

CARLTON TRAIL COLLEGE, Applicant v SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Respondent

LRB File Nos.: 195-25 & 162-25; February 27, 2026

Vice-Chairperson: Patricia Warwick; Board Members: Shawna Colpitts and Chris Boychuk, K.C.

Citation: *Carlton Trail College v Saskatchewan Government and General Employees' Union*, 2026 SKLRB 15

Counsel for the Applicant, Carlton Trail College: Amy Gibson and Meghan Johnson

Counsel for the Respondent, Saskatchewan Government and General Employees' Union: Heather Robertson

Onus of Proof – Board discusses onus when new positions created – Board discusses effect of LOU between parties respecting provisional status of new position.

REASONS FOR DECISION

Background:

[1] **Patricia Warwick, Vice-Chairperson:** Saskatchewan Government and General Employees' Union ("Union") has brought a Reference of Dispute in LRB File No. 162-25 ("Reference of Dispute Application") to determine whether a new position at Carlton Trail College ("Employer") should be included within the Union's bargaining unit. The Employer is applying to the Board for a determination of which party bears the onus of proof in the Reference of Dispute Application ("Preliminary Application") in LRB File No. 195-25.

[2] The Board has determined that the Employer bears the onus in the Reference of Dispute Application for the reasons that follow.

Facts:

[3] The Union is the certified bargaining agent for a group of employees of the Employer. The amended Certification Order is dated December 4, 2025. The Certification Order is an all-employees unit with a number of enumerated exclusions.

[4] The parties are subject to a collective bargaining agreement, the term of which is September 1, 2022 to August 31, 2025.

[5] The Union filed the Reference of Dispute Application over a newly created position, namely the Student and Supports and Engagement Manager (“SSE Manager”) on August 29, 2025.

[6] The SSE Manager position is the subject of a Letter of Understanding (“LOU”) between the parties. The LOU reads as follows:

LETTER OF UNDERSTANDING

Between

Carlton Trill College (the “Employer”)

and

Saskatchewan Government and General Employees’ Union (the “Union”)

RE: Bargaining Unit Exclusions

The parties agree as follows:

1. *The position of Information Technology Manager shall be excluded from the scope of the Union’s bargaining unit on the basis that this position’s primary responsibilities are to exercise authority and perform functions that are of a managerial character.*
2. *The position of Human Resources Generalist shall be excluded from the scope of the Union’s bargaining unit on the basis that this position’s primary responsibilities include activities that are of a confidential nature in relation to labour relations, business strategic planning, policy advice and budget implementation and planning.*
3. *The positions of Workforce Development Manager and Student Supports & Engagement Manager shall be treated as out of scope on a provisional basis for a one year period from date of hire of a person into the position.*
 - (a) *The Union reserves the right to request additional information about these positions and the duties and responsibilities of them for the above-noted period.*
 - (b) *During the one year period from date of hire of a person into those positions, either party may apply for a determination on scope through an application to the Labour Relations Board. In the event such an application is made, the positions shall remain out of scope until determination by the Labour Relations Board.*
 - (c) *Should neither party apply to the Labour Relations Board at the end of the one year period outlined above, the exclusions would no longer be provisional.*
 - (d) *By agreeing to this and during the period outlined above, the Union has not conceded that the positions should be out of scope.*

FOR THE UNION
“D Purshega”
“K Mahussier”

FOR THE EMPLOYER
“Bailey Williams”
“Amy Yeager”

Date: June 5, 2024

Date: June 6, 2024

[7] The Employer has brought this Preliminary Application asking that the Board to determine who bears the onus of proof in the Reference of Dispute Application.

[8] A hearing respecting the Preliminary Application was held on January 16, 2026 by way of WebEx. The Union and counsel and the Employer and counsel attended the hearing.

Argument on behalf of the Employer:

[9] The Employer argues that the Union bears the onus of proof in the Reference of Dispute Application.

[10] The Employer largely relies on the case of *University of Regina Faculty Association v. Canadian Office and Professional Employees Union*¹ (“UFRA”) in support of its position. The Employer acknowledges that the Board in *UFRA* was considering which party bears the onus after a provisional exclusion order of the Board but says that *UFRA* is analogous to the matter at hand because the parties here had an LOU which provisionally excluded the SSE Manager position. The Employer argues that there is no practical distinction between the provisional exclusion ordered by the Board in *UFRA* and the provisional exclusion agreed to by the parties in the LOU.

[11] The Employer argues that because the LOU is silent respecting onus, it follows that the party seeking to vary the LOU bears the onus of establishing that the circumstances contemplated in the LOU no longer exist. The Employer argues this is analogous to *UFRA*, where the Board was considering Section 6-105(2) of *The Saskatchewan Employment Act*² (“Act”) which is silent on onus, and the Board found that the Union had the onus to prove “that the circumstances contemplated in the Provisional Decision as justifying the EFM’s exclusion from the bargaining unit do not exist”.³

[12] The Employer argues that normally an applicant bears the onus of proof in matters before the Board with the exception of situations where the *Act* outlines a reverse onus. The Employer cites Section 6-62(4) as an example of a statutory reverse onus and says the same statutory provision is not present here.

¹ 2022 CanLII 111251 (SK LRB)

² SS 2013, c S-15.1

³ *UFRA*, *supra*, para. 71.

[13] The Employer argues that the parties agreed to the provisional exclusion and now that the Union wants a change to this, the Union bears the onus of demonstrating a material change and bears the onus of proving the exclusion.

[14] The Employer argues that the Reference of Dispute Application is not an application to amend and argues that the principles in *Canadian Union of Public Employees, Local 4777 v. Prince Albert Parkland Health Authority*⁴ ("*Prince Albert Parkland*") as relied upon by the Union are distinguishable or should be applied differently here. First, the Employer says that one of the disputed positions in *Prince Albert Parkland*, was a newly created position not previously subject to an order by the Board. As the Employer sought to have the new position excluded, the onus was on the Employer to do so. Here, the Employer says, there is no application to amend before the Board and the parties have a provisional agreement to exclude – which factor was not present in *Prince Albert Parkland* – and therefore the onus should be on the Union applicant here to prove a material change and exclusion.

[15] Also, the Employer argues that the other positions under consideration in *Prince Albert Parkland* had been previously excluded by the Board and the Union there was applying for an amendment and for the position to be included in the bargaining unit. The Board placed the onus on the Union to prove the inclusion. Here, the Employer argues that there is a provisional agreement between the parties respecting the SSE Manager position and the Union is seeking to change this provisional agreement and so the onus should lie with the Union as is the usual practice of the Board.

Argument on behalf of the Union:

[16] The Union argues that the Employer bears the onus to prove the exclusion of the new SSE Manager position.

[17] The Union argues that the SSE Manager position is a new position that has previously not been covered by an order of the Board and that the Employer bears the onus to justify the scope exclusion from the Union's bargaining unit. The Union relies on *Prince Albert Parkland* in support of its argument.

[18] The Union argues that *UFRA*, relied upon by the Employer, is distinguishable from the facts here. The Union points out that in *UFRA*, the Board was dealing with a previous provisional

⁴ 2009 CanLII 38609 (SK LRB)

order of the Board and here, there is no such provisional order. The Union says that it specifically did not agree that the SSE Manager should be excluded from its bargaining unit and highlights section 3(d) of the LOU which says:

“3(d) By agreeing to this and during the period outlined above, the Union has not conceded that the positions should be out of scope.”⁵

[19] The Union relies on previous cases of the Board in considering managerial exclusions including *Saskatchewan Polytechnic v. Saskatchewan Government and General Employees’ Union*⁶ (“*Saskatchewan Polytechnic*”).

[20] The Union says the Board should take into account the recent Unfair Labour Practice complaint and decision of the Board. The Union argues that the Unfair Labour practice decision supports its position that the Employer should bear the onus here because the Board has already found that the Employer has not been transparent with the Union over the SSE Manager position and has not recognized the Union over the position.

Analysis and Decision:

[21] Clause 6-111(1)(h) of the *Act* gives the Board the power to deal with preliminary matters:

Powers re hearings and proceedings

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

...
(h) to order preliminary hearings or procedures, including pre-hearing settlement conferences;”

[22] The preliminary issue for the Board to decide here is simply which party bears the onus of proof respecting the matters raised in the Reference of Dispute Application. The Reference of Dispute Application concerns the scope of a new position created by the Employer in a workplace certified as an all-employee unit with enumerated exceptions.

General Process Where New Position Created in All Employee Unit

[23] The Board has considered the issue of onus in past cases where a new position is created in an all-employee bargaining unit.

[24] One such case is *Prince Albert Parkland*, relied upon by the Union. There, the Board provided a helpful description of the onus issue as follows:

⁵ LOU between the parties dated June 5/6, 2024, para 3(d).

⁶ 2022 CanLII 45399 (SK LRB)

“Onus of Proof

[9] Before dealing with the five (5) claimed positions, the Board would like to deal with an issue raised by the P.A. Health Authority related to the onus of proof in this case. In this case, the Employer argues that it should not bear the onus of proving that the positions should be excluded from the bargaining unit, which is the usual requirement. In support of that position, the Employer cited the Board’s decision in *Saskatchewan Union of Nurses and Saskatchewan Association of Health Organizations and Prince Albert District Health Board*, [1999] Sask. L.R.B.R. 549, LRB File No. 078-97. In that case, the Board was dealing with a similar situation during the 1997 health care reorganization. The case dealt with whether a nursing supervisor was an “employee” within the meaning of the [Act](#). In that case, the Employer argued that because the position had historically been excluded from the bargaining unit, the Union bore the onus of proof that it should fall within the scope of the bargaining unit.

[10] In that case, the Board did not make a determination as to who should bear the onus, but rather, appeared to exercise its jurisdiction to review the nursing supervisor’s position without placing the legal burden of proof on either party. Counsel for the Employer in this case argued, based upon this decision, that the Board should determine this matter without placing the legal onus on either party to this application.

[11] The Board usually mandates that it is the responsibility of the Employer to ensure that matters of scope of new positions are resolved within the parameters of the legislation and that the onus normally falls upon the Employer seeking to exclude positions to justify their exclusion. In *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Raider Industries Inc., et al.*, [1996] Sask. L.R.B.R. 297, LRB File No. 005-96, the Board stated as follows, at 310-11:

Based on this view of the significance of the certification order in determining scope, the Board has been exceedingly clear about the process which must be followed if an employer wishes to create a position out of the scope of the bargaining unit. In Canadian Labour Congress, Local 481 v. Saskatchewan Government Employees’ Association, LRB File No. 192-78, the Board outlined the alternatives:

It has been the policy of the Board, in cases of all employee units, where a new classification is created, to put the onus upon the employer to satisfy the Board that the occupant of the new classification is not an employee within the meaning of [Section 2\(f\)\(i\)](#) of [The Trade Union Act](#) and therefore should be excluded from the unit.

[12] Similarly, in *University of Saskatchewan v. Administrative and Supervisory Personnel Association*, [2007 CanLII 68769 \(SK L.R.B.\)](#), LRB File No. 057-05, the Board placed the onus of proof upon the Applicant to justify the exclusion of positions previously within the scope of the bargaining unit.

[13] This case is similar to the above noted cases, except that here, the Union is seeking to include positions not previously within the bargaining unit, and which positions were previously excluded from the bargaining unit by Order of the Board. It would be illogical to require an onus in the case where an Employer sought to exclude positions from within the bargaining unit, but to have no onus where the Union is the applicant and wishes to have those positions included within the bargaining unit. Such an onus of proof is consistent with the usual onus which falls upon an applicant to prove its application. (See: *Saskatoon Regional Health Authority v. Service Employees’ International Union, Local 333*, [2009 CanLII 2051 \(SK L.R.B.\)](#), LRB File No. 296-04.

*[14] It should be noted, however, that the position of Supervisor of Environmental Services is a newly created position which was not previously covered by the Orders of the Board in relation to this collective bargaining unit. As such, the onus of proof with respect to that position will fall upon the Employer in accordance with the Board's usual practice."*⁷

[25] The general direction from previous decisions of the Board⁸, is that when the Employer creates a new position in an all-employee unit, the Employer bears the evidentiary onus to support an argument for exclusion. The Employer argues that there are several distinguishing factors which would justify the Board not following its general policy here. The Board does not agree, as explained below.

Application to Amend:

[26] The Employer has argued that the Reference of Dispute Application is not an application to amend the parties' Certification Order – that neither party has applied to amend the Certification Order in the Reference to Dispute - therefore this is not a situation where the Employer would have the onus to prove exclusion from the bargaining unit. The Employer argues that *Prince Albert Parkland* does not apply because the parties provisionally agreed to the exemption of the SSE Manager position and this means the onus discussion in *UFRA* applies based on the provisional order of the Board there.

[27] The Board does not accept this argument for several reasons. First, the Reference of Dispute Application was brought by the Union under Section 6-110 of the *Act* which reads, in part, as follows:

Board may determine dispute on consent

6-110(1) A union representing the employees in a bargaining unit may enter into an agreement with an employer to refer a dispute or a category of disputes to the board.

...

(3) On a reference made in accordance with subsection (1) or (2), the board shall hear and determine any dispute referred to it by any party to that agreement.

(4) A finding of the board as a result of a hearing pursuant to this section:

(a) is final and conclusive;

(b) is binding on the parties with respect to all matters within the legislative jurisdiction of Saskatchewan; and

(c) is enforceable as a board order made pursuant to this Part

⁷ *Prince Albert Parkland*, supra., paras. 9-14.

⁸ *Prince Albert Parkland*, supra.; Provisional Decision in *UFRA - University of Regina Faculty Association v Canadian Office and Professional Employees Union, Local 397*, 2022 CanLII 111251 (SK LRB); *Saskatchewan Polytechnic v. Saskatchewan Government and General Employees' Union*, supra.

[28] The Board powers that go along with this are found at Section 6-104(2)(g) and (i) as follows:

**Board powers
6-104**

...
(2) *In addition to any other powers given to the board pursuant to this Part, the board may make orders:*

...
(g) *amending a board order if:*

- (i) *the employer and the union agree to the amendment; or*
- (ii) *in the opinion of the board, the amendment is necessary;*

...
(i) *subject to section 6-105, determining for the purposes of this Part whether any person is or may become an employee or a supervisory employee 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;*

Clearly, the Legislature has given the Board the authority and the obligation to consider disputes such as the Reference of Dispute Application and make orders as it deems necessary and appropriate including amendments to Certification Orders. The Board possesses the authority to amend the parties' Certification Order after hearing the Reference of Dispute matter as per the cited provisions of the *Act* regardless of the Employer's characterization of the dispute.

[29] Second, the Board has reviewed the parties' LOU respecting the SSE Manager and notes that the LOU specifically contemplates that for a period of one year from the date on which the Employer hires a SSE Manager, either of the parties may apply to the Board "for a determination on scope". This clearly indicates that the parties anticipated a scope application could be made to the Board respecting the SSE Manager position.

[30] Third, the Reference of Dispute Application states in part that the Union "makes this application to resolve the dispute between the parties as to whether the newly created position of Student Supports & Engagement Manager is within the scope of [the Union's] bargaining unit with [the Employer]". It is clear to the Board that the Union is applying as anticipated in the parties' LOU for a determination by the Board respecting scope of the newly created position of SSE Manager. If the Board were to find that the SSE Manager position is within the scope of the existing Certification Order, no amendment to the Certification Order would be required as the SSE Manager would not become an enumerated exclusion. However, if the Employer is successful in the Reference of Dispute matter, an amendment to the Certification Order to add the SSE Manager as an enumerated exclusion would be required.

[31] Ultimately, in the Reference of Dispute Application, the Board will have to make a scope decision respecting the newly created SSE Manager position. The Employer's characterization of the Reference of Dispute Application as something other than an application to amend a Certification Order does not distinguish this case from others before the Board where the Employer bears the onus of proving a new position's exclusion from the bargaining unit.

Provisional Agreement between the Parties – the LOU

[32] The Employer argues that this case is analogous to the Board's decision in *UFRA*. In *UFRA*, the Union was applying to amend a Provisional Decision and the Board found the Union had the onus "to establish that the circumstances contemplated in the Provisional Decision as justifying the EFM's exclusion from the bargaining unit do not exist, now that the EFM position has been filled."⁹ In *UFRA*, the Board went on to note that:

*"To the extent the Employer may rely upon bases for exclusion of the EFM position other than those accepted in the Provisional Decision, such as those which might support its exclusion under the managerial exclusion, it is of course the Employer's obligation to satisfy the Board of their applicability."*¹⁰

While the Employer acknowledges that there is no Provisional Board Decision here, the Employer says the parties' agreement in the LOU to provisionally exclude the SSE Manager position has the same effect as the Provisional Decision from the Board as per *UFRA*. The Employer says the parties' provisional agreement is akin to the finding of the Board in the *UFRA* Provisional Decision, and moves the onus to the Union to show a material change from the circumstances of the LOU and to prove inclusion of the new SSE Manager position in the bargaining unit.

[33] The Board does not consider the parties' agreement in the LOU to provisionally exclude the SSE Manager from the bargaining unit to have the same effect as a Provisional Decision of the Board exempting a new position from a bargaining unit as per *UFRA*.

[34] In the Provisional Decision in *UFRA*, the Board held a hearing and considered the evidence and the legal arguments of the parties before rendering the provisional order. At the hearing of the Provisional Decision, the onus was on the Employer to satisfy the Board that the new position there should be excluded. Here, there has been no consideration of the scope of the new SSE Manager position by the Board. The Union reviewed the information provided to it by the Employer and decided to agree to an exclusion for the SSE Manager on a temporary basis

⁹ *UFRA*, *supra*, para. 71.

¹⁰ *UFRA*, *supra*, para. 72.

and specifically did not agree to a permanent exemption as per the LOU itself. However, the Union did not agree that the new position would be out of scope nor that the Board should not consider the inclusion/exclusion of the new position in the bargaining unit. This agreement by the Union is not the same as a provisional order made by the Board after a complete hearing of the matter wherein the Employer bore the onus. This analogous step, of the Board having considered the inclusion/exclusion of the new position where the Employer bore the onus, from *URFA*, is missing in the matter at hand.

[35] Even the Board in *UFRA* acknowledges that if the Employer would be relying on a basis or bases of exclusion other than what the Employer relied on in the Provisional Decision hearing, the Employer would bear the onus. Here, the Board is considering inclusion/exclusion of a new position for the first time and so this statement from *UFRA* applies here. The Employer will bear the onus, as is the usual practice in these types of matters, of proving an exclusion from the bargaining unit of the new SSE Manager position.

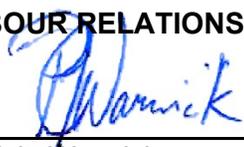
[36] Finally, the Board did not find the reverse onus argument of the Employer persuasive. As discussed above, when a new position is created by an Employer, the Board's usual practice has been to place the onus on the Employer to prove the inclusion/exclusion of the position in/from the bargaining unit. This is based on many years of consideration of such matters by the Board. This Board does not see a distinguishable factor here that would move the Board away from many years of Board jurisprudence.

[37] As a result, with these Reasons an Order will issue that the Employer will bear the onus, as is the usual practice in these types of matters, of proving an exclusion from the bargaining unit of the new SSE Manager position in the Reference of Dispute application.

[38] The Board thanks the parties for their helpful submissions all of which were reviewed and considered in deciding this matter.

DATED at Saskatoon, Saskatchewan, this **27th** day of **February, 2026**.

LABOUR RELATIONS BOARD



Patricia Warwick
Vice-Chairperson