed a vote on March 4, 2024.

[8] The Board's agent issued a Notice of Vote on March 4, 2024. The vote was conducted by mail in ballot from March 4, 2024, to March 25, 2024.

[9] The Saskatchewan Building Trades Council and the Progressive Contractors Association of Canada applied to intervene in the within application and were granted standing as intervenors in a decision of the Board reported as *Saskatchewan Building Trades Council v United Brotherhood of Carpenters and Joiners of America, Local 1985*, 2024 CanLII 72521 (SK LRB).

[10] The Board held a hearing on March 17-19, 2025 and May 27, 2025. The Board found all witnesses who testified to be credible and does not consider there to be significant material conflict in the evidence. The primary conflict relates to the degree of overlap between the trades at the Cargill site; that is Woodland's witnesses testified to a significant amount of work being done across trade lines and Carpenters 1985's witness testified to work being done across trade lines but at a lower incidence than contended by Woodland. The Board does not consider this conflict to be material as the material fact is work was done across trade lines at the Cargill site;

the degree of work is not material to the Board's analysis below. Based on the evidence called and filed with the Board, the Board finds the following facts.

[11] Woodland is in the business of supplying skilled labour for industrial construction projects. At the time of the application, Woodland had 275 employees in the province working on five projects. As of February 15, 2025, Woodland had 369 employees in the province working on five projects.

[12] On February 15, 2024, Woodland employed 60 carpenters, who all worked on the Cargill Canola Crush Plant project outside of Regina. As of February 15, 2025, Woodland employed 11 carpenters at the Cargill site. It is anticipated by Woodland that by late this year there will only be a few carpenters remaining at the Cargill site. The total workforce of Woodland at the Cargill site on February 15, 2024 was 224, and on February 15, 2024 was 297.

[13] Woodland and CLAC entered collective bargaining agreements in 2022 and 2025. The most recent agreement was reached on March 13, 2025, and was ratified by Woodland and the membership of CLAC. CLAC had also reached collective bargaining agreements with the predecessor employer, TWI. CLAC and Woodland have a mature bargaining relationship.

[14] At the time of the application, the carpenters on the site were primarily concrete form carpenters. Woodland called evidence about how various trades, and specifically some of the carpenters and cement masons would cross trade lines to ensure tasks were completed. This was not true of all of the carpenters as some would only perform carpentry. It is also clear on the evidence that as the concrete form work was completed, most of the carpenters were laid off. The remaining carpentry work at this point is primarily finishing carpentry requiring far fewer carpenters.

[15] The Employer expressed concern that a craft unit carve out would be disruptive to its operations as there were no mechanisms built into the CLAC CBA to deal with jurisdictional disputes. The Board finds that the amount of jurisdictional conflict is speculative, but the lack of a method for resolution of jurisdictional dispute without application to the Board or referral to arbitration does present a risk of industrial instability.

[16] The evidence establishes that carpenter members of the CLAC unit raised concerns with CLAC and that CLAC attempted to address those concerns with Woodland. There was no evidence filed of CLAC disregarding the interests of its carpenter members or failing to represent

their concerns. No evidence was filed of duty of fair representation applications against CLAC in this workplace. The Board has reviewed the CBAs between CLAC and Woodland and the Provincial Carpenters 1985 agreement and does not find that CLAC has disregarded the interests of carpenters in the collective bargaining agreements with Woodland.

[17] Carpenters 1985 called evidence and the Board accepts the same related to how the Provincial Collective Agreements work and the benefits for carpenters who work under that agreement. Carpenters 1985 ensures that the stewards and unions representatives are always carpenters so that they understand membership's work and concerns.

[18] Evidence was also adduced as to a craft unit working alongside an all-employee unit in Alberta following the decision of the Alberta Board in *United Brotherhood Of Carpenters And Joiners of America, Local Union No. 2103 v Peter Kiewit Sons ULC*, 2018 CanLII 15237 (AB LRB). The Board accepts that the witness called did not experience jurisdictional conflict under the Alberta registration system in that instance.

[19] The Intervenor, the Saskatchewan Building Trades Council, provided evidence about other trades' Provincial Collective Agreements under Part 13 of the SEA, and how craft units represent members of their craft and how the union halls are involved in various aspects of employment including training, benefits, pensions, and transitions between worksites and employers.

Relevant Statutory Provisions:

[20] The right to form a union is pursuant to s. 6-4 of the SEA:

> ***Right to form and join a union and to be a member of a union***
> ***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.*
>
> *(2) No employee shall unreasonably be denied membership in a union.*

[21] The focus of the Board's analysis in this decision is on ss. 6-10 and 6-11 of the SEA:

> ***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.

Determination of bargaining unit
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, including a bargaining unit comprised of supervisory employees, as defined in clause 6-1(1)(o) of this Act as that clause read before the coming into force of The Saskatchewan Employment Amendment Act, 2021, the board shall determine:*

(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.

…

(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.

[22] Under the construction division, s. 6-64 discusses potential applicable units:

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.

Analysis and Decision:

Ruling on the Admission of CBAs from Alberta

[23] The Board reserved on the admission of the Collective Bargaining Agreements with between Peter Kiewit and Sons in Alberta. The Board finds these documents to be inadmissible on relevancy grounds. The contents of collective agreements entered into with a different local of the Carpenters and CLAC with a different employer in a different statutory scheme are not likely to prove or disprove a fact in dispute in this case. While the Board may admit evidence that does not comply with the formal rules of evidence, the Board declines to exercise that authority here. Examining the bargaining relationships of parties that are strangers to this proceeding is not necessary for the Board to determine the matter and unnecessarily broadens the scope of the proceeding.

The Board's General Approach to Appropriate Bargaining Units

[24] Carpenters 1985 and the Saskatchewan Building Trades Council argue that the Board should apply the same approach to an appropriate bargaining unit for a partial raid as it does for any other certification application. The Board discussed its general approach to determining an appropriate unit in *North Battleford Community Safety Officers Police Association, v. City of North Battleford*, 2017 CanLII 68783 (SK LRB):

> *[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[22] [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 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.[23]*
>
> *[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.) [24] [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:

> *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.*

[25] Similarly, in *Canadian Union of Public Employees v Phoenix Residential Society*, 2023 CanLII 72599 (SK LRB), the Board commented on the burden on a union seeking certification of a new unit:

> *[44] The Union bears the onus on this application. It must establish on the civil standard of proof (more likely than not) that its proposed bargaining unit is appropriate.*
>
> *[45] The Union is not required to establish that its proposed bargaining unit is the most appropriate bargaining unit for engaging in collective bargaining with the Employer. However, it must establish that it is an appropriate unit for such purposes.[16]*
>
> *[46] The Board has a general preference for larger, broadly-based units in workplaces 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.[17] However, the size of a unit is only one factor amongst many that the Board may consider when determining whether it is appropriate. Others include 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.[18]*
>
> *[47] In considering whether a proposed unit is appropriate, the Board is mindful of s. 6-4 of the Act, which acknowledges employees' rights to engage in collective bargaining through a union of their own choosing. It is also mindful of employees' rights under s. 2(d) of the Charter to engage in meaningful collective bargaining.[19] A proposed unit that will not permit employees to engage in meaningful collective bargaining will not be appropriate. The burden is on the union to establish an appropriate unit, but it need only establish that it is appropriate and the union bears no additional burden as it might in the context of a partial raid.*

The Board agrees that these are the proper factors to consider in determining whether a proposed unit is appropriate for collective bargaining.

Partial Change in Union Representation

[26] Carpenters 1985 urges the Board to only apply analysis similar to the above in considering its partial change in representation application. CLAC, Woodland, and the Progressive Contractors Association of Canada, argue that the analysis must be different and that the Board should apply the test it applies in a non-construction context to partial raids.

[27] In a non-construction context, the Board's jurisprudence has applied a modified test for determining the appropriate unit for partial raid. This differential approach is codified in s. 6-10(1)(b). The legislature has given clear direction to the Board that a partial carve out is to be treated differently than a change in representation where the unit is taken as already certified in s. 6-10(1)(b) or where it is a new certification. The Board must not just determine an appropriate unit, but the Board must also answer the question of whether the partial unit should be separately certified. This is a codification of the case law the question of appropriate bargaining unit is approached differently when there is an application for only a part of a unit.

[28] Boards across the country are generally reticent to grant partial changes in representation. The Canada Board discussed the reticence to revisit established units in *Chalk River Nuclear Security Officers Association v Unifor*, 2020 CIRB 950:

> *43 In a displacement application, there is a bargaining unit in place that the Board has already found to be appropriate. The Board has already assessed the various factors and found a sufficient community of interest among the employees in the unit. Once a bargaining unit is in place and has established its viability through successful negotiations of successive collective agreements and constructive labour-management relations, the Board will be reluctant to fragment the existing structure and carve out specific groups, unless there are compelling reasons to do so. It will be careful not to engage in an assessment of whether a differently constituted unit would be better or less optimal than the existing one. This is because the Board generally favours the creation of broader-based*

> *units, and once created, it discourages the fragmentation of existing units it has deemed appropriate, in the interest of labour stability. It will be careful not to redesign the bargaining units because it would better respond to the interests of particular groups. The Board will be reluctant to change the status quo unless it is necessary to do so.*

The Current Saskatchewan Policy on Partial Changes in Representation

[29] The Saskatchewan Board has long had a policy against fragmentation and only permitting partial changes in representation in exceptional circumstances. This was succinctly stated by the Board in *Civic Employees' Union, Local 21 v. Regina (City)*, 1980 CarswellSask 581

> *13 Another factor considered by the Board was that to grant the application would be contrary to a long established policy of the Board that it will not break up existing units with a successful history of collective bargaining unless there are very impelling reasons to do so: LRB File No. 086-80: Retail, Wholesale and Department Store Union, Local 454, Westfair Foods Ltd., United Food and Commercial Workers International Union, dated May 26th, 1980 and the cases cited therein.*

[30] This policy has been affirmed in subsequent cases including *Hanna v Saskatchewan*, 1985 CarswellSask 852, [1985] Sask. Lab. Rep. 31 (Sask LRB); *H.S.A.S. v South Saskatchewan Hospital Centre* , 1987 CarswellSask 662, [1987] Sask. Lab; *Regina Public Board of Education Union of Office Employees v. C.U.P.E., Local 3766*, 2000 CarswellSask 881; and *S.E.I.U., Local 336 v Chinook School Division No. 211*, 2007 CarswellSask 838.

[31] In *C.U.P.E., Local 3926 v. Deer Park School Division No. 26*, 2000 CarswellSask 884, [2000] Sask. L.R.B.R. 349, 2001 C.L.L.C. 220-007, 66 C.L.R.B.R. (2d) 154, this Board permitted a carve out based on the exceptional circumstance of the incumbent unit admitting that it could not effectively represent the employees at issue. However, even in that case, the Board reiterated the policy against fragmentation:

> *11 The Board has a long standing policy against fragmentation of existing bargaining units. The rationale for the rules against fragmentation was set out in Health Sciences Association of Saskatchewan v. Wascana Rehabilitation Centre and Saskatchewan Government Employees' Union, [1994] 4th Quarter Sask. Labour Rep. 100, LRB File No. 265-93 at 109 as follows:*
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> > *On the other hand, the Board has often stated, notably in the Wayne G. Hanna v. Government of Saskatchewan case, supra, and the related decisions in D. Grant Griffin v. Government of Saskatchewan and Saskatchewan Government Employees' Association, LRB File No. 168-80, and Robert M. Donald v. Government of Saskatchewan and Saskatchewan Government Employees' Union, LRB File No. 435-82, that employees cannot simply choose to opt out of bargaining units because they feel their own interests would be better served. In the Plains Health Centre case in LRB Files No. 421-85 and 422-85, the Board commented:*

> *If a democratic majority rule system is accepted as valid under the Charter, as surely it must be, then it is the appropriate bargaining unit that forms the constituency within which majority views are determined. No matter how the constituency lines are drawn, it is virtually inevitable that one or more employees in one or more occupational groups will not be represented by the bargaining agent of their choosing. Nevertheless, everyone in the constituency is governed by the wishes of the majority, and no one in the minority has a special constitutional right to "opt out" of the constituency and choose his own bargaining agent. If that were not the case, collective bargaining as it is now structured under The Trade Union Act would soon be replaced by the anarchy of unlimited free choice for everyone.*

In that case, of course, the Board did place heavy weight on the community of interest relied on by the applicant in granting the application. In retrospect, it is our view that the Board, in that and other cases, failed to make what seems to us a valid distinction between the significance of community of interest when a certification order is being sought for a bargaining unit which is smaller than an all-employee unit in the first instance, and the significance of this factor when what is being considered is the dismantling of an existing bargaining unit. In a decision in Island Medical Laboratories Ltd. v. Health Sciences Association of British Columbia (1993), 19 C.L.R.B.R. (2d) 161, the British Columbia Labour Relations Board referred to the two major goals which guide the determination of appropriate bargaining units — ensuring access to collective bargaining to employees, and providing a foundation for stable industrial relations. The Board went on to make this comment:

> *We believe that the concept of community of interest as employed by all labour relations boards in North America adequately addresses both goals on initial applications for certification. The facilitation and encouragement of collective bargaining and the issue of industrial stability are not policy matters completely divorced from one another either at the initial stage of certification or at the second or additional stage of the expansion of collective bargaining. For example, at the initial stage of certification, the design of the bargaining unit must ensure the viability of collective bargaining. The Board would not put into a single bargaining unit employees whose communities of interest directly conflict; further, no bargaining unit would be created that cuts across a particular classification, where all members are in the same physical location, resulting in half of the employees in that classification in the bargaining unit and the other half out of the bargaining unit. Both these situations would not be conducive to the settlement of collective bargaining disputes.*
>
> *Industrial stability, however, has different facets, depending upon whether one is at the initial stage of certification or at the second or additional stage of certification. At the initial stage of certification the concern*

> *with industrial stability is with the design of the bargaining unit. The focus is on a single unit — one union, one employer. However, at the second or additional stage of certification the concern is threefold: first, the design of the bargaining unit; second, the proliferation of bargaining units; and third, the relationship not just between the second or additional units and the employer but between the units themselves. As the number of units increases, so does the potential for industrial instability.*
>
> *At the second or additional stage of certification, among the four criteria cited in ICBC — administrative efficiency and convenience, lateral mobility, common framework of employment conditions and industrial stability — we see Industrial stability as the most crucial factor.*
>
> *We do not interpret earlier decisions of this Board as signifying that employees may point to a strong community of interest as a basis for defining any bargaining unit they wish, or for departing from a bargaining unit which has been defined on a more inclusive basis. Though community of interest may have considerable weight in an assessment by the Board of whether a bargaining unit can be a viable basis for coherent collective bargaining, it is a factor which must be considered in relation to a wide range of other factors, especially, as the Island Medical Laboratories decision intimates, when what is at issue is breaking down an existing large unit into smaller ones.*

[32] The Board has not considered the application of this policy to the construction industry as prior to the passage of *The Construction Industry Labour Relations Amendment Act, 2010*, SS 2010, c 7 ("the CILRAA"), only craft unions were permitted in the construction industry in the recent past. With the passage of CILRAA, all employee units or wall to wall units were permitted in the construction industry.

[33] This Board in *Communications, Energy and Paperworkers Union of Canada v. J.V.D. Mill Services Inc.*, 2011 CanLII 2589 (SK LRB), considered the language of the CILRAA and the decision of the British Columbia Board in *Cicuto and Sons Contractors Ltd*, IRC No. C271/88 (Reconsideration of BCLRB No. 52/87, 1 C.L.R.B.R. (2d) 63 ("*Cicuto and Sons*"), and found that all employee units could be appropriate bargaining units in the construction industry. As it relates to the language requiring the Board to make no presumption related to the preferability of craft units, the Board noted:

> *[140] We are directed by section 4(3) of the CILRA that "the Board shall make no presumption that a craft unit is a more appropriate unit in the construction industry than any other form of appropriate unit". That interdiction does not, however, prescribe that a craft unit could not be the most appropriate unit in the construction industry. What that provisions directs is that, notwithstanding the Board's previous preference for craft units in*

> *the construction industry, the Board must take a clean slate approach to its determination of the appropriate unit for collective bargaining.*

[34] The language of the CILRAA was carried forward into the SEA and in particular s. 6-11(7) and s. 6-64. The Board has continued to interpret s. 6-11(7) as preventing the Board from presuming that craft units are preferable but still allowing the Board to find that a craft unit is appropriate: *International Brotherhood of Electrical Workers, Local 2038 v Tron Construction & Mining Inc.*, 2023 CanLII 27425 (SK LRB).

[35] The current state of the law in Saskatchewan is that there is a policy against fragmentation of units. Generally, industrial stability is favoured once the majority of employees have made a choice. The choice of the minority of employees is curtailed unless exceptional circumstances or compelling reasons can be shown to permit a partial carve out of a bargaining unit. Both all employee and craft units can be appropriate in the construction industry as is contemplated by ss. 6-64(2)-(4) of the SEA.

[36] However, this general reticence to carve outs does not apply to the construction industry in certain jurisdictions. The Board must consider which of the policy concerns identified by various Boards in addressing carve outs should inform its approach in this case.

The British Columbia Case Law

[37] The British Columbia Board has found that craft units and all-employee units are appropriate units for collective bargaining in the construction industry, see: *Cicuto and Sons*. However, the British Columbia Board has a general policy against the recognition of hybrid units in the construction industry and also has a general policy against fragmentation. That is a construction employer is either certified with craft units or an industrial unit, but not a mix of the two.

[38] This approach was confirmed in the case of two competing applications for certification, where the craft unit was sought slightly before the all-employees unit. As stated in *Vertex Construction Services v. International Union of Operating Engineers, Local 115*, 2000 CanLII 27515 (BC LRB):

> *116 To briefly summarize our analysis and findings in this case, we conclude the original panel erred in determining that the CLAC application should be considered before the IUOE application which was filed first in time. While that approach is consistent with the IML principles, it failed to consider the specific nature of the construction industry and, in particular, that there are two models of representation in construction, both of which are*

> *appropriate. Outside construction, all-employee units and less than all-employee units may both be appropriate. Either may be certified, providing it is an appropriate unit. Where competing applications are filed contemporaneously, the application for the larger unit will be preferred and processed first given the concerns regarding access to collective bargaining, industrial stability and administrative efficiency. The Teleflex case is an example of the practical application of these principles.*
>
> *117 In the construction industry, however, both craft units and all-employee units are appropriate. Because both structures offer access to collective bargaining and neither raise concerns about industrial stability on an initial application for certification, there is no reason to prefer one application over the other on an initial application for certification. Further, the consideration for administrative efficiency (as in Teleflex) does not apply in construction. The result, in this case, is that the IUOE application should have been processed first.*
>
> *118 Once the initial application is granted, the interplay between these co-existing principles changes. The Board's preference for all-employee units, and the policy considerations on which the IML principles are based, means that there is a presumption against a non-craft unit being certified where a craft unit is already in place. It also means that a craft union cannot "raid back" on an all-employee unit. In both cases, the concern regarding the potential for industrial instability means that the Board's preference for all-employee units will apply. In this way, the principles of the preference for all-employee units and the dual models of representation co-exist in the construction industry.*

[39] The British Columbia Board subsequently reaffirmed the either or approach in *Farmer Construction Ltd. v. Construction and Specialized Workers' Union, Local 1611*, 2005 CanLII 11350 (BC LRB):

> *29 The best way to look at the different structures of certification in the construction industry is as two sides of the same coin. On one side are the craft certifications that fit their respective jurisdictions together like a jigsaw puzzle. On the other side of the coin is the wall-to-wall certification. Both are equally acceptable ways to organize construction workplaces and, like the coin, one method operates to the exclusion of the other.*

[40] And recently, in the reconsideration decision in *Altrad Services Ltd. (Re)*, 2023 BCLRB 118 (CanLII) ("*Altrad*"), the British Columbia Board has confirmed the continuing application of a presumption against hybrid units in the construction industry:

> *40 The Board's appropriateness policies are intended to allow trade unions and employers to anticipate whether a proposed unit will be found appropriate for bargaining. Establishing and adhering to such policies provide certainty and predictability, reducing the need for litigation over the appropriateness of particular proposed units. The Board's general appropriateness policy for industrial bargaining units articulated in IML was issued 30 years ago and remains good law to this day. The Board has the power to change any of its law and policy under the Code in light of evolving labour relations realities. However, because of the value of predictability and certainty in labour relations law and policy, we must be persuaded on the basis of clear evidence and argument that a change is necessary. In this case, the Union has not persuaded us that a change is necessary, for the reasons given.*

The Alberta Case Law

[41] The Alberta Board has a general policy against balkanization or carving out. This policy was reviewed in *International Association of Bridge, Structural, Ornamental And Reinforcing Iron Workers, Local Union No. 720 v 1504532 Alberta Ltd*., 2024 ALRB 77 (CanLII):

> *[15] The Board's case law is clear that the mere fact an applied for carved out unit is for a standard bargaining unit does not necessarily make it an appropriate unit in the circumstances of a carve-out. The general reasons for avoiding carve-outs, even if the applied for unit is a standard unit, are articulated in Canadian Health Care Guild v. Central Park Lodges Ltd., [1997] Alta. L.R.B.R. 153 ("Central Park Lodges"). In particular, that case states at pages 155-157 and 164-165:*
>
> > *This case brings into conflict two long-standing Board policies. This Board has since at least 1977 enforced a practice of certifying unions for standard bargaining units in the hospital and nursing home industry. It has been very reluctant to grant bargaining rights for units that depart from the standard descriptions. On the other hand, for at least as long this Board, like every labour relations board in Canada, has been reluctant to allow a raiding union to carve out a smaller unit from the unit already certified without compelling labour relations reasons to do so.*
> >
> > *…*
> >
> > *The opposing policy is the policy against "carving out" in a raid. George Adams, in Canadian Labour Law, 2d ed. (Canada Law Book: 1993) says on this topic (at 7-6 ff.):*
> >
> > > *The history of bargaining favours the existing bargaining unit where there is an incumbent union and to this extent reflects a commitment by labour boards to the status quo. All Canadian labour relations boards are very reluctant to sever a small group of employees from an existing bargaining unit. There is generally a strong presumption in favour of the appropriateness of an existing bargaining unit which usually reflects as well a commitment by labour boards to broader-based bargaining structures where they already exist. There must therefore be very compelling reasons to justify the "carving up" of an established collective bargaining relationship. (...)*
> > >
> > > *Boards regularly refuse to carve out a craft group because of their aversion to fragmentation and their deference to a history of relatively satisfactory collective bargaining. The carving out of a smaller unit is very much an exception. Nevertheless, constitutional concerns may cause a federal unit to be carved out of a provincial enterprise. Geographic factors can also be relevant. Or there may be an exceptionally strong community of interest argument in favour of a separate and smaller unit. Nevertheless, the general governing rule is that the appropriate bargaining unit in a raid is the pre-existing unit.*

> *The Alberta Board subscribes to the approach outlined by Adams. We have generally refused applications by a raiding union to carve out a portion of the incumbent union's bargaining unit. That is so even where the raiding union seeks to carve out a group of employees with whom it has a strong historical association and who might well be an appropriate bargaining unit on a first-time certification of the employer. For example, the Board is unlikely to allow a carve-out of a trades group from a standard plant unit: Plumbers, Loc. 496 v. Goodyear Canada Inc. [1992] Alta. L.R.B.R. 89.*

…

> *In our view, then, this case should be treated like any other certification application that would balkanize an existing bargaining unit. We reiterate: the Board's approach is that in a partial raid, any other bargaining unit than the existing bargaining unit is presumptively inappropriate. To overcome that presumption, the applicant must establish compelling labour relations reasons. In effect, the applicant must show that the existing bargaining unit has become inappropriate: AUSE v. Edmonton Roman Catholic Separate School Division No. 7 [1996] Alta. L.R.B.R. 115; Westar Timber Ltd. v. I.W.A., Loc. 1-405 (1987) 87 C.L.L.C. 16,020 (B.C.L.R.B.). There is no exhaustive list of the reasons why a labour relations board will allow an existing bargaining unit to be broken up, but they include:*
>
> - *a history of seriously conflicting interest within the bargaining unit;*
> - *a history of unfair subordination of one group's interests to another's within the bargaining unit;*
> - *changes to the employer's operations, geographical or otherwise, that make the existing bargaining unit structure unsuitable; or*
> - *changing organizing or bargaining patterns within the industry.*
>
> *The Board adopts this restrictive approach to balkanization of existing bargaining units for the same reasons that all other Canadian labour boards do. The policy against balkanization promotes industrial stability. Fewer bargaining units per employer generally means fewer resources devoted to collective bargaining and collective agreement administration, fewer barriers to workforce mobility, and fewer bargaining disputes that can result in work stoppages. The policy respects bargaining history. It shows deference to bargaining structures that have proven reasonably satisfactory in the past, because it is not always easy to predict how successful any new bargaining structure will be. The policy promotes certainty. Dissident employees and raiding unions will know in advance the16argainning unit they must seek support within, and there will be less scope for all parties to use the issue of bargaining unit appropriateness to jockey for tactical advantage.*

[42] However, the Alberta Board in that case found that the construction industry, based on the legislative wording at the time and its historical development, operated as an exception to the general policy:

[23] Here, the question posed is whether the long-standing existence of territorial limitations of jurisdiction upon the construction building trades subject to registration, well-recognized by the Board and long engrained into Board policy, should be recognized as an exception to the policy against carving out when such a trade union seeks certification of part of an existing province-wide bargaining unit of that trade. An exception in this context would permit employees to choose to certify a territorially-limited building trade subject to registration as their bargaining agent, notwithstanding an existing province-wide certification or voluntary recognition of that trade. To find otherwise would effectively bar the territorially-limited building trades subject to registration from applying for certification in those circumstances.

[24] The Employer suggests the answer to this issue lays in section 36 of the Code, which would permit the two Ironworkers locals to make a joint application for province-wide bargaining rights. While permitted by the Code, joint bargaining agency is very uncommon, likely in light of the possibility of inter-union conflict and potential industrial instability.[6] While the structures of registration bargaining might arguably alleviate some of those uncertainties, the Board simply has no basis to find that joint bargaining agency is a practical remedy for what would otherwise constitute a bar on organizing. A glance at the Board's Active Certificates table shows a single jointly held certificate in construction: the genesis of that certificate in its joint form stems from no later than 1973. Simply put, Alberta has no practical history of separate locals applying for joint bargaining agency in construction, unlike the circumstances of British Columbia. Rather, it would constitute a significant departure from the long history of the Board's policies recognizing and accommodating those geographic jurisdictional limitations in the construction industry.

[25] The Board is not satisfied that the policy rationales discussed by the B.C. Board in Vertex are applicable or determinative of this case. For the reasons suggested by Local 720 above, the Alberta construction sections of the Code, and in particular the registration system, fundamentally alter the applicable landscape and policy implications of permitting a raid to carve-out in these circumstances.

[26] Crucially, unlike Vertex, what is proposed here is not a carve-out of a trade from an "all-employee" unit, but a geographic limitation recognized by long-standing Board policy carved-out from an "all-province" but still trade-based unit. This is a very different issue, and has much less fundamental implications upon the structure of construction bargaining units than the scenario posed by Vertex. Nor does the Board consider the legislated adoption of section 163.5 of the Code, which the Employer and CISIWU state codifies the result of Vertex in Alberta with respect to a carve-out of a trade from an "all-employee" unit in construction[7], to inform our policy considerations here. Even assuming that section does what the Employer and CISIWU state, there is no necessary correlation between a policy that would prevent trade carve-outs from all-employee units and the policy considerations informing whether the territorial jurisdictions of trade unions are appropriate exceptions to the policy against carve-outs for existing single-trade bargaining units. In some cases, the Legislature may choose to impose legislated solutions to handle circumstances arising from the mutual existence of both "all-employee" and "trade-based" construction units; this does not mean the Board's treatment of trade-based units will necessarily change absent clear legislative direction.

[27] The Board is satisfied that in light of the historical recognition of trade union geographic jurisdictions in Board policy, and the implications that a restriction on carving out in the circumstance presented here would have on employee choice, strong labour relations reasons exist to recognize a policy exception to the presumption against carving out in this circumstance.

[43] The exception did not permit a carve out from an all-employee unit but permitted the carve out within a trade-based all province unit. There have been subsequent legislative amendments in Alberta on this issue which are currently subject to further litigation in Alberta.

The Ontario Case Law

[44] Carpenters 1985 puts heavy emphasis on the Ontario case law and encourages the Board to adopt a similar approach. Ontario, like other jurisdictions, has a general policy against fragmentation. However, based on the statutory provisions in Ontario, certain craft unit carve outs of all-employee units are treated as essentially mandatory. This is discussed in *Labourers' International Union of North America, Local 1081 v. Brook Restoration Ltd.*, 2013 CanLII 54063 (ON LRB):

> *19. There are four principles that the Board has established over a lengthy period of time in dealing with certification applications, and particularly displacement applications, that I must consider in this case. These principles may pull in different directions, but in the end, it is a question of whether the facts cause the Board to give greater priority to one or another of them in the context of each application.*
>
> *20. The first two are described in Expercom at paragraphs 41 and 42:*
>
> > *41. The first is that the Board does not determine the most appropriate bargaining unit but rather determines whether the bargaining unit proposed by an applicant is appropriate, and if the applicant's proposed unit is appropriate, that is the bargaining unit the Board determines is the appropriate bargaining unit. As the Board stated in Primeline Plumbing Ltd., supra:*
> >
> > *…so long as the applicant's proposed bargaining unit is appropriate for collective bargaining, the Board will accept it even though the unit proposed by the responding party might also be appropriate.*
> >
> > *42. The second is that when an applicant is seeking certification to displace an incumbent union and proposes a bargaining unit that differs from the incumbent's bargaining unit, the Board normally finds the existing bargaining unit to be the appropriate bargaining unit in that application rather than the applicant's proposed bargaining unit. That principle is well established and is perhaps best articulated in Milltronics Limited, [1980] OLRB Rep. Jan. 56 where the Board wrote at page 58:*
> >
> > > *Where one trade union is seeking to displace another, however, the established bargaining structure is prima facie appropriate particularly if it has been established by the parties themselves, through collective bargaining, and continued through the years over several collective agreements. Indeed, what better evidence of "appropriateness" could there be than a pre-existing bargaining structure which the parties have developed themselves and have adapted to their own bargaining circumstances. The Board has been reluctant to fragment an established bargaining structure or to "carve out" groups of employees from such structure. The Board will generally find the appropriate*

> *bargaining unit to be that which the incumbent presently represents; although, of course, in appropriate circumstances, a larger unit may also be appropriate and could be granted without raising any concern about fragmentation. Usually, however, a "raiding union" must "take" what the incumbent union has.*

21. The third consideration is that the general rule that a displacing union must "take the bargaining unit as it finds it" was never an absolute requirement. There have been exceptions based on the particular facts of the case, even absent any statutory restrictions or directions. Further, the Board has also considered whether the employer has a greater capacity to tolerate fragmentation that the application potentially represents: Ontario Hydro, [1980] OLRB Rep. June 882.

22. Finally, in this case the application is made with respect to a bargaining unit of employees who are engaged in the construction industry. Hence subsection 158 (2) applies:

> *(2) Despite subsection 128 (1), a trade union represented by an employee bargaining agency may bring an application for certification in relation to a unit of employees employed in all sectors of a geographic area other than the industrial, commercial and institutional sector and the unit shall be deemed to be a unit of employees appropriate for collective bargaining.*

[45] The Ontario Board explained the effect of s. 158(2) in *International Union of Operating Engineers, Local 793 v Nuna Logistics Partnership*, 2024 CanLII 25031 (ON LRB):

32. In construction industry certification applications, unlike its general approach in industrial certification applications, the Board has long permitted what are often referred to as "craft carve-outs" – that is, a craft-based construction trade union ("carpenters", "electricians" and "bricklayers", to name a few examples) are permitted to seek to represent a bargaining unit of just its craft ("carpenters", "electricians" and "bricklayers", as examples) in respect of an employer that may employ persons in addition to the enumerated craft (see, for example, Ellis-Don Limited, [1988] OLRB Rep. Dec. 1254 at paragraph 41).

33. In construction industry displacement applications, the Board permits craft carve-outs, and in circumstances where ICI bargaining rights are in issue and the trade union seeking to displace is a designated employee bargaining agency ("EBA") or an affiliated bargaining agency ("ABA") of a designated EBA, the carve-out is essentially mandatory (see, for example, Shearwall Forming (East) Ltd. [1989] O.L.R.B. Rep. 1254 at paragraph 13).

34. The mandatory character of the ICI sector carve-out arises from the effect of holding a designation as either a designated EBA or an ABA of a designated EBA and the effect (in particular) of section 158(1) of the Act, which states:

> *"158(1) An application for certification as bargaining agent which relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126 shall be brought by either,*
>
> *(G) an employee bargaining agency; or*
>
> *(b) one or more affiliated bargaining agents of the employee bargaining agency,*

> *on behalf of all affiliated bargaining agents of the employee bargaining agency and the unit of employees shall include all employees who would be bound by a provincial agreement together with all other employees in at least one appropriate geographic area unless bargaining rights for such geographic area have already been acquired under subsection (2) or by voluntary recognition."*

35. In Shearwall Forming (East) Ltd., supra when considering the mandatory effect of this provision on the structure of a bargaining unit in a displacement application the Board said this:

> *"13. There is nothing in either the provisions or the logic of the Act which requires an applicant which is an affiliated bargaining agent to take an existing bargaining unit as it finds it. Indeed, where the existing bargaining unit includes employees in the ICI sector who perform the work of a craft which the employee bargaining agency of which the applicant is an affiliated bargaining agent has not been designated to represent, the applicant cannot (as the Council recognizes in its submissions) take the bargaining unit as it finds it. Both the provisions and the logic of the Act make a craft carve out mandatory in such circumstances."*

36. In summary, in a construction industry displacement application where ICI sector bargaining rights are at issue, and the displacing applicant trade union is either a designated EBA or an ABA of a designated EBA, the Board effectively requires the displacing applicant trade union to carve-out its designated trade in the ICI sector regardless of the description of the incumbent bargaining unit.

The Nova Scotia Case Law

[46] The Nova Scotia Board has also adopted a presumption against fragmentation and applies it with slight modification to craft units. The approach was set out in *NSUPE and Dalhousie University, Re(2011)*, 2011 NSLB 95, 2011 CarswellNS 1035:

> ***26*** *The principles that can be extracted from the above decisions and from our Trade Union Act are these:*
>
> > *AA. There is a preference for all-employee units, because they have several advantages including:*
> >
> > *G. administration efficiency (i.e. one agreement to administer rather than two or more);*
> >
> > *ii. convenience in bargaining (i.e. one set of negotiations);*
> >
> > *iii. the promotion of lateral mobility for employees (allowing employees to move up to other classifications within the same unit);*
> >
> > *iv. The prospect of fewer work disruptions.*
>
> *B. Once there is an all-employee unit in place, there is a strong bias against the notion of "balkanizing" (dividing) that existing unit.*

> *C. A Board will nevertheless consider such an application if there is a strong case that the smaller group does not have, or has ceased to have, a community of interest with the larger group.*
>
> *D. Section 28 of the Trade Union Act would appear to be an appropriate statutory foundation for such an application, subject to the provisions of s.24.*
>
> *E. A breakaway group, if it is to be considered as a new unit, must demonstrate compellingly that it has made diligent efforts to pursue its interests through the existing bargaining structure, and that its efforts have not succeeded.*
>
> *F. It will be difficult for such a group to obtain its own unit in the face of a structure that has had success in reaching reasonable collective agreements and a history of properly representing all members – such as in the area of grievances.*
>
> *G. Section 24 of the Trade Union Act would cause the Board to look more favourably on an application for a trade or craft unit, where the application was being made by a Union with specialized experience representing that trade or craft.*

The Nova Scotia Board has stated it would look more favourably on a craft unit carve out, but the decision does not say that a craft unit is relieved of the onus imposed on breakaway groups to demonstrate that there are representational issues with the existing certification.

[47] The Nova Scotia Board departed from the policy against fragmentation in *Nova Scotia Union of Public and Private Employees v Halifax Regional Centre for Education*, 2024 NSLB 44 (CanLII). The Majority was of the view that "the Board should be a little more receptive to application of this type", that is partial carve outs. On judicial review, the Court found the decision was unreasonable and ordered the matter to be re-heard before a new panel. The Court noted the Nova Scotia Board's historic approach imposed a heavy burden on an applicant for a carve out and that the Board had insufficiently explained the departure from that approach, as stated at paras 47-48:

> *[47] The majority's reasons do not adequately justify the order the majority made. Having reaffirmed the Board's historic approach to fragmentation as described in Glace Bay – with a heavy burden on the proponent, more likely to be met where the employer does not object – the majority went on to allow fragmentation on the basis that the proposed new arrangement was simply preferable to the existing one. This was accompanied by statements that implied a broader systemic change to the Board's approach to fragmentation, effectively making it available simply on the basis that the bargaining unit requests it and can demonstrate some benefits. In the result, it is now unclear what position the Board takes on fragmentation.*
>
> *[48] The majority failed to meet the requirement for justification set out in Vavilov: the reasons do not explain the result on the application before the Board in the context of the existing precedents, but they do create confusion as to whether the traditional approach to fragmentation still governs, or whether the majority has rejected it and imposed a new policy. As such, the majority's decision was unreasonable.*

Boards across the country continue to apply a presumption against fragmentation. The instances of relieving against this presumption or not applying it at all are based on specific statutory context in Alberta and Ontario.

How do Charter Values Fit in the Analysis?

[48] Carpenters 1985 have raised the importance of Charter values in the Board's analysis of its discretion under the statutory provisions at issue. It is argued that employee choice as embodied in section 2(d) of the Charter should guide the Board's analysis. The Respondents have argued that Charter values do not necessarily change the analysis.

[49] Whether Charter values change the analysis, the Board is arguably required to consider the impact of Charter rights when raised pursuant to the decision of the Majority of the Supreme Court of Canada in *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22 (CanLII):

> *[91] Where a Charter right applies, an administrative decision-maker should perform an analysis that is consistent with the relevant Charter provision. Administrative tribunals are empowered — and, for the effective administration of justice, called upon — to conduct an analysis consistent with the Charter where a claimant's constitutional rights apply (Conway, at paras. 78-81; R. v. Bird, 2019 SCC 7, [2019] 1 S.C.R. 409, at para. 52). It was therefore incumbent on the arbitrator to proactively address the s. 8 issue that manifested itself on the facts of the grievance. It is insufficient to revert to a separate "well developed arbitral common law" privacy right framework, or to another framework, as the arbitrator did in this instance (A.F., at para. 13). As I have explained, the Charter and relevant s. 8 jurisprudence were legal constraints that applied to the arbitrator's decision (Vavilov, at para. 101). In other words, the arbitrator was required to decide the grievance consistent with the requirements of s. 8. This would properly entail drawing on both the relevant body of arbitral decisions and the s. 8 jurisprudence.*

[50] Similarly, in *Doré v. Barreau du Québec*, 2012 SCC 12 (CanLII), [2012] 1 SCR 395, administrative decision makers were directed by the Supreme Court of Canada to balance Charter values and statutory objectives:

> *[55] How then does an administrative decision-maker apply Charter values in the exercise of statutory discretion? He or she balances the Charter values with the statutory objectives. In effecting this balancing, the decision-maker should first consider the statutory objectives. In Lake, for instance, the importance of Canada's international obligations, its relationships with foreign governments, and the investigation, prosecution and suppression of international crime justified the prima facie infringement of mobility rights under s. 6(1) (para. 27). In Pinet, the twin goals of public safety and fair treatment grounded the assessment of whether an infringement of an individual's liberty interest was justified (para. 19).*

[51] In this case the freedom of association applies. The Board must balance the purposes of the SEA against any impact on the freedom of association.

[52] Justice Ball discussed the purpose of *The Trade Union Act*, RSS 1978, c T-17, in *Saskatchewan Federation of Labour v. Saskatchewan Government and General Employee's Union*, 2010 SKQB 390 (CanLII):

> *[75] In summary, I find that although the SLRB is an administrative tribunal that exercises quasi-judicial functions, its primary purpose is to formulate and implement policy intended to achieve The Trade Union Act's primary goals and objectives. Those goals and objectives include, at their core, the regulation of labour relations in a manner that will secure fair and reasonable wages, benefits and working conditions for employees while, at the same time, promoting industrial stability. The SLRB is given a wide discretion as to how those goals and objectives should best be achieved. It remains a textbook example of a statutory tribunal which, to parse the language of the Supreme Court of Canada in Ocean Port Hotel, spans the constitutional divide between the executive and judicial branches of government.*

As much of the language of *The Trade Union Act* has carried over to Part VI of the SEA, the Board finds that the purpose of Part VI of the SEA is essentially the same as *The Trade Union Act.*

[53] These statutory purposes must be balanced against the freedom of association in section 2(d) of the Charter. The Majority of the Supreme Court of Canada recognized that employee choice in union representation is part of the right of freedom of association in *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 (CanLII), [2015] 1 SCR 3:

> *[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. This right to participate in the collective is crucial to preserve employees' ability to advance their own interests, particularly in schemes which involve trade-offs of individual rights to gain collective strength*** *(J. E. Dorsey, "Individuals and Internal Union Affairs: The Right to Participate", in K. P. Swan and K. E. Swinton, eds., Studies in Labour Law (1983), 193).*
>
> *[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 associational 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 (PIPSC, at p. 380, per Cory J., in dissent; P. Davies and M. Freedland, Kahn-Freund's Labour and the Law (3rd ed. 1983), at p. 200).*
>
> *[87] Accountability to the members of the association plays an important role in assessing whether employee choice is present to a sufficient degree in any given labour relations scheme. Employees choose representatives on the assumption that their voice will be conveyed to the employer by the people they choose (A. Bogg and K. Ewing, "A (Muted)*

> *Voice at Work? Collective Bargaining in the Supreme Court of Canada" (2012), 33 Comp. Lab. L. & Pol'y J. 379, at p. 405). A scheme that holds representatives accountable to the employees who chose them ensures that the association works towards the purposes for which the employees joined together. Accountability allows employees to gain control over the selection of the issues that are put forward to the employer, and the agreements concluded on their behalf as a result of the process of collective bargaining.*
> *[emphasis added]*

[54] While employee choice is a part of the analysis, the Majority also noted that choice is not absolute, and limits are imposed on individual rights:

> *[92] A variety of labour relations models may provide sufficient employee choice and independence from management to permit meaningful collective bargaining.* ***As discussed, choice and independence are not absolute in the context of collective bargaining. By necessity, a collective framework not only serves employees' interests, but imposes limits on individual entitlements in order to permit the pursuit of collective goals.*** *Collective bargaining is "an exercise in solidarity in which individual interests are not simply aggregated but transformed in the process of democratic deliberation" (J. Fudge, "Introduction: Farm Workers, Collective Bargaining Rights, and the Meaning of Constitutional Protection", in F. Faraday, J. Fudge and E. Tucker, eds., Constitutional Labour Rights in Canada: Farm Workers and the Fraser Case (2012), 1, at p. 17; see also G. Murray and P. Verge, La représentation syndicale: visage juridique actuel et futur (1999), at pp. 2-3; Dorsey, at pp. 195 and 219). As Professor Wellington states: "Accommodating the interests of the dissenter and those of the majority is always difficult. The hallmark of a truly democratic society is its unwillingnesss to give up easily either majority rule or individual freedom" (Labor and the Legal Process (1968), at p. 129).*
> *[emphasis added]*

[55] The British Columbia Board addressed the issue of balancing collective rights and employee choice in *Allard*, and rejected an argument that employee choice prevents the Board from continuing to apply its policy on appropriate bargaining units in the construction industry in *Allard*:

> *41 The Union's third and final argument is that the Original Decision's reliance on the Board's Policy denies employees their statutory and constitutional rights, under the Code and the Charter respectively, to be represented by a bargaining agent of their choosing "in the absence of any actual compelling labour relations basis or other overriding justification for that deprivation". In making this argument, the Union concedes that employee choice of bargaining agent is "not absolute, under either the Code or the Charter". While the Code and the Charter protect the right to freely choose union representation, they do not necessarily guarantee employees will always have their preference as to their bargaining agent or unit configuration (Connective Support Society Kamloops, 2023 BCLRB 101 (Leave for Reconsideration of 2023 BCLRB 25), para. 32). Similarly, the presumption against multiple bargaining units in IML itself means groups of employees may only have access to collective bargaining through an incumbent union and not the union of their choice: ibid. However, the craft-based model established by Section 21 of the Code requires the Board to have regard for the particular role that craft unions play, notwithstanding the presumption against multiple bargaining units discussed in IML. In the present case, the fact the Board found a hybrid bargaining structure inappropriate does not deny employees access to collective bargaining, contrary to the Code and the Charter; it*

> *simply requires that employees must access collective bargaining either through a craft unit or a single industrial unit that subsumes any crafts that have already been certified. Of course, where no crafts have yet been certified, it is open to a trade union to organize on a wall-to-wall basis at the outset.*
>
> *42 The Board's appropriateness policies under the Code set out rules and tests for bargaining unit appropriateness which are based on the Board's statutorily recognized labour relations judgment and expertise. The legislature intended the Board to exercise that judgment and expertise when it gave the Board broad discretion under Section 23 of the Code to determine what constitutes an appropriate bargaining unit under the Code. That discretion, however, is exercised taking into consideration the provisions of the Code, such as Section 21. In this case, there is no evidence the employees at issue will be denied their fundamental Code and Charter right to access collective bargaining by the dismissal of the Union's application. Non-construction trade employees can access collective bargaining under Section 18 of the Code, and construction trade employees can access collective bargaining under either Section 18 or 21, in accordance with applicable Board appropriateness policies.*

[56] The Board agrees with the British Columbia Board's analysis on this point. Employee choice under section 2(d) is not absolute and within this context, does not require balancing beyond what is performed by Board policy. Majoritarianism is an accepted feature of labour relations under the Wagner model. As such, a group that is seeking to carve out is not being denied choice in an unconstitutional manner, no more than an individual who does not want to be a part of the union is denied choice when the majority votes for unionization. Effective input into selection of collective goals does not mean every individual has a veto.

[57] In order to guard against tyranny of the majority and inappropriate subordination of interests, any test in favour of large units must be only a presumption. The Board must be willing to permit fragmentation in the interests of choice where compelling evidence can be brought forward that the current bargaining structure is impeding individuals' right to participate in the collective in a manner that infringes section 2(d) of the Charter.

What should be the test for Partial Changes in Representation in the Construction Industry

[58] The Board finds that it should maintain its policy against fragmentation and that this policy should also apply to the construction industry. As a policy choice, the Board favours the promotion of industrial stability over unfettered individual choice. The underlying rationales supporting large units continue to apply, that being efficiency in bargaining and administration, fewer potential labour disruptions, fewer jurisdictional disputes, lateral mobility of employees, and potentially stronger bargaining strength of employees. These rationales are supported by Boards across the country, and the jurisdictions which make an exception for the construction industry do so based on the legislative provisions applicable in those jurisdictions, not on a rejection of the application

of the policy rationale. The legislative provisions of the SEA do not support making an exception for the construction industry and support applying the general approach.

[59] Carpenters 1985 and the Saskatchewan Building Trades Council argued strongly for the policy against fragmentation to not be applied to the construction industry and for the test to simply be whether a unit is appropriate for bargaining. The Board does not find that this approach would accord with the wording of the SEA in ss. 6-10 and 6-11. The Board finds that a textual, contextual, and purposive reading of the sections requires the Board to determine more than on an application for a partial raid or carve out than on a full raid or an application for certification. An application for certification only requires the Board to determine if a bargaining unit is appropriate. On a partial raid, the Board must determine whether it should permit a separate certification and whether it is an appropriate bargaining unit. The first question requires determining whether to permit fragmentation or balkanization of a bargaining unit.

[60] The Board has a general policy against balkanization or fragmentation. The reasons for this policy as discussed above are sound. The Board is directed by s. 6-11(7) to treat a craft unit the same as a non-craft unit. Therefore, the same policy should apply as it relates to fragmentation to both craft and non-craft units. Subsection 6-11(7) arguably precludes considering the transitory nature of employment in the construction industry in determining whether to permit separate certification.

[61] Even if s. 6-11(7) should be construed narrowly and the Board is permitted to consider the preferability of craft units in the construction industry, which would arguably be counter to s. 2-10 of *The Legislation Act*, SS 2019, c L-10.2, the Board would decline to do so. A craft unit may be better suited to the transitory nature of employment in construction, however, this preferability does not outweigh the policy rationales against fragmentation. The Board finds that any benefit to employees that would be gained by the carve-out is outweighed by the increased risk of labour disruptions and jurisdictional disputes, the increased administrative costs, and the decreased bargaining power of the remaining unit.

[62] As it relates to the argument of following the Ontario approach, the Board finds that would be contrary to the wording of 6-11(7), which reads:

> *(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.*

The legislature has restricted the Board's discretion in this specific way; the Board shall not presume a craft unit is more suitable. To accept a craft carve out as mandatory would be beyond the Board's grant of discretion.

[63] Similarly, the Board finds that the decision in *1504532 Alberta Ltd* is distinguishable from the Saskatchewan context. At paragraph 26 of the decision, it is explicit that the decision does not relate to a carve out of an all-employee unit. The decision is also explicitly based on the unique historical and statutory context of Alberta. The Board finds the Alberta approach to carve outs of general all employee units is more applicable to the Saskatchewan context.

[64] As it relates to s. 6-64, the Board finds that the SEA permits hybrid units, but it does not determine when hybrid units are appropriate. The Board retains discretion under ss. 6-10 and 6-11 to determine what are appropriate bargaining units. Specifically, when an application relates to Division 13, the Board may consider whatever factors are relevant to an application. Whether an employer is already an industrial or a craft certified employer would be a relevant consideration. The Board would not adopt a prohibition on hybrid units, but it must be shown in a particular case why a hybrid unit would be appropriate instead of maintaining the existing bargaining pattern.

[65] Going forward, a union seeking a partial change in representation must demonstrate that the Board should separately certify a unit and that the unit is appropriate for collective bargaining. That is a union must rebut a presumption against fragmentation by demonstrating compelling labour relations reasons for permitting an existing unit to be fragmented. A union must also establish that the proposed unit is an appropriate unit for collective bargaining including the issue of whether a hybrid structure would be appropriate in that workplace.

Should the Board Permit Partial Change in Representation in this Case?

[66] The Board finds that Carpenters 1985 have not met their initial onus in this case. The evidence establishes that there are advantages and disadvantages to craft versus industrial units. The evidence does not establish a compelling labour relations reason to allow the carve out of

the all-employees unit represented by CLAC. CLAC has successfully concluded several collective agreements while representing the all-employees unit and there is no evidence of unfair subordination of interests within the existing unit, or another compelling reason to justify fragmentation of the existing unit.

[67] The Board does not consider individual choice of a minority to be a sufficiently compelling labour relations reason on its own. To accept the argument of the paramountcy of choice would arguably lead to a constitutional right of partial decertification for any portion of a unit. The Board does not accept that section 2(d) of the Charter or the purposes of the SEA require choice to be given that level of primacy.

[68] The Board declines to compare the approaches to representation used by CLAC and Carpenters 1985. Carpenters 1985 is essentially asking the Board to make a value judgment about how CLAC operates and that for workers in the construction industry that it is preferable how the craft unions operate. The Board declines to enter into this inquiry. Even if it were accepted that the craft unit approach was preferable, preferability of representation is not a compelling labour relations reason to permit a partial carve out.

[69] As a result, with these Reasons, an Order will issue that the Application for Change in Union Representation in LRB File No. 036-24 is dismissed.

[70] 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.

[71] Board Member Cutis Talbot, K.C., concurs with these reasons. Board Member Hugh Wagner dissents.

DATED at Regina, Saskatchewan, this **6th** day of **October 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary,
Chairperson

DISSENT

[72] I have read the Reasons for Decision in this matter and agree with the recapitulation of the facts and the matters at issue. However, and with the greatest of respect, I disagree with the conclusion and decision.

[73] As I read it, the SEA allows for two competing models of representation within the construction industry as covered by Division 13. While the SEA says there should not be a presumption in favour of craft-based representation it does not prohibit a hybrid situation wherein there is a craft unit(s) alongside some configuration of an all employee unit.

[74] In my respectful opinion, the evidence in this case supports the view that Woodland's operational model closely resembles that of a typical craft based work project where the numbers of workers corresponds to the particular craft specialities and skills needed in a particular timeframe. In this instance, when carpenters were no longer needed, they were let go and were not reassigned to other jobs of work. And, while there was evidence of some overlap involving carpenter employees helping with masonry work, the evidence also suggests that this is also not an unusual occurrence in a work project unionized along craft lines.

[75] I agree that allowing the Carpenters 1985 application would fragment the existing CLAC, Local 151 all employee bargaining unit to a degree. However, I do not agree that allowing the carve-out applied for by Carpenters 1985 would by definition lead to or cause labour relations instability.

[76] If the herein application was allowed, Woodland would become signatory to the Carpenters' provincial agreement which is the result of a long established and stable industrial relations environment that provides properly trained, skilled and educated workers to employers. In my respectful opinion, the suggestion of labour relations instability flowing from a carve-out of a Carpenters bargaining unit is not supported by the evidence.

[77] Since the SEA allows for competing models of worker representation within the construction industry as covered by Division 13, I would find that the section 6-4 (1) of the SEA should prevail to allow the subject employees of Woodland, who are covered by the herein application, to exercise their right to engage in collective bargaining through a union of their own choosing.

[78] Accordingly, were it in my power to do so, I would allow the Carpenters 1985 application.

Hugh Wagner, Board Member