

CANADIAN UNION OF PUBLIC EMPLOYEES, Applicant v SOUTHLAND TRANSPORTATION LTD., Respondent

LRB File No. 081-25; December 18, 2025

Chairperson, Kyle McCreary; Board Members: Shelley Boutin-Gervais and Grant Douziech
Citation: *CUPE v Southland Transportation*, 2025 SKLRB 60

Counsel for the Applicant, Canadian Union of
Public Employees: Andrew Restall

Counsel for the Respondent, Southland Transportation Ltd.: Bruce Graham

**Certification – Appropriate Bargaining Unit – Unit not underinclusive even
though there is a risk of industrial conflict due to intermingling**

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** On May 7, 2025, the Canadian Union of Public Employees (“the Union”) has filed an application for certification pursuant to s. 6-9 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (“the Act”), in relation to certain bus drivers employed by Southland Transportation Ltd. (“the Employer”) in relation to the Horizon School Division.

[2] The Union has proposed a unit of the following description:

All School Bus Drivers who are licensed with an S Endorsement employed by Southland Transportation in Saskatchewan, driving under the Horizon School Division contract except those driving for the schools in the following communities:

*Annaheim
Bulyea
Foam Lake
Holdfast
Imperial
Leroy
Middle Lake
Strasbourg
St. Brieux
Wynyard*

[3] On May 22, 2025, the Employer filed a Reply. The Employer took the position that the proposed unit was inappropriate as it was underinclusive.

[4] The Board directed a vote of the proposed unit on June 10, 2025. The vote was conducted by electronic ballot and has not yet been tabulated.

[5] The Board directed this matter be heard on the basis of written submissions on September 5, 2025.

[6] Both parties have filed affidavit evidence and written arguments.

Evidence:

[7] The Union filed affidavits from Aimee Nadon, Wilhelmina McCormick, and Darren Schatz.

[8] Ms. Nadon is an organizer employed by the Union. Ms. Nadon's affidavit sets out the Union's organizing efforts at the Employer since September 2024. The Union had an inside committee and attempted to contact as many employees in as many communities as possible. The Union attempted to get support in all communities but did not receive it. The Union determined it would not be successful on an all employee certification covering the entire Horizon School Division. The Union has excluded those areas from its application where it received no support.

[9] Ms. McCormick is the Vice President and Shop Steward of CUPE, Local 4254. CUPE, Local 4254, represents support workers with Prairie Spirit School Division. The support workers include bus drivers. Ms. McCormick provides evidence about the Prairie Spirit School Division and changes to its certification order. As it relates to the matter before the Board, Ms. McCormick's evidence sets out that not all bus drivers in the division are certified and that the Employer is able to use out-of-scope drivers as fill ins and the drivers receive rates of pay pursuant to the CBA and union dues are deducted. To Ms. McCormick's knowledge, this approach has not been a problem for Prairie Spirit School Division to implement.

[10] Mr. Schatz has been employed by the Employer as a bus driver since 2017. Mr. Schatz's affidavit provides evidence as to the actual work of a bus driver, primarily being in the home community and being solitary. The interaction with other bus drivers is restricted to minimal communication or necessary operational matters only. Bus drivers must attend a weekly safety meeting for example. Mr. Schatz was a member of the inside committee assisting with organizing and his evidence is consistent on the reasons for the proposed unit with Ms. Nadon.

[11] The Employer filed an affidavit from Pammella Saretsky.

[12] Ms. Saretsky is the General Manager of the Humboldt operations of the Employer. The Humboldt operations include an office, garage, mechanic shop and a storage area. The Humboldt operations primarily provide school bus service to the Horizon School Division. The Employer services the majority of schools in the division in over 30 communities. The Employer has identified that the proposed unit excludes drivers related to 10 communities. The affidavit details the concerns of the Employer related to potential jurisdictional conflict caused by the proposed unit and the negative impact the proposed unit could have on the Employer's operations.

[13] The Board has reviewed the affidavits and determines that the information is sufficient to determine this matter on the written record. Further, the parties have had notice of the case to meet and an opportunity to meet it: *Stephen-McIntosh v SEIU-West*, 2025 SKLRB 2, and *SEIU-West v City Centre Bingo*, 2025 SKLRB 34.

Relevant Statutory Provisions:

[14] This is an application pursuant to s. 6-9:

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.

[15] The Board's authority to determine appropriate unit is set out in s. 6-11:

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 the one bargaining unit to another bargaining unit, 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.

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

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

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

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

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

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

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

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

[16] This matter is determined on affidavit evidence and without an oral hearing pursuant to s. 6-111(1)(e) and (q):

Powers re hearings and proceedings

6-111(1) With respect to any matter before it, the board has the power:

...
(e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the board considers appropriate, whether admissible in a court of law or not;

...
(q) to decide any matter before it without holding an oral hearing.

Analysis and Decision:

Test for Appropriate Bargaining Unit

[17] The Board must determine whether a bargaining unit is appropriate pursuant to s. 6-11. The Board is concerned with whether a bargaining unit is an appropriate unit, not whether it is the most appropriate unit.

[18] The Board's approach to determining an appropriate unit was discussed 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.

[58] Fourth, units that may be characterized as "under-inclusive" may be certified as appropriate in certain circumstances. The leading case on this issue appears to be Graphic Communications International Union, Local 75M v Sterling Newspapers Group, a Division of Hollinger Inc.[25] [Sterling Newspapers Co.]. In this decision, former Chairperson Gray

on behalf of the majority of the Board (Member Carr dissenting), reviewed the Board's prior jurisprudence on under-inclusive units, including authorities cited by counsel in this matter such as *Canadian Union of Public Employees, Local 1902-08 v Young Women's Christian Association et al.* [26], and *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Saskatchewan Centre of the Arts*[27]. She summarized her analysis as follows at para. 34:

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

[19] The primary question in this case is the size of the bargaining unit; there is a clear community of interest among the bus drivers in the proposed unit, but the Employer contests that the proposed unit is underinclusive to the point of causing industrial stability, not being viable for collective bargaining, and being disruptive to the Employer's operations. The Board will consider this question through its approach to under inclusivity.

Test for Underinclusive Unit

[20] The Board has continued to apply the approach from *Sterling Newspapers*, as noted in *Canadian Union of Public Employees v Phoenix Residential Society*, 2023 CanLII 72599 (SK LRB):

[49] Sterling Newspapers is a 1998 decision of the Board. In it, the panel's majority determined that a small bargaining unit of employees who worked in the Regina Leader Post's printing department (22 out of the business' 370 employees)[20] was appropriate. The dissenting member suggested this rewarded "what appear[ed] to be the insufficient organizing efforts of the applicant",[21] and expressed concern that empowering those in the printing department to withdraw their services in the pursuit of collective bargaining goals "expose[d] the majority of employees to the tyranny of a small minority." [22] The majority acknowledged the competing interests of employees' rights to organize and the promotion of industrial stability through stable collective bargaining structures.[23] After canvassing previous Board jurisprudence, it summarized circumstances in which the Board had found under-inclusive (i.e., not "all employee") bargaining units to be inappropriate:

34 From this review of cases, it would appear to the Board that under-inclusive bargaining units will not be considered to be appropriate in the following circumstances:

- (1) there is no discrete skill or other boundary surrounding the unit that easily separates it from other employees;*
- (2) there is intermingling between the proposed unit and other employees;*
- (3) there is a lack of bargaining strength in the proposed unit;*

(4) *there is a realistic ability on the part of the Union to organize a more inclusive unit; or*

(5) *there exists a more inclusive choice of bargaining units.* [24]

[21] The Employer argues that the Union fails each of the factors, the Board will consider each.

Is there a Discrete Boundary surrounding the proposed unit?

[22] The Employer contends that the applied for unit has no discrete boundary due to the centralization of management and dispatching. The Union contends that geographic boundaries are discrete boundaries.

[23] As the Board noted in *Teamsters Local Union No. 395 v North East School Division No. 200*, 2019 CanLII 43223 (SK LRB), at para 42, boundaries do not have to be skill based to be considered distinct, geographic boundaries can also be distinct boundaries. The spare drivers do make the geographic distinction somewhat more “porous”, however they do not obfuscate the boundary entirely.

[24] The Board finds that considering the nature of the transportation work to and from schools in specific municipalities, the boundary based on the municipalities worked in is a discrete boundary.

Is there intermingling between the proposed unit and other employees?

[25] While the Employer has contested every factor, the primary ground is the issue of intermingling. The Employer contends that there is intermingling, both in terms of interactions with other classifications that will not be in scope, particularly dispatch and maintenance, but also with positions of drivers that are not part of the proposed unit.

[26] The Employer contends that there is intermingling with the dispatch and maintenance workers. The Board does not find this to be intermingling as the Union has not sought to certify the dispatch and maintenance workers. In scope and out of scope workers are allowed to interact without it triggering intermingling concerns.

[27] The Board does have intermingling concerns as it relates to the issue of spare or relief drivers. The Union has filed evidence on how intermingled spare or relief drivers work in another school division. That is having in scope and out of scope bus drivers did not cause issues with another school division. The Employer contends that reassigning routes and relief drivers will be

difficult with the Union only representing part of the geographic area covered. The Employer referenced that there were several reassessments last year, but did not specify whether any of those reassessments that crossed the proposed boundary between in and out of scope drivers. The Board accepts that unionization may have a negative impact on the Employer's assignment of work.

[28] The Employer also raises a concern of jurisdictional conflict. The Board accepts the Union's evidence that jurisdictional conflict has been managed in similar workplaces in the province between in and out of scope bus driver positions. The Employer has not identified a specific concern on why this conflict will be unmanageable in this workplace when it has been managed in similar workplaces with a different local of the same union.

[29] The Board accepts that there is a risk of intermingling and jurisdictional conflict. However, on a day to day basis, it is clear what positions would be in scope and what work is out of scope. The purpose of the Act and s. 2(d) of the Charter is to promote freedom of association. The risk of some conflict is not sufficient to justify potentially denying associational rights to those employees in the proposed unit. The Employer's position taken to its conclusion is that the Board's preference for large units precludes certifying small units. This is not the Board's policy. The Board seeks to avoid fragmentation, that is distinct from allowing small units to certify when there is not availability of a larger or broader unit.

[30] The Board finds that there is a risk of industrial conflict due to intermingling but does not find the risk sufficient to make the proposed unit inappropriate for collective bargaining.

Is there a lack of bargaining strength in the proposed unit?

[31] The Employer asserts that the proposed unit lacks bargaining unit strength. The Union asserts it does not and states much smaller units are certified by the Board.

[32] The proposed unit has 77 employees according to the Employer, and 80 employees according to the Union. The Employer has 51 other permanent or spare drivers excluded from the proposed unit. The Employer asserts that in the event of a strike these 51 would be able to fulfill their own obligations and the obligations of the striking employees.

[33] The Board does not view the number of excluded employees as sufficient to fundamentally undermine the strength of the proposed unit. While the Employer may be able to backfill some of the work in the event of a strike, the bargaining unit is larger than the number of out-of-scope

drivers and the potential for replacement workers for some positions is not sufficient to find that the bargaining unit lacks strength.

Was there a realistic ability on the part of the Union to organize a more inclusive unit?

[34] The Employer contends that the Union could have organized an all employees unit and chose not to. The Union argues that it organized the broadest unit that met the support threshold.

[35] Unlike in *Canadian Union of Public Employees v. Turning Leaf Services Inc.*, 2017 CanLII 85455 (SK LRB), where the Board found the Union's evidence of organizing a larger unit insufficient, the Union has provided evidence of its organizing efforts and an explanation for the unit that was chosen.

[36] The Employer argues that the Union should have done better and only chose the unit based on where it had support. Employees are not required to support unions; it is a personal choice. A portion of a workforce not wanting to unionize is not a reason to preclude other employees from seeking representation as long as the proposed unit is appropriate.

[37] The Board does not find that there is evidence that the Union could have organized a more inclusive unit.

Is there a more inclusive choice of bargaining units?

[38] The Employer argues that the Union does not meet this factor because of the failure to organize a larger unit. This conflates the fourth and fifth factor. The fifth factor relates to whether there is an existing bargaining unit with the Employer that would be a more inclusive choice. There is no evidence of an existing certified bargaining unit and therefore this factor does not apply to this application.

[39] Similar to the proposed unit in *Northeast School Division*, which included some but not all positions related to transportation, the Board finds that the proposed unit is appropriate for collective bargaining and that this matter should proceed to tabulation.

[40] As a result, with these Reasons, an Order will issue that the Application for:

- (a) The ballots held in the possession of the Board Registrar pursuant to the Direction for Vote issued in this matter on June 3, 2025, be tabulated in accordance with The Saskatchewan Employment (Labour Relations Board) Regulations, 2021, RRS c S-15.1 Reg 11;

(b) The result of the vote be placed in Form 24 and that form be advanced to a panel of the Board for its review and consideration.

[41] 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 **18th** day of **December, 2025**.

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson