

THE PRINCE ALBERT MANAGEMENT ASSOCIATION, Applicant v THE CITY OF PRINCE ALBERT, Respondent

LRB File No. 229-24; February 28, 2025

Chairperson, Kyle McCreary; Members: Al Parenteau and Hugh Wagner

Citation: *PAMA v Prince Albert*, 2025 SKLRB 9

For the Applicant, The Prince Albert Management Association:

Tim Earing

For the Respondent, The City of Prince Albert:

Kiley Bear

Certification – New Union – Proposed management association is found to be an appropriate labour organization subject to concerns about appropriate unit

Appropriate Bargaining Unit – Managerial Exclusion – Human Resources Manager – Board not bound to accept unit proposed by parties – Board finds that Human Resources Manager should be excluded from bargaining unit and must be excluded for it to be an appropriate bargaining unit

REASONS FOR DECISION

Background:

[1] Kyle McCreary, Chairperson: The Prince Albert Management Association (“PAMA”) filed an application pursuant to Section 6-9 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (“the Act”), for certification of all employees in pay bands 1 through 8 of the management classification system of the City of Prince Albert (“the Employer”) on November 19, 2024.

[2] On December 2, 2024, the Employer filed a reply asserting that positions within the CUPE bargaining unit and the Human Resources Manager (“the HR Manager”) should be excluded from the bargaining unit. The parties subsequently agreed that the CUPE positions should be excluded. The parties have also agreed that the HR Manager should be included.

[3] On December 9, 2024, the Board issued a Direction for Vote in relation to the certification application. The vote was conducted by electronic ballot between December 18, 2024 and December 31, 2024.

[4] The Employer provided written submissions to the Board on January 13, 2025, that there was an agreement on the proposed scope of the bargaining unit.

[5] PAMA provided written submissions to the Board on January 13, 2025, on scope as well as PAMA's Constitution and the results of its annual meeting on January 9, 2025.

[6] PAMA is a newly formed union or labour organization, and the Board must consider whether it is an appropriate labour organization prior to determining the question of certification.

[7] The Board also sought submissions from the parties on whether this was an appropriate bargaining unit and whether the HR Manager met the definition of employee in Part VI of the Act.

Relevant Statutory Provisions:

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

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.*

...

[emphasis added]

[9] An employee is defined for Part VI in s. 6-1(h):

(h) *"employee" means:*

(i) *a person employed by an employer other than:*

(A) *a person whose primary responsibility is to exercise authority and perform functions that are of a managerial character; or*

(B) *a person whose primary duties include activities that are of a confidential nature in relation to any of the following and that have a direct impact on the bargaining unit the person would be included in as an employee but for this paragraph:*

(I) *labour relations;*

(II) *business strategic planning;*

(III) *policy advice;*

(IV) *budget implementation or planning;*

(ii) *a person engaged by another person to perform services if, in the opinion of the board, the relationship between those persons is such that the terms of the contract between them can be the subject of collective bargaining; and*

(iii) *any person designated by the board as an employee for the purposes of this Part notwithstanding that, for the purpose of determining whether or not the person to whom he or she provides services is vicariously liable for his or her acts or omissions, he or she may be held to be an independent contractor;*

and includes:

(iv) *a person on strike or locked out in a current labour-management dispute who has not secured permanent employment elsewhere; and*

v) *a person dismissed from his or her employment whose dismissal is the subject of any proceedings before the board or subject to grievance or arbitration in accordance with Subdivision 3 of Division 9;*

[10] A labour organization is defined in s. 6-1(k):

(k) *“labour organization” means an organization of employees who are not necessarily employees of one employer that has collective bargaining among its purposes;*

[11] A union is defined in s. 6-1(p):

(p) *“union” means a labour organization or association of employees that:*

(i) *has as one of its purposes collective bargaining; and*

(ii) *is not dominated by an employer;*

[12] The Board can determine a matter without an oral hearing pursuant to s. 6-111(1)(q):

Powers re hearings and proceedings

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

...

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

Analysis and Decision:

[13] The Board has considered this matter without an oral hearing pursuant to s. 6-111(1)(q). The Board has given the parties an opportunity to file submissions on issues addressed in this decision, in particular:

- a. Whether PAMA should be recognized as a labour organization;
- b. Whether the proposed unit is an appropriate bargaining unit; and
- c. Whether the HR Manager position meets the definition of employee.

Is PAMA an appropriate labour organization?

[14] The Board discussed the test for determining whether a union should be recognized in *Canadian Staff Union v. Canadian Union of Public Employees*, 2011 CanLII 61200 (SK LRB):

[11] The jurisprudence of this Board is to compel an applicant seeking to represent a group of employees, that has not previously been certified in this Province, to establish its status and, in particular, its standing to be certified to represent employees for the purpose of collective bargaining. See: Health Sciences Association of Saskatchewan v. University Hospital, [1965-74] Dec. Sask. L.R.B. Volume III, LRB File No. 225-72. Simply put, an applicant organization must satisfy the Board that it is a trade union with the meaning of The Trade Union Act. In this regard, it should be noted that this is not an enquiry into the relative strength or tenacity of the applicant organization in terms of achieving particular collective bargaining goals or its adherence to particular ideological beliefs. In this exercise, the Board is simply concerned with whether or not the organization is dedicated to advancing the interests of its members by means of collective bargaining and that its internal structure possess certain hallmarks of organizational legitimacy associated with a trade union. See: Board of Education Administrative Personnel Union v. Board of Education and Regina Collegiate Institute, [1978] June Sask. Labour Rep. 44, LRB File No. 380-77. See also: Regina Musicians Association, Local 446 v. Saskatchewan Gaming Corporation, [1997] Sask. L.R.B.R 273, LRB File No. 012-97.

[12] It was clear from the evidence presented in these proceedings that the Applicant had a long history of collective bargaining, albeit exclusively for employees employed by the Employer and primarily based upon the Employer's voluntary recognition of the Applicant as the bargaining agent for its employees. The Applicant's Constitution defined its structures and processes for collective bargaining. In our opinion, the Applicant's history of labour relations, including the numerous, nationally-recognized collective agreements it had negotiated, together with the Applicant's Constitution, unequivocally demonstrated that collective bargaining is among its purposes. Furthermore, the Applicant's internal structures appeared to be transparent, democratic and membership-driven. These structures operate at both a national and regional level. Saskatchewan is a Region within the Applicant's organization structure, ensuring that members within Saskatchewan can have a voice at both the local and national level through a variety of means, including the election of officers. In our opinion, the Applicant demonstrated the requisite hallmarks of organizational legitimacy anticipated by this Board. For the foregoing reasons, we were satisfied that the applicant organization was a labour organization within the meaning of The Trade Union Act.

[15] The Board discussed the specific evidence it will review in making the above determination in *Saskatchewan Institute of Applied Science and Technology Faculty Association v Saskatchewan Government and General Employees' Union*, 2012 CanLII 65539 (SK LRB):

[22] In doing so, the Board reviews whether the organization has a suitable Constitution, which includes collective bargaining on behalf of employees among its purposes. It also reviews whether or not the Constitution has been ratified and adopted by the members of the organization, whether the members have then obtained membership in accordance with the provisions of the Constitution and whether from those members it has elected officers with the authority to engage in collective bargaining and conduct the affairs of the organization.

[16] The Board has reviewed the materials filed by PAMA. PAMA has a Constitution, which was ratified after this application was commenced. PAMA has elected officers and has membership. Subject to the concerns below about the proposed bargaining unit, the Board finds that PAMA should be recognized as a union.

Is the HR Manager appropriate to include in the proposed bargaining unit?

[17] PAMA and the Employer have agreed to the scope of the certification Order. The Board however is not bound by the unit applied for by PAMA, and the Board retains jurisdiction to determine whether a bargaining unit is appropriate even when the parties consent to the scope of a potential certification. The parties' agreement is a factor for the Board to consider, but the Board must still determine a bargaining unit is appropriate as is directed by s. 6-11(1).

[18] The Employer initially objected to the inclusion of the HR Manager in the bargaining unit on the basis of the managerial and confidentiality exclusions under s 6-1 of the Act. In particular, the Employer stated that the position was responsible for labour relations including collective bargaining, staffing and grievance management. The Employer subsequently withdrew this objection.

[19] The Employer and Union both now take the position that the HR Manager is only responsible for labour relations as it relates to the CUPE 882 unit and not the proposed PAMA unit. The Director of Corporate Services will be responsible for labour relations on behalf of the City for the new proposed unit. As such, the position of the parties is that the HR Manager meets the definition of employee because their role is restricted to collective bargaining, staffing and grievance management of the CUPE 882 unit.

[20] In *City of Regina v. Canadian Union of Public Employees, Local 21, and Regina Civic Middle Management Association*, [1995] 3rd Quarter Sask. Labour Rep. 153, LRB File No. 268-94, at 158, the Board stated:

At the heart of the decision the Board must make is the question whether in any particular case the duties which are attached to a position are of a kind and extent which would create an insoluble conflict between the responsibility which someone performing managerial functions owes to an employer, and the interests of that person and his or her colleagues as members of a bargaining unit. Because such a conflict is in many cases a matter of degree, it is impossible to state any one test which can be used to determine whether a particular person falls on one side of the line or the other.

[21] In determining whether a conflict exists, the Board considers various factors, as stated in *Saskatchewan Polytechnic v Saskatchewan Government and General Employees' Union*, 2022 CanLII 45399 (SK LRB)

[79] The Board in Prince Albert Parkland described the principles and factors to be considered in making the determination:

[66] The Board considered and dealt with all of the cited cases in University of Saskatchewan, supra. That case set forth the following principles to be considered:

- 1. The determination of whether a position falls to be excluded is primarily a factual one (para 36)*
- 2. Exclusions on the basis of managerial responsibility should be made on as narrow a basis as possible (para 37)*
- 3. A person to be excluded must have a significant degree of decision-making authority in relation to matters which affect the terms, conditions or tenure of employment of other employees. A high degree of independence to make decisions of a purely professional nature is not sufficient. (para 38)*
- 4. The job functions which the Board considers central to the finding of managerial status includes the power to discipline and discharge, the ability to influence labour relations, and to a lesser extent, the power to hire, promote and demote. Other job functions, such as directing the workforce, training staff, assigning work, approving leaves, scheduling of work, and the like are more indicative of supervisory functions, which do not, in themselves, give rise to conflicts which would undermine the relationship between management and union by placing a person too closely identified with management in a bargaining unit. (para 38)*
- 5. In assessing managerial authority, the Board considers the actual authority assigned to a position and the use of that authority in the workplace. (para 38)*
- 6. The authority bestowed on a managerial employee must also be an effective authority; it is not sufficient if the person can make recommendations, but has no further input into the decision-making process. (para 38)*

[22] The HR Manager position is responsible for collective bargaining with another unit of the Employer. To collectively bargain on behalf of the Employer, the HR Manager must have knowledge of the Employer's bargaining strategy and mandate. The HR Manager is also involved in grievance and staffing issues on behalf of the Employer. This again means that the HR Manager will have knowledge of the Employer's approach to settlement and likely range of acceptable outcomes in many situations.

[23] These duties put the HR Manager's duty of loyalty to the Employer in insoluble conflict with their interests as a member of the bargaining unit. The fact that the HR Manager would not

be involved in these duties for members of the PAMA unit reduces the conflict, but does not solve the conflict. The knowledge of bargaining strategy, mandate, and likely approaches to grievance settlement cannot be ignored.

[24] The potential inclusion of the HR Manager position in the bargaining unit also raises concerns about Employer influence in the union's operations. The Board must ensure a bargaining unit is appropriate when granting certification. An appropriate bargaining unit balances employees' right to associate with the desire to create stable units. As stated in *Canadian Union of Public Employees v Phoenix Residential Society*, 2023 CanLII 72599 (SK LRB):

[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.

[25] The inclusion of the HR Manager would not properly balance these rights in an appropriate bargaining unit as it could, in the long run, create an unstable unit or one with too much employer influence. The Board finds that the HR Manager position must be excluded from the proposed bargaining unit for it to be an appropriate bargaining unit. With the position excluded, the other factors including community of interest, structure of the employer and promotion of stability support the bargaining unit being appropriate.

[26] The Board finds that the proposed bargaining union is an appropriate bargaining unit if the HR Manager is excluded along with the excluded CUPE 882 positions.

[27] As a result, the Board agent shall proceed to tabulation in accordance with these reasons.

[28] The Board's decision is final, subject to s. 6-115(3) of the Act.

[29] 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.

[30] The Board will issue an Order that:

- a. The ballots held in the possession of the Board Registrar pursuant to the Direction for Vote issued in this matter on December 9, 2024, be tabulated in accordance with *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021*, RRS c S-15.1 Reg 11;
- b. If they voted, the ballot of the HR Manager be removed sealed and not counted in the tabulation;
- c. 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.

[31] Board Members Parenteau and Wagner concur with these reasons.

DATED at Regina, Saskatchewan, this **28th** day of **February, 2024**.

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson