



ALRB Cite: City of Edmonton Bargaining Units et al.
[1993] Alta. L.R.B.R. 362

**CITY OF EDMONTON and CIVIC SERVICE UNION, LOCAL 52, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1007, AMALGAMATED TRANSIT UNION, LOCAL 569, CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 30, ENERGY AND CHEMICAL WORKERS, LOCAL 829 and CERTAIN EMPLOYEES IN THE WATER TREATMENT PLANTS, Affected Parties.
Board File: GE-00140. August 18, 1993.**

Andrew C.L. Sims, Q.C., Chair, Deborah M. Howes, Vice-Chair, Mark L. Asbell, Vice-Chair, David Fagan and Ray Drisdelle, Members

For the City of Edmonton: Roger S. Hofer, Barbara Burton

For CSU, Local 52: Rostyk Sadownik, Shirley Wood

For ATU, Local 569: Duncan A. Stewart, Q.C., Phil Heiland, Bill Chahal

For IBEW, Local 1007: Duncan A. Stewart, Q.C., J.K. Budge, Larry Kelly

For CUPE, Local 30: Lyle Kanee, Anne Lennarson, Ron Pilling

For ECWU, Local 829: No representation

For Certain Employees in the Water Treatment Plants: Norman Spitzer, Allan T. Pazder, Kevin Moore

Appropriate bargaining unit - s. 32(1)(c) (L.R.C.) - Board initiating general review and reconsideration of City of Edmonton bargaining units - Board reviewing relevant principles and boundary disputes between units - Board reconsidering certificates to standardize wording and clarify boundaries between units.

Reconsideration - s. 11(4) (L.R.C.) - Board reconsidering certificates following review of City of Edmonton bargaining units to clarify unit boundaries.

Replacement certificates - s. 205 (L.R.C.) - Board issuing replacement certificates for City of Edmonton bargaining units - New wording eliminating unnecessary references to exclusions and employer name.

In response to a long history of litigation and continuing uncertainty over City of Edmonton bargaining unit boundaries, the Board commenced a general review and reconsideration of certificates for City employees. At the same time the Board reviewed the wording of the certificates to issue replacement certificates under s. 205 of the Labour Relations Code.

The bargaining units for firefighters and power engineers were not controversial and replacement certificates for each unit were issued. The remaining bargaining units involved transit operators (ATU, Local 569); electrical system personnel (IBEW, Local 1007); public works construction, maintenance, and caretaking personnel (CUPE, Local 30); and office and clerical workers city-wide (Civic Service Union, Local 52). The Board reviewed the history of each bargaining unit and the history of disputes over their application.

The Board noted the following governing principles to its decision: (1) The Board's decision was to be a comprehensive reconsideration of all four certificates in question, designed to stand on its own and not as a mere interpretation of decisions before; (2) Bargaining units define people, not work. Bargaining agents have no proprietary right under a certificate to "bargaining unit work". Whether an employee falls under a given certificate is measured by the person's "prime function" even if the employee's ancillary duties involve work normally done by members of another unit; (3) Units are described as functional units. They are based on neither a person's job title nor the City's departmental structure, which are too prone to change. In particular the Board affirmed its continuing disapproval of "departmental units" that ignore employee community of interest across departments; (4) One bargaining unit must incorporate the "tag-end" employees whose job responsibilities defy categorization. The CSU unit should incorporate the tag-ends because its employee mix is the most diverse; and (5) Where there is genuine ambiguity as to which unit an employee falls into, the allocation should be based on an assessment of where the disputed employee's community of interest is greatest.

Using these principles, the Board reviewed the bargaining units boundary by boundary. It set out principles in each case for deciding on which side of the boundary a disputed employee should fall. It referred specifically to several disputed classifications and outlined the considerations by which they should be allocated. The Board directed that changes in bargaining unit allocations required by this decision be implemented in the next renewal collective agreement for each bargaining unit.

Finally, the Board set out guidelines for the filing of determination or reconsideration applications arising from this decision.

REASONS FOR DECISION

Andrew C.L. Sims, Q.C., Chair: This decision concerns the bargaining units within the workforce of the City of Edmonton. It is a culmination of a lengthy review of those units. It has three parts.

Part I describes the reasons for the review, some background issues, and the process the Board followed. It then describes the reason why the Board decided certain contentious issues in the way it did.

Part II describes each of the City of Edmonton bargaining units. It begins with the general principles applicable to all units. Then, for each unit, it gives the bargaining unit, followed by a descriptive guide to that unit.

Part III deals with the implementation of this decision. It also gives some guidance on the form future applications involving these units should take.

Part I

I. The Reasons for this Review

The Board initiated this review for two reasons. First, section 205 of the *Labour Relations Code* directed the Board to issue replacement certificates. Second, the volume of disputes before the Board concerning bargaining unit description issues pointed to problems with the present unit descriptions.

On May 4, 1989, the Board wrote to all affected parties. The letter outlined a procedure the Board intended to follow to resolve some specific cases as well as the broader issues involved in issuing replacement certificates. In that letter, the Board set out its objectives as follows:

... the Board will conduct such proceedings as may be necessary to determine:

- (a) What the wording of the replacement certificates for City of Edmonton bargaining units ought to be.
- (b) What modifications may be necessary to the present or replacement unit descriptions to make sure that the certificates do not overlap and are consistent with each other.
- (c) Whether any major review of City of Edmonton bargaining unit descriptions, or of the number of bargaining units within the City, is necessary to make sure that the units become or continue to be appropriate for collective bargaining. The number of scope issues that continue to

arise, and the inability of the parties to resolve those issues may indicate an increasing inappropriateness. The Board has not reached this conclusion but poses the question so that any party taking that position can advance their views now. It is the desire of the Board to establish or clarify jurisdictional lines within the City that will last some years and will lead to self-administration rather than repeated references to the Board.

The Board received helpful submissions from the parties. After analyzing those submissions, the Board issued a working paper “Bargaining Unit Issues Involving City of Edmonton Bargaining Units” setting out the issues needing resolution. The Board then received further written submissions. The parties agreed on many of the propositions within the working paper. The Board heard further submissions and evidence on the remaining issues in November 1991.

This decision is the culmination of that review process.

II. Housekeeping Changes to the Current Bargaining Unit Descriptions

(a) The Labour Relations Act Unit Descriptions

Under the *Labour Relations Act* there were eight bargaining units concerning the City of Edmonton’s employees. Two involved police officers under the *Police Officers Collective Bargaining Act*. The other six were:

***The CSU 52 Unit:** Employees of the City of Edmonton when employed as office and clerical employees; child care workers, day care workers, and social workers; construction inspectors, water service inspectors and by-law inspectors (except heavy equipment inspectors, contract inspectors, field inspectors, industrial waste inspectors, and electrical inspectors); investigating officers, draftspersons; surveyors; traffic engineering technicians, materials technicians, laboratory technicians, recreation technicians, and planetarium technicians; telephone service representatives and telephone operators; security officers; custodial workers; driver instructors (except transit driver instructors); stores employees (except transit stores employees, power stores employees, and telephone stores employees); billing and collection employees; excluding police technicians and police cadets; employees exercising managerial functions or those employees employed in a confidential capacity in matters relating to labour relations; those sworn in personnel of the Edmonton Police Department who have the legal powers of a police constable; those personnel within the scope of Certificate No. 140-61 of the Canadian Union of Public Employees, Local Union No. 30; those personnel within the scope of Certificate No. 19-55 of the Amalgamated Transit Union, Division 569; those personnel within the scope of Certificate No. 36-69 of the Oil, Chemical and Atomic Workers International Union, Local*

9-829; those personnel within the scope of Certificates of the International Brotherhood of Electrical Workers, Local 1007 (power unit) Certificate issued May 6, 1949 as varied February 22, 1973, and (telephone unit) Certificate issued May 6, 1949 as varied February 22, 1978; those firefighters and related trades and maintenance personnel of the City of Edmonton Fire Department.

The CUPE 30 Unit: All hourly paid workers and Construction Watchmen employed on City Construction and Maintenance Work in the Engineering, Waterworks, Parks, Garage, Purchasing, Airport, Building Maintenance, and Police Garage Departments, excluding General Foremen, Supervisors and higher ranks, Electric Light and Power, Telephones, Power House, Edmonton Transit System, Police and Fire Departments and all Clerical Employees.

The A.T.U. 569 Unit: All employees engaged in the operation, service and maintenance of the public transportation system excluding office, clerical, technical, construction and building maintenance personnel.

The I.B.E.W. 1007 Unit: All employees of the City of Edmonton engaged in the installation, construction, maintenance, repair and operation of electrical and/or related communication equipment owned or operated by the City of Edmonton excluding those employees in the position of Supervisor and those employees employed above the position of Supervisor.

The E.C.W.U. Local 829 Unit: All employees employed by the City of Edmonton as Firemen or Stationary Engineers at Power Production Plants owned and operated by the City of Edmonton excluding such employees exercising managerial functions and employees employed in a confidential capacity in matters relating to labour relations.

The Firefighters Unit: All full-time firefighters of the fire department of The City of Edmonton excluding the Chief and deputy chiefs.

(b) Housekeeping Changes to the Wording of Certificates

Section 205 of the *Labour Relations Code* provides, in part:

205(4) *On the coming into force of this section, the Board shall issue a certificate to replace each certificate subsisting under the Labour Relations Act.*

(5) *In issuing replacement certificates under subsection (4) the Board may amend the bargaining unit descriptions contained in the original certificate in order to*

(a) clarify the geographic scope of the unit description where that scope is referred to in the certificate but not in the unit description,

(b) delete words excluding persons who are in any event excluded by the operation of this Act, or

(c) give consistency to the wording of bargaining unit descriptions without altering the substantive description of the unit.

(6) In issuing replacement certificates under subsection (3), the Board may, with the consent of the parties, amend the name of the trade union or the employer to reflect the current names of the parties where, in the opinion of the Board, it is appropriate to do so.

(7) Notwithstanding subsection (4), the Board is not required to issue a replacement certificate where it has reason to believe that the employer or the trade union has ceased to exist or has not been in business for a substantial period of time.

(8) Where the Board does not issue replacement certificates for the reasons specified in subsection (7), the certificate under the Labour Relations Act shall be deemed to be revoked.

The Board's working paper "Bargaining Unit Issues Involving City of Edmonton Bargaining Units" set out preliminary views on the changes necessary for section 205. In particular, it dealt with s. 205(5)(b) and (c). Most of the proposals proved uncontroversial. The changes proposed were as follows:

III. Replacement Certificate Wording Changes

The Board's practice is not to use the employer's name in the bargaining unit description. A certificate gives the employer's name, as required by section 37. Subject to what is said below about "Subsidiary Employers", the unit description describes only employees of that employer. Further reference in the unit description is therefore redundant.

The Board proposes, rather than adding reference to the City of Edmonton in the A.T.U. certificate, to delete such references in the I.B.E.W. 1007 and CSU 52 certificates. It also proposes to delete the similar reference - *employed on City Construction and Maintenance work* - in the CUPE 30 certificate. Such references have already been deleted from the Firefighters and E.C.W.U. certificates.

The Board agrees with the City's suggestion that reference to City departments, which are subject to change, is generally inappropriate. Instead, the Board expresses a preference for generic terms.

...

Each replacement certificate will have a number. The exclusion of the employees covered by one certificate from another will be accomplished by reference to that certificate number. Implicit in this exclusion by number is that it includes any future certificates issued replacing those certificates. In the discussion that follows, we will refer to any excluded certificates as follows: CSU, CUPE, ATU, IBEW, ECWU or Fire.

IV. Words in units excluding statutorily excluded persons

This section just identifies those words the Board believes identify managerial and similar exclusions, which should be omitted from replacement certificates because of section 205(5)(b).

The I.B.E.W. 1007 unit:

All employees of the City of Edmonton engaged in the installation, construction, maintenance, repair and operation of electrical and/or related communication equipment owned or operated by the City of Edmonton excluding those employees in the position of Supervisor and those employees employed above the position of Supervisor.

The CSU 52 unit:

Employees of the City of Edmonton...;employees exercising managerial functions or those employees employed in a confidential capacity in matters related to labour relations;...

those sworn in personnel of the Edmonton Police Department who have the legal powers of a police constable,...Fire Department.

In the Board's view, police officers are excluded because of section 4(2)(d) of the Labour Relations Code.

The CUPE 30 unit:

All hourly paid workers, Construction Watchmen, and Watchmen/Caretakers employed on City Construction and Maintenance Work in the Engineering, Waterworks, Parks, Garage, Purchasing, Airport, Building Maintenance, and Police Garage Departments, excluding General Foremen, Supervisors and higher ranks, Electric Light and Power, Telephones, Power House, Edmonton Transit System, Police and Fire Departments and all Clerical Employees.

V. Standardized Wording Changes

This section just identifies those additional words in current certificates which, in the Board's view, should obviously be deleted or changed to comply with the standard wording policies referred to above.

The I.B.E.W. 1007 unit:

All employees of the City of Edmonton engaged in the installation, construction, maintenance, repair and operation of electrical and/or related communication equipment owned or operated by the City of Edmonton.

The Board believes the words and/or are ambiguous and just mean "and".

The CSU 52 unit:

Employees of the City of Edmonton when employed as office and clerical employees; child care workers, and social workers; construction inspectors, water service inspectors and by-law inspectors (except heavy equipment inspectors, contract inspectors, field inspectors, industrial waste inspectors, and electrical inspectors); investigating officers; draftpersons; surveyors; traffic engineering technicians, materials technicians, laboratory technicians, recreation technicians, and planetarium technicians; telephone service representatives and telephone operators; security officers; custodial workers; driver instructors (except transit driver instructors); stores employees (except transit stores employees, power stores employees, and telephone stores employees); billing and collection employees; excluding police technician and police cadets; those personnel within the scope of Certificate No. 140-61 of the Canadian Union of Public Employees, Local Union No. 30; those personnel within the scope of Certificate No. 19-55 of the Amalgamated

Transit Union, Division 569; those personnel within the scope of Certificate no. 36-69 of the Oil, Chemical and Atomic Workers International Union, Local 9-829; those personnel within the scope of Certificates of the International Brotherhood of Electrical Workers, Local 1007 (power unit) Certificate issued May 6, 1949 as varied February 22, 1973, and (telephone unit) Certificate issued May 6, 1949 as varied February 22, 1973; those firefighters and related trades and maintenance personnel of the city of Edmonton Fire Department.

The introductory words can be replaced by “All...”

The certificate exclusions can be replaced by certificate numbers.

The only concerns raised relate to those broader issues dealt with below. This housekeeping process leaves us with the essence of the six bargaining units for the City of Edmonton. Two units are uncontroversial, and the Board has already issued their replacement certificates, which read:

For the Energy and Chemical Workers Union Local 829 (as it then was) unit:

All power engineers at power production plants.

We note, to avoid confusion, that this Union is now called the Communications, Energy and Paperworkers Union of Canada (CEPU). We will use the new name in the rest of this decision.

For the Firefighters Unit:

All full-time firefighters except the Chief and Deputy Chiefs.

This leaves the four main units which, as modified above, form the subject of this review. We will review briefly, the history of these four units and the border disputes that have arisen over time. This history explains the need for clarification about how these four units border upon each other.

The core of each unit is simple enough to define. However, the core descriptions are neither contested, nor helpful. Disputes arise, not at the core, but on the boundary lines between these various units.

The four modified present unit descriptions, which form our starting point, are as follows:

ATU 569: *All employees engaged in the operation, service and maintenance of the public transportation system excluding office, clerical, technical, construction and building maintenance personnel.*

IBEW 1007: *All employees engaged in the installation, construction, maintenance, repair and operation of electrical and related communications equipment.*

CUPE 30: *All hourly paid workers, construction watchmen and watchmen/caretakers employed on construction and maintenance work in the engineering, waterworks, parks, garage, purchasing, airport, building maintenance, and police garage departments, excluding electric light and power, telephones, power house, edmonton transit system, police and fire departments and all clerical employees.*

CSU 52: *All office and clerical employees; child care workers, and social workers; construction inspectors, water service inspectors and by-law inspectors (except heavy equipment inspectors, contract inspectors, field inspectors, industrial waste inspectors, and electrical inspectors); investigating officers; draftpersons; surveyors; traffic engineering technicians, materials technicians, laboratory technicians, recreation technicians, and planetarium technicians; telephone service representatives and telephone operators; security officers; custodial workers; driver instructors (except transit driver instructors); stores employees (except transit stores employees, power stores employees, and telephone stores employees); billing and collection employees, excluding police technician and police cadets; CUPE, ATU, ECWU, IBEW, Fire, and related trades and maintenance personnel of the City of Edmonton Fire Department.*

We now review the background to each of these four units.

III. The Four Main Units in the Present City Bargaining Unit Structure

1. The ATU Unit

The ATU has represented at least some of the employees of Edmonton Transit system for decades. It first applied for certification in 1955. The unit sought read:

All transit systems (Edmonton) Operators; Garage and Maintenance Employees; Outside Employees; Office Employees, and all Edmonton Transit System Inspectors.

The Board certified the Union, but modified the unit substantially, to read:

All Transit System (Edmonton) Operators: Garage and Maintenance Employees (excluding those above the rank of Chief Mechanic and Assistant Garage Foreman): Outside Employees; Chief Dispatcher; Dispatchers: Assistant Dispatcher: Farebox Inspectors: Maintenance Clerk: Mileage Clerk: Stock Record Clerk; Kardex Clerk: Storekeeper:

Assistant Storekeeper; Stores Receiving and Issue Clerk: General Purpose Man and Night Watchman (excluding employees of the Electrical Division of the Edmonton Transit System).

The Board gave its reasons for so doing. See:

The Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division 569 v. The City of Edmonton et al. 1955 C.L.L.C. ¶18,006.

The key points mentioned by the Board in 1955 were:

- that the application was restricted to employees then working in the Edmonton Transit System Department.
- that the unit should exclude employees of the Electrical Division of the Department on whose behalf IBEW, 1007 had acted as bargaining agent.
- that some office employees should be excluded.

The Board's explanation of which office employees should be excluded is revealing. See page 1521.

Evidence submitted to the Board definitely established that certain of the employees described as "office employees" performed duties directly relating to the physical operation of the Edmonton Transit System while others performed duties which solely related to administration. The Board was of the firm opinion that office employees performing duties relating to the physical operation of the Edmonton Transit System would properly be a part of the unit for which the Applicant could act as bargaining agent and that the office employees performing duties relating to administration should not be included in such a unit.

We note two points:

- This was not a "departmental unit." The exclusion of electrical people, and office employees performing administrative duties, excluded many people working within the Transit Department.
- The Board listed the people it believed were office employees performing duties relating to the physical operation of the Edmonton Transit System rather than using that generic description. The listed employees were (from the certificate) the "Chief Dispatcher... (through to) ... the Stores Receiving and Issue Clerk."

In the mid 1970's, CSU applied for certification and CUPE applied to revise its certificate. This led ATU to apply to have the Board reconsider and amend its unit description because it perceived the new units encroached upon its own. It asked for a unit reading:

All employees of the City of Edmonton, employed with the Public Transportation System excluding those employees in the position of Supervisor of Operational and Maintenance Garages and those employees executing confidential functions relating to Labour Relations.

This request followed a series of challenges and applications for determinations arising out of perceived conflicts between the old ATU certificate and the new CSU 52 certificate. The Board, on January 3, 1978 decided to reconsider the 1955 certificate and make some changes.

ATU sought a departmental unit, which would put all office and clerical employees in the Transit Department under the ATU Certificate. The City submitted that the 1955 division between "office personnel working in administration" and "office personnel working in operations" was artificial and no longer appropriate. CSU had become certified for an office and clerical unit. CSU argued that all office and clerical workers employed within transit should fall to them, and urged the Board to exclude them from the ATU unit description. The Board did so, and amended the bargaining unit to read:

All employees engaged in the operation, service and maintenance of the public transportation system excluding office, clerical, technical, construction and building maintenance personnel.

ATU 569 v. The City of Edmonton, Canadian Union of Public Employees Local 52 (Edmonton Civic Service Union) et al., (78-093 Dubensky, Chair, September 27, 1978).

This is the unit description now in force. In deciding upon this unit, the Board made two observations:

- their determination of the unit was not based on the City's centralized classification system. (page 17)
- "Work objective," which appeared to mean "working as part of the transit system" was not the sole factor in determining community of interest. Employee skills, and the comparability of those skills to people working elsewhere in the City, were equally important. As this related to office and clerical employees, had they been allocated to ATU, the Board said at page 18:

... the office and clerical personnel of the Transit Department would continually be comparing themselves to other office and clerical persons

with the City as opposed to office and clerical persons in other transit operations elsewhere.

It then concluded that a departmental unit would not be appropriate. The Board expressed its conclusion as follows at page 21:

In making its decision, the Board was of the opinion that to do otherwise would fragment to a large degree the existing Local 52 unit, promote the establishment of departmental units throughout the City, seriously restrict the promotional possibilities of a large number of office, clerical and technical people, and would impose a situation whereby persons having similar skills, performing similar tasks and working in close proximity to each other would have different working conditions. In the opinion of the Board these ramifications of a departmental unit far outweigh any advantages.

Concerns were raised as to the difficulty of determining whether or not certain persons may be employed in a position that is office, clerical or technical in nature. While in some instances this might be true, if the parties affected realistically examine the nature and the intent of the amended unit, then disputes in this area may be kept to an absolute minimum. Further, the amended unit should be looked at on the basis of being a functional unit.

Unfortunately, these anticipated difficulties arose. The exclusion of office and clerical employees was relatively clear. However, the exclusion of employees whose work was “technical in nature,” with no definition of what was intended by the word “technical,” spawned much litigation. The reference to the unit being “a functional unit” caused similar disagreement. To some, functional meant a unit premised on similarity of job function, or work skills, as contrasted to one based on the area or department in which people worked. To others, functional was still read to mean “work objective.” The transit “functional unit,” to some, meant all those working on the transit system, which is virtually the same as the departmental concept the Board rejected.

The Board ended its 1978 decision with a general comment on how it viewed City of Edmonton bargaining units. It said, at p. 22:

What it does envision relative to the City of Edmonton, is a unit comprising operational, service and maintenance employees for each of the public transportation system, the electrical distribution system, the electrical generating system and the telephone system. In addition, a tag-end blue collar unit made up of all blue collar employees not falling within the four systems outlined above, and a unit, city wide made up of all clerical, technical and office employees. While it may be necessary for the Board to reconsider and vary other decisions to accomplish this end, the Board is of the opinion that the end result would bring

about a clear understanding by all parties as to the application of the wording of bargaining units within the City of Edmonton.

Until now, the Board undertook no such general reconsideration.

Soon after the Board issued this ATU reconsideration decision, the City asked the Board to decide whether a series of positions fell within the ATU unit as amended, or the CSU unit. See: *The City of Edmonton v. ATU 569*, 80-061 (Canning, Vice-Chair). The Board panel described the test to be applied in deciding whether persons fell within the ATU unit, at p. 4:

In our opinion, the description of the bargaining unit is clear as to its meaning and further that the decision of September 27, 1978 is clear in its direction. All we can do here is reiterate what was said in that decision. The unit for which the Respondent is certified covers all operations, service and maintenance employees of the transportation system excluding in other words except, those employees whose job function would fall within the ambit of being office and/or clerical and/or technical in nature or would fall within the normal accepted definitions of being in construction or building maintenance. To determine then if a person is employed within the unit or not requires two determinations. Firstly a determination as to whether or not their job falls within the operation, service and/or maintenance of the transportation system. If it does not, no further determination is necessary. They are not included. If their job function falls within that criteria, then a second determination must be made. That determination is whether or not their job function, even though falling within the scope of being operational, service or maintenance, comes within what would normally be considered office, clerical or technical in nature or would fall within the recognized definition of construction or building maintenance. If their function, even though it falls within the first criteria also falls within the second, then they are not in the unit.

A computer programmer's function may be to develop and implement a system for scheduling transit vehicles during peak hours and thereby could be considered to be part of the operations. However, even though that person is part of the operations, the programmer's function falls within the scope of being office staff and even technical in nature and this would exclude this person from the unit. In other words what we are saying is if a person would be considered to be primarily office staff or primarily providing a clerical function etc., then they are not included in the unit whether or not they are engaged in the operation, service or maintenance of the transportation system.

The ATU asked the Board to define the terms office, clerical and technical. The Board was unable to do so, saying at page 5:

Looking at other authorities and the reams of printed matter does not really assist in answering the question. Everyone seems to be an expert on the question but no two definitions are identical. If this Board could come up with a sure fire definition that would be applicable in every instance, we would solve forever one of the major areas of labour relations disputes in Canada. In fairness to the parties and in complete honesty, we must admit that we do not have such a definition. However, we do look upon the determinations before us based on many factors such as the nature of the business of the employer, the interfacing of the public transportation system with the City, the community of interest of the employees and the prime and secondary functions of the affected positions.

The ATU challenged this decision before the Courts, without success.

In particular, ATU argued that the Canning decision in 1980 was a wrongful reversal of the Dubensky decision of 1978. They argued the Canning decision excluded all office clerical and technical employees whereas the Dubensky decision had not. The Court rejected the ATU's categorization of what the Dubensky panel had ruled, implying directly that the Canning panel's interpretation and "test" was a correct reading of the Dubensky decision. However, the Court went on to hold:

I disagree with ATU's contention that the Canning decision amended or contradicted the Dubensky decision and in so doing contravened any rule of natural justice. Even if somehow the Dubensky decision had been amended by the Canning decision, it is clear that the legislature has empowered the Board to do just that by the wording of s. 51(1) of the *Alberta Labour Act, 1973 (supra)*.

Amalgamated Transit Union Local 569 v. The Board of Industrial Relations (Unreported decision Alberta Court of Queen's Bench, Stratton J., May 7, 1981, 80-061A)

After failing to get the Court to quash the Canning decision, the ATU asked the Board to reconsider both the Canning decision and the Dubensky decision. At the same time, it invited the Board to reconsider the CSU certificate.

This resulted in a further Board decision:

Amalgamated Transit Union Local 569 v. City of Edmonton, Civic Services Union 52 et al. (82-005, McBain Chair, January 19, 1982)

That decision painstakingly reviewed all the previous decisions. The Board heard, and in its decision canvassed, all the ATU's arguments about what the border relationship between CSU and ATU had been, had been held to be, and ought to be. At page 8, it summarized the main thrust of the ATU's complaints. At page 9, the panel carefully assessed those allegations. It summed up the changes in two concise paragraphs:

In 1975, CUPE Local 52 was certified by the Board. That decision indicated that the CUPE 52 unit was an “inclusive unit” and not a “tag end” unit, and that it was comprised primarily of “office and clerical employees.” The Dubensky decision chose to exclude technical personnel from the Transit Union certificate. The Board was well aware of the consequences of such an exclusion. The Dubensky decision in 1978 represents an alteration of the approach taken by the Board in 1975 with respect to municipal bargaining units and that decision commented upon previous decisions of the Board in paragraphs 34 and 35. Clearly the Board was aware of the 1975 decision, and after deliberation knowingly made the change.

We do not see that the Dubensky decision varied Certificate 25-75. The Dubensky decision did, however, have consequences upon that certificate. Certificate 25-75 states among its many exclusions, an exclusion of those personnel within the scope of Certificate 19-55 of the Amalgamated Transit Union No. 569. The Dubensky decision varied the scope of the applicant’s [ATU] certificate, when it varied that certificate. Employees engaged in office, clerical, technical, construction and building maintenance were then specifically excluded from that unit. Employees who were formerly specifically excluded from Certificate 25-75 were no longer excluded, and could now be re-examined to ascertain whether they fall under Certificate 25-75 and in particular the general phrase “when employed as office and clerical employees.”

ATU 569’s version of the history of this bargaining unit does not accord with the history set out in the various decisions. This can be seen from its written submissions. For example, at page 13, they say:

In the Municipal Corporation structure, the bargaining units of ATU 569 and IBEW 1007 are inclusive units, i.e. “all employee”. The units of ATU 569 and IBEW 1007 are not, however, exclusive. Thus the description of CSU 52, “All employees except [those falling in the other Certificates].

CSU 52 historically was to represent office and clerical personnel except those in the units of ATU 569 and IBEW 1007. CUPE 30 is a stand alone unit of outside workers in the Municipal Corporation structure. (Historically the core was Public Works and still is today).

The bargaining units of ATU 569 and IBEW 1007, therefore, have employees in each unit performing work for Transit or Power, which is similar to or identical to duties in either CSU 52 or CUPE 30. (emphasis added)

There is no support for the proposition that CSU was to represent office and clerical employees except those in Transit. The ATU applied for such a unit, but the Board, as early as 1955, refused it for the reasons set out above. At page 15, the ATU's submission continues:

The bargaining history of ATU 569 extends over a period in excess of 80 years. It has held, as a utility, two certificates issued in 1955 and 1978, both of which were "all employee" units of transit. The first unit description was based on an all Transit unit. The 1978 unit description reduced the scope of the unit. (emphasis added)

The suggestion that the first [1955] unit description was based on an "all Transit unit," is not correct. However, much of the litigation pursued by ATU over this unit has, as its foundation, the notion that the Board has taken away ATU's bargaining rights to all office and clerical employees held from 1955 until at least 1978. The charts presented by ATU — "Reflecting fragmentation of the ATU 569 bargaining unit — 1955 to 1991" reflect this same view of the history.

2. The IBEW Power Unit

IBEW held two certificates each dating from 1949. They were each reconsidered and varied in 1973. The unit covering telephones originally read:

"Plant Engineer, Maintenance, Foreman, Chief Switchman, Chief Installer, Assistant Plant Engineer, Cable Foreman, Line Foreman, Main Exchange Foreman, Branch Exchange Foreman, P.A.B.X. Switchman, Chief Tester, Switchmen, Cable Splicers, P.B.X. Installers, Senior Shop Mechanic, Lineman, Installers, Inspectors, Senior Rackmen, Rackmen, Shop-Repairmen, Servicemen, Nightmen, Cable Splicer's Helper, Labourers, and apprentices where applicable to the foregoing."

It was varied in 1973 to read:

"All employees of the City of Edmonton engaged in communication installation, construction, maintenance, repair and operation of communication and/or related electrical equipment owned or operated by the City of Edmonton excluding those employees in the position of Supervisor and those employees employed above the position of Supervisor."

The unit covering power originally read:

"General Foreman, Meter Foreman, Commercial Manager, Line Foreman, (with status of Assistant General Foreman) Assistant Meter Foreman, Pole Gang Foreman, Line Foreman, Substation Inspector, Cable Splicer Foreman, Cable Splicer, Line Inspector,

Wiring Inspector, Transformer Repairman, Lineman, Meter Installers, Meter Testers, (Service Men) Street Lighting men, Lineman's Helper, Groundman, Meter Readers, (apprentices where applicable to the foregoing)."

It was varied in 1973 to read:

"All employees of the City of Edmonton engaged in the installation, construction, maintenance, repair and operation of electrical and/or related communication equipment owned or operated by the City of Edmonton excluding those employees in the position of Supervisor and those employees employed above the position of Supervisor."

The telephone certificate is, for this decision, only of historical significance as "Ed-Tel" is now a separate corporation. It is clear from the wording of the 1949 certificates that they covered "hands-on" tradespersons and helpers and their supervisors. The scope of the 1973 certificates appear to be directed at the same core activities.

In 1975, the Board certified CSU for the unit described below. That event triggered a series of disputes about whether the CSU certificate inappropriately carved out office, clerical or technical functions from the IBEW units. In 1981, IBEW launched a series of challenges seeking determinations about the status of certain people it felt were assigned inappropriately to CSU. While most of those challenges affected the Telephone Unit, some involved the Power Unit.

In 1982, the City of Edmonton brought a further series of determination applications concerning the managerial status or appropriate bargaining unit allocations of certain persons. Several proceedings, mostly on preliminary or collateral matters, followed. In 1989 the Board issued a decision (see below) on some of these issues, which the IBEW challenged and continues to challenge. It related primarily to the Telephone unit, but has broader significance. This is because it involves the dispute ATU and IBEW have over the "office, clerical and technical" employees issue and its relationship to the CSU unit certified in 1975.

Layered on top of the legal disputes about what each bargaining unit covered is another difficulty — technological change. As the 1989 decision noted:

We received evidence of broad technological change involving electronics and computerization within Ed-Tel over several years. These developments have blurred some lines between jobs and changed the methods of performing many tasks and the qualifications required. In some instances, a tradesman within Local 1007 or a non-trade person at issue may perform what was formerly only trade work. Such changes have resulted from the substitution of computers for trade skills and the accessibility of some computer programs to trade and non-trade persons alike.

In the result, certain work has disappeared through technological displacement. The change in technology has changed the nature of the work performed. Data base information and computer programs have replaced, in part, the tradesman's knowledge and his diagnostic and prescriptive skills.

IBEW, Local 1007 v. City of Edmonton and CSU 52 [1989] Alta.L.R.B.R. 276 at p. 282.

The IBEW put arguments to the panel that CSU did not, could not, or ought not to have, carved certain work out of the IBEW units. The key Board rulings, which IBEW still contest, are as follows, from page 287:

[The Board held that certain positions did not fall within the IBEW telephone unit, and explained the factors behind its decision...] The first such factor was the Board's treatment of Edmonton Civic Service bargaining unit descriptions in the March, 1975 decision of the Williams panel and the September, 1978 decision of the Dubensky panel. While those respective decisions involved different applicants, certain principles nevertheless emerge which relate to the issues in this case.

In the first of those matters, the Canadian Union of Public Employees, Local Union 52 (Civic Service Union) applied for a bargaining unit of the City which excluded a number of categories and City activities. To determine an appropriate unit description for Local 52, the Board invited responses from the other Civic Unions. The "Telephone Unit" of Local 1007 was among the respondents.

[The panel then referred to the decision about the CSU 52 unit referred to below and continued ...]

The Dubensky decision made it clear that the Local 52 bargaining unit would encompass certain kinds of employees across various City Departments. The decision also made it clear that office, clerical and technical employees were intended to be the bargaining unit members. In the result, a clear, unqualified scope was given to the CSU bargaining unit.

In the present case, the Applicant's arguments had two branches. The first was that all of these functions were once performed by persons within the Applicant's unit and, therefore, should be maintained within that unit. That assertion appears to be factually incorrect in many of the cases. Even if those were the facts, however, we would not find the argument valid because it would not permit any evolutionary change in work functions. The Board's responsibility is to make its determinations under section 8(2)(o) based upon the work as it is currently being performed. To do otherwise, could lead to decisions that are unrealistic and irrelevant.

The Applicant's second argument is that all of the persons here perform work which falls within its bargaining unit description as varied by our predecessor Board in February, 1973. In other words, the Applicant argues that the persons at issue are employees engaged in:

Communication installation, construction, maintenance, repair and operation of communication and/or related electrical equipment owned or operated by the City of Edmonton ...

From the evidence, however, we do not find that the contested persons are engaged in communication installation, construction, maintenance, repair and operation of communication and/or related electrical equipment. In our view, they provide administrative support to Ed-Tel employees engaged directly in those activities under the Applicant's certificate. Providing support to those activities is clearly different from engaging directly in the activities.

The Applicant's second argument, if successful, would result in an all-embracing unit, as Mr. Stewart terms it, which would effectively be a self-contained departmental bargaining unit. That concept is unacceptable to the Board. It could lead to the "total destruction of the present scope of collective bargaining in the City" as noted by the Dubensky panel at page 19 of its decision. In that case, the City argued that a departmental bargaining unit concept could lead to as many units as there were City departments. That result clearly had and still has many negative implications.

The remaining factor of general relevance in this case is the community of interest between the employee groups. We did not have direct evidence in this regard. However, we inferred that the disputed persons would have more in common with other office and clerical employees regarding employment terms than with the Applicant's members.

The Board had several reasons for that conclusion. Firstly, all of these persons apparently work in an office kind of environment. Many members of Local 1007, however, work in the field under whatever different working conditions and other considerations that may entail. Secondly, there appear to be differences between this group and that of the Applicant Union concerning the basic nature of the work which each performs. The contested persons' work seems to be administrative versus the installation, construction, maintenance, repair and operations work involving equipment under the IBEW certificate.

Finally, we inferred that the disputed group and members of the Applicant Union have generally different backgrounds of training and experience. Members of Local 1007 may often have a background of trade training and experience whereas no such requirement applies to any of the work at issue. We accept that tradesmen need significant periods of

formal training and several years of apprenticeship time to acquire their journeymen trade skills. There are apparently no tradesmen or apprentices in the contested positions nor a formal training requirement approaching that of the trades. In fact, the evidence is to the contrary. For this reason, too, the disputed employees would compare themselves more with other office and clerical employees than with the Applicant's members.

3. The CUPE Local 30 Unit

In November, 1961, CUPE applied for certification of a bargaining unit described as:

All hourly-paid workers and construction watchmen with the exception of those in a confidential capacity and those who deal with matters relating to Labour Relations.

Instead, with the concurrence of the City, the Board certified the Union, in December 1961, for an amended unit (Certificate 140-61).

All hourly paid workers and Construction Watchmen employed on City construction and maintenance work in the Engineering, Waterworks, Parks, Garage, Purchasing, Airport, Building, Maintenance, and Police Garage Departments excluding General Foremen, Supervisors and higher ranks, Electric Light and Power, Telephones, Power House, Edmonton Transit System, Police, and Fire Departments, and all Clerical Employees.

In May, 1973, CUPE 30 asked the Board to vary Certificate 140-61 to read:

All employees of the City of Edmonton, including foremen and positions of equal status, employed on construction, maintenance or public service work, in the Engineers' Section and Airport Division of the Engineering and Transportation Department, the Edmonton Water and Sanitation Department, the Edmonton Parks and Recreation Department, the Garage Department, the Purchasing Division of the Finance Department, the Building Maintenance Section of the Property & Building Management Department and the Police Garage of the Police Department.

IBEW objected because it wanted to ensure that the amended CUPE description specifically excluded IBEW's units as described in its own Certificates. CUPE expressed a concern about the City's unilateral transfer of employees performing underground duct work from its jurisdiction to IBEW.

In June, 1973, CUPE placed before the Board an amended version of the description contained in the May, 1973 application. This latest description specifically included all underground work related to traffic lights, duct lines and power and telephone vaults, excluding work done by journeymen electricians and communication technicians.

In June, 1973, CSU expressed concern that CUPE's variance application, if successful, would result in the transfer of certain trade categories from their jurisdiction to CUPE. This concern was apparently later resolved by agreement between CUPE and CSU that the trade classifications should remain as they were.

In November, 1973, CUPE advised the Board that it was withdrawing its variance application and was prepared to continue under the existing description. CUPE participated in the CSU certification application in 1974-75. It successfully argued that the unit for CSU should specifically exclude heavy equipment inspectors, field inspectors and industrial waste inspectors. Understandings were also reached about watchmen and caretakers. This led to an amended certificate issued in September, 1975 reading:

All hourly paid workers and Construction Watchmen employed on City Construction and Maintenance Work in the Engineering, Waterworks, Parks, Garage, Purchasing, Airport, Building Maintenance, and Police Garage Departments, excluding General Foremen, Supervisors and higher ranks, Electric Light and Power, Telephones, Power House, Edmonton Transit System, Police and Fire Departments and all Clerical Employees.

This unit description has remained static since 1975. CUPE participated in a number of proceedings, brought by other unions, but none resulted directly in any modification of the CUPE bargaining unit.

4. The CSU 52 Unit

CSU bargained voluntarily for City employees for many years without a certificate. They applied for certification in 1974 and received their first certificate in 1975. The unit description read as follows:

Employees of the City of Edmonton when employed as office and clerical employees; child care workers, day care workers, and social workers; construction inspectors, water service inspectors and by-law inspectors (except heavy equipment inspectors, contract inspectors, field inspectors, industrial waste inspectors, and electrical inspectors); investigating officers; draftpersons; surveyors; traffic engineering technicians, materials technicians, laboratory technicians, recreation technicians, and planetarium technicians; custodial workers; driver instructors (except transit driver instructors); stores employees (except transit stores employees, power stores employees, and telephone stores employees); billing and collection employees; excluding police technicians and police cadets; employees exercising managerial functions or those employees employed in a confidential capacity in matters relating to labour relations; those sworn in personnel of the Edmonton Police Department who have the legal powers of a police constable; those personnel within the scope of Certificate No. 140-61 of the Canadian Union of Public Employees, Local Union No. 30; those personnel within the scope of Certificate No. 19-55 of the Amalgamated Transit Union, Division 569; those personnel within the scope of Certificate No. 36-69 of

the Oil, Chemical and Atomic Workers International Union, Local 9-829; those personnel within the scope of Certificates of the International Brotherhood of Electrical Workers, Local 1007 (power unit) Certificate issue May 6, 1949 as varied February 22, 1973, and (telephone unit) Certificate issued May 6, 1949 as varied February 22, 1973; those firefighters and related trades and maintenance personnel of the City of Edmonton Fire Department.

Comprehensive investigations and hearings lead up to this unit description. All the City bargaining agents had notice of and took part in the proceedings. The various proposals, counter-proposals and negotiations are documented in three Board documents.

- Statement of Position dated May 30, 1974
- Statement of Position dated July 11, 1974
- Reasons for Decision dated March 6, 1975

The record of the certification application shows all parties were concerned about time-bars to the application. The CSU certification would have been untimely if the CSU bargaining unit included employees already covered under collective agreements with other unions. In its May, 1974, position paper the Board said:

... this is to confirm the Board's commitment to the parties at hearing that it would undertake to provide to all parties affected, (a) its position, in principle, relative to the question of the nature and scope of the bargaining unit affected by the instant application, (b) advice on the Board's position as to the jurisdiction of the Board in matters of certification relative to certain personnel employed by the respondent employer as support staff to the police and fire fighting forces of the City of Edmonton, and (c) the Board's position on the interpretation that the Board places on existing bargaining unit certificates as they relate to certain positions identified in the Field Examiner's report to the Board in respect of the instant application that are disputed by one or more of the parties.

In giving these undertakings the Board reminded the parties that the matter before it was limited to an application for certification which had been filed by the Applicant and that the parties affected by this application should not expect the Board to enter into concerns which did not lie primarily to the disposition of the said application. However, recognizing that the instant application was entered from a background and history of the deplorable bargaining unit administration, of which all parties are to some measure responsible, this Board believes that its right and proper role is to exercise its authorities and responsibilities in such a way that its decisions concerning the instant application will lead directly to effective and constructive bargaining unit management.

With reference to the matter identified as Item (a) above the parties were informed at hearing that the Board (i) is favourably disposed to a bargaining unit which is inclusive as opposed to one which is a residual or as it has been referred to, a “tag-end” unit. Furthermore, the Board indicated at hearing that (ii) it envisages as being appropriate for collective bargaining, in the totality of the circumstances presented to it, a bargaining unit which is primarily, office and clerical in nature and (iii) a bargaining unit which clearly and unambiguously interfaces with existing bargaining units throughout the City of Edmonton.

We note three important issues raised in this passage:

- The Board was faced with “a background and history of deplorable bargaining unit administration” which led it to try to give a decision that would “... lead directly to effective and constructive bargaining unit management.”
- The Board made three points about the bargaining unit, that it was:
 - (i) inclusive
 - (ii) primarily office and clerical
 - (iii) a clear interface with other units.
- The Board said at the outset it would be giving its interpretation of the existing bargaining units (that is CUPE, ATU and IBEW particularly) as they related to disputed positions.

It went on to say at p. 4:

“that clarification by the Board on the scope of existing certificates would greatly sharpen the delineation on the interface between the applicants’ unit and existing units”

On the scope of the (then existing) ATU unit, it said, at p. 4:

First, by way of general application the Board is of the opinion that when the certificates were originally before this Board the intent in construction was to give a scope of application which is in effect “departmental” or “activity” in nature. In reaching this conclusion we rely particularly on (i) the specific wording used by the Board in the original unit definition and which in our opinion suggests a “departmental” or “activity” related focus and (ii) the propositions put forth by the Board in its written position when it entertained the application of Local 569 in 1955.

The Board then referred to the 1955 ATU certification decision noted above, and said at page 5, in respect of the ATU unit:

... the Board clearly accepted that (i) the City of Edmonton Transit operation did make use of office and clerical personnel and that (ii) those employees, and only those employees who performed functions related to the transit operation should be included within the bargaining unit applied for by the Applicant while others not so performing would not be included within the unit...

It is clear to us that the Board was taking the position that inasmuch as the employees in question were not directly related to the operation of the Transit System they would not be included within the unit applied for.

The Board went on to make some observations about some specific positions in the power, telephone and CUPE units.

The July 1974 discussion paper refined further the question of whether certain classes of employee fell within CSU's unit (historically, and as applied for) or in IBEW's power or telephone unit.

The March 6, 1975 decision documented the various decisions that went into formulation of the final CSU bargaining unit. Of that unit, the Board said, at p. 11:

The decision of the Board to amend the bargaining unit description to the above wording is based upon the submissions not only of the applicant and respondent, but also of the affected and interested parties. The Board is of the opinion the amended unit description concurs with principles and criteria adhered to by this Board in determining a bargaining unit appropriate for collective bargaining.

From pages 12 through 18, the Board documents the submissions received from the various unions and affected employees. It details where it believes all the disputed positions appropriately fell. It is clear that, in ruling that a position fell within the CSU unit, it was also saying that the position did not fall into one of the other units abutting the proposed CSU bargaining unit.

The Board's decision (at pages 17 and 18) over Teletype Operators and related positions is similarly revealing. It makes it clear that:

- they were included in CSU's unit before certification, not in IBEW's telephone unit.
- the 1973 amendment to the telephone unit was not intended to enlarge that unit to include these clerical type positions.

- even though those groups wanted to go into the IBEW unit, this was not justified on community of interest grounds.

In contrast, at page 17, the Board made the following findings:

With respect to the classifications of 0311 Stores Clerk I (only those in the Power Department and Telephone Department), 0312 Storekeeper (only those in the Power Department and Telephone Department), and 0341 Yardman, it is the Board's position that with respect to an appropriate unit for collective bargaining these positions best fall within the scope of the units represented by Local 1007, International Brotherhood of Electrical Workers. In this finding, it is the Board's opinion that the nature of the work, location and community of interest embraced clearly within said units are so compelling in support of inclusion in the International Brotherhood of Electrical Workers, Local 1007 unit that it outweighs [sic] the acknowledged history of voluntary representations by the applicant to this certification.

Rather than leading to "effective and constructive bargaining unit administration" the decision almost immediately sparked a series of applications that continued until the commencement of this review. ATU filed a series of determination applications, as did IBEW. There were also requests to reconsider the CSU certification decision. See:

Amalgamated Transit Union Local 569 v. The Board of Industrial Relations et al.
[Unreported decision, Steer, J., Alberta Q.B. 75-036A dated July 8, 1976]

In a letter dated January 24, 1977, the Board gave reasons for refusing a request by ATU to include a Clerk-Stenographer and an Engineering Assistant in the ATU unit instead of the CSU unit. These reasons cast considerable light on the Board's thinking about the relationship between these two units in respect of administrative and clerical positions:

The Board is of the opinion in considering the testimony of the three employees, the submissions of the parties and the evidence adduced, that the duties performed by such three employees related to administration and therefore, the Board determined pursuant to Section 50(1)(p) of the Act that Sheila Smart, Mary Doherty and Steven Spisak are included in the unit as evidenced by Certificate No. 25-75.

The Board, in making the above determination, confirms the principle enunciated in granting Certificate No. 19-55 and in refusing to amend the Amalgamated Transit Unit Division 583 Certificate No. 31-62, that a unit of employees comprising both office employees and plant, outside employees or employees performing duties related to the

physical operations of the employer, is not a unit appropriate for collective bargaining in all circumstances.

A few months later, the Board made some additional decisions along the same lines. On May 20, 1977, in a letter decision, it held:

... the Board was satisfied in considering the submissions of the parties and evidence adduced that the duties of those persons employed within the classifications of 0001 — Invoice Clerk, 0002 — Information Clerk and 4202 — Planning Assistant II (Transit SVC Designer) are related to Administration and should not be included in the unit as evidenced by Certificate No. 19-55 as amended and the duties of the persons employed in the classifications [sic] of 0001 — General Schedules Clerk and 0002 — Transit Schedules Clerks are related to the physical operation of the City of Edmonton Transit System and should therefore be included in the unit as evidenced by Certificate No. 19-55 as amended.

In 1978, the Board decided the ATU reconsideration application referred to above in respect of the ATU unit. That decision (the Dubensky decision) very clearly set out its conclusion that office, clerical and technical employees employed in the transit department should not fall into the ATU unit, but instead, into the CSU unit. This decision was a reconsideration. Unlike the CSU certification decision, it was unrestrained by concerns about collective agreement time bars.

The Board amended the ATU unit description to clearly exclude “office, clerical, technical, construction and building maintenance personnel.” It made it quite clear where those people belonged. However, it did not actually amend any other unit beyond that of ATU. It invited applications, but none came. Its overall thinking was clear enough. It rejected departmental units. It also said:

With respect to a departmental unit, the Board noted that within the collective bargaining sphere of the City, the Transit Department is the only area in which clerical personnel are represented by a bargaining agent other than Local 52. To resort to departmental units throughout the City, would result in the total destruction of the scope of collective bargaining in the City as it is presently known.

A.T.U. 569 v. The City of Edmonton, Canadian Union of Public Employees, Local 52 (Edmonton Civic Service Union) et al, (78-093 Dubensky, Chair, September 27 1978) at p.

18

This comment also tells us that the Board believed there was not, and should not be, any office and clerical people within the two units (power and telephone) held by IBEW at the time.

IV. Issues of General Application

(1) Appropriate Bargaining Units

This decision is about the appropriateness of collective bargaining units. The Labour Relations Code's certificates exist to facilitate orderly collective bargaining. Certificates granted for inappropriate units frustrate rather than enhance that objective.

Well established principles guide Boards when approving units as appropriate. A brief summary of the major points will suffice. As the City is a multi-union environment, with all employees certified, special considerations influence the appropriateness question. The units must be capable of co-existing in harmony. Unit descriptions which, by ambiguity or poor design, generate constant disputes about who falls where, are inappropriate. They frustrate, not foster the bargaining relationships they authorize. In multi-union environments it is important to give special consideration to the career paths individuals may follow. Collective bargaining structures can frustrate the normal promotion of employees. This may be due to seniority restrictions, job posting and qualification provisions, or other terms that restrict access to jobs by persons allocated to other bargaining units.

The ATU and IBEW submissions give a useful checklist of points to consider in assessing unit appropriateness. In summary, that list suggests Boards consider:

1. The purposes, intent and provisions of the legislation governing certification and the determination of appropriateness of bargaining units.
2. Community or mutuality of interest with respect to wages, hours, working conditions, and other collective bargaining objects of employees to be certified in the same bargaining unit. As Judge A. Gold, Vice-President of the Quebec Labour Relations Board, stated in one of his decisions: "The unit must have a certain homogeneity and separate group identity which makes it capable of being distinguished from the other employees or groups of employees in the working force."
3. The prior history and pattern of collective bargaining of the bargaining unit in question.
4. The history, and the extent and type of labour organization connected with the determination of the unit and with other employees of the same employer.
5. The desires of the employees as to the bargaining unit in which they wish to be included.
6. Some Boards, such as Ontario, pay attention to the eligibility of employees for membership in a particular labour organization. (This is not an issue in this case).

7. The employer's administrative set-up, the organization and method of operation (whether centralized or not), the relationship to the proposed bargaining unit, and the way that the unit fits into the company's organization.
8. The collective bargaining record of an existing bargaining agent with regard to the employees in a unit previously certified as appropriate.
9. Although the cardinal rule is that each case must be decided on its own merits, nevertheless, in practice Boards pay considerable attention to prior decisions from which policy principles emerged.
10. The agreement of the parties on a particular bargaining unit is a very important factor. Boards have a duty to establish appropriate units, independently of the will of the parties. However, in practice, when the parties agree on the type and composition of a bargaining unit, the Boards will usually approve of such a unit, even if not completely in line with previous certification practices.

George Adams, *Canadian Labour Law*, 2nd edition p. 7-3 - 7-47 describes in great detail the applicable considerations. The author summarizes these considerations starting at p.7-3:

The complex and often conflicting considerations involved in the determination of an appropriate bargaining unit discouraged legislatures from enacting specific standards which labour boards would be required to utilize in determining bargaining unit contours. Only the legislation of Nova Scotia provides guides for its labour board and even these guides are quite general. The statute provides that the board should give consideration to the "community of interest among the employees... in such matters as work location, hours of work, working conditions and methods of remuneration." "Community of interest," however, is a concept employed by all labour boards whether dictated by statute or not. In this way, the tribunals seek to describe bargaining units that neither embrace employees having a substantial conflict of interest nor omit employees sharing a large measure of economic interest. It is through the concept of community of interest that a labour board determines whether employees with craft skills and training should be separated from more semi-skilled or unskilled employees where an applicant seeks an "industrial" unit. Similar factors prevail in determining whether production and maintenance employees should be grouped in a single unit with office, technical or clerical employees. Community of interest is also a concept relied on in determining whether there would be a grouping of employees employed at all of an employer's plants or locations. In making these determinations, labour boards are driven to consider a host of factors which illustrate just how vague or flexible the standard "community of interest" can be. The multiplicity of factors, which seldom point in one specific direction, may include: (1) similarity in the scale and manner of determining earnings; in employment benefits, hours of work and other terms and conditions of employment; in the kind of work performed; and in the qualifications, skills

and training of employees; (2) the frequency of contact or interchange among employees and the geographic proximity of workplaces; (3) continuity or integration of production processes; (4) common supervision and determination of labour relations policy; (5) relationship to the administrative organization of the employer; (6) history of collective bargaining; (7) desires of affected parties and employees; and (8) extent of union organization.

In applying these considerations, a labour board's objective is to fulfil its obligation to maximize an employee's freedom to join a trade union of his or her choice while at the same time promoting harmonious labour relations through effective and efficient collective bargaining procedures. Each case required a labour board to balance the aforementioned factors by assigning weight as deemed appropriate by the board in light of its experience and wisdom in such matters. A classic Canadian labour board review of the factors is found in *Usarco Ltd.* ...

It might also be observed that collective bargaining statutes regulating private-sector workplaces do not create any presumption in favour of the most comprehensive unit of employees even though the employees involved may have a community of interest.

... It has therefore been common for a single employer to be certified for a number of appropriate bargaining units, e.g., an office unit, a craft unit, a plant unit, a sales unit and a part-time unit. Labour boards have uniformly rejected the submission that there is only one appropriate bargaining unit in each case.

A common theme runs through the submissions from the ATU and IBEW. It also runs through their submissions referred to in the many decided cases involving those two unions over the past twenty years. It is the suggestion that community of interest refers primarily to the identity of the place of employment. Different euphemisms mask the same general idea. It is that the Edmonton Transit system or department and the Edmonton Power system or department are the communities in which all their employees have an interest. Sometimes this is described as each unit's "core" — "Transit" or "Power." At other times these departments are said to be "functionally coherent and interdependent."

These suggestions misconceive the labour relations concept of community of interest. Identification with such "work function" or "departmental" groupings are an important component within the concept of community of interest, as shown by factor 7 in the list provided by ATU and IBEW, set out above. But the community of interest concept means more than this. It means identifying those employees with whom the employees in question share common cause in a labour relations sense. Differences in types of work, skill levels and working conditions (factor 2 in the ATU/IBEW list) are often more important than affiliation with a particular department or work objective.

In their rebuttal, IBEW and ATU assert:

The interesting aspect of this whole exercise is that, while the concept of a departmental unit is rejected, so is a partial departmental unit and a functional work unit. The question is how does one define community of interest?

So long as these two unions seek a definition based on an identifying word - inside - outside - transit - power, they will find no answer to their question. The answer can only come from a more discerning look at the interests and concerns of the employees in question, their similarities and differences.

We have arrived at our decisions on the many specific points detailed below, weighing the criteria set out above as they apply to those specific issues. First, we set out some decisions of general application.

(2) Preliminary Rulings of General Application

We make five preliminary rulings.

- (i) This is a reconsideration of all four certificates, and a new departure.
- (ii) Allocations must be based upon each person's primary function, not incidental duties.
- (iii) Bargaining units are not based solely upon the City's job titles, nor upon the City's departmental structure. These elements, while relevant to allocation, are not decisive because they change with time.
- (iv) The CSU 52 will be an "all employees - except" unit. That is, a unit that incorporates the "tag-ends." If persons do not fall within one of the other units, then they will fall within CSU 52.
- (v) Where there is a serious doubt about whether a person's duties put them in one unit or another, the decision should be made on the basis of a broad look at community of interest principles.

(i) This is a reconsideration of all four certificates:

The litigation engendered by these four bargaining units has been immense. The same positions have been advanced, argued and decided over and over again. Much of this has been carried on the backs of procedural and due process questions, such as — Did this decision vary that decision? — If so, did the Board have jurisdiction to do so or intend to do so?

One cannot read the many thousands of pages of submissions and decisions without sensing that far too much has been made of four relatively straightforward bargaining units. Faced with an unabating flow of

determination applications, the Board called for general submissions, from all parties, on what these units ought to look like. All parties received notice of the Board's proceedings, and of its willingness to reconsider the unit descriptions should circumstances warrant. We needed to hear the merits of the positions behind the continued discontent. We afforded a full opportunity for those issues to be aired.

After absorbing these submissions, and reviewing the history of the relationships outlined above, we have decided to exercise our power to reconsider each of the four unit descriptions. The unit descriptions we now adopt are set out in Part II of this decision.

The four unit descriptions are designed to stand together. They abut one another without overlap or gap. They may vary the unit descriptions that existed before. They may result in some people being reallocated from one bargaining unit to another. This may not coincide with the lists of positions or scope clauses in the collective agreements extant between the City and these four unions.

The legislation gives the Board a broad power to reconsider its own decisions. See Section 11(4) of the *Labour Relations Code* and:

R. v. Alberta Board of Industrial Relations et al. (1970) 17 D.L.R. (3d) 302 (Alta. S.C.A.D.) (The "Chemcell" decision)

CUPE Local 41 v. Board of Industrial Relations (1978) 84 D.L.R. (3d) 710 (Alta. S.C.A.D.).

This can include reconsideration of bargaining units to make them functional.

We have reconsidered each of the four units to make it clear that the words we use, in the unit descriptions, and in our explanations of those unit descriptions, should be assessed in their own right. They are not just a reconstruction of what went before. To take the latter approach would be to invite another two decades of litigation about whether we had or had not made changes.

The Board has assessed these four units to see whether we have so changed the scope of any one of them that majority support is called into question. We have considered the principles set out in such cases as *C.K.C.V. (Quebec) Limited v. Canada Labour Relations Board* (1981) 38 N.R. 188 (S.C.C.). See also: *Development in Labour Law; The 1980-81 Term*, Brian A. Langille, *The Supreme Court Law Review* (1982) 323 at 340. We believe these reconsiderations clarify the scope of the four units. We do not believe there has been any change in any of the four units sufficiently fundamental to call into question majority support issues or to necessitate new representation votes.

We recognize that ATU and IBEW have, for many years, argued that excluding office and clerical (and perhaps) other employees from their units has removed people from those units who rightly belonged there.

Had this been so, an accretion question might have arisen, but it is not so. First, our decision is not dissimilar in this respect to the several decisions that have gone before, and been upheld by the Courts. Second, to a large extent, the City's bargaining unit assignments have been a lot closer to the units we now set than they have been to the units to which ATU 569 and IBEW 1007 think they ought to have been assigned many years ago.

The Board's intention, by this decision, is to create a new point of departure. By this, we hope to eliminate two lines of argument from the adjudication of border disputes in the City of Edmonton bargaining units.

First, a lot of cases argued in the past have centred on alleged changes, contrasts or errors in applying earlier Board decisions. Whatever the merits of the arguments in each of those cases, the overall process was counter-productive. This decision is intended to be comprehensive, and to stand on its own. It is not just one more in a series.

Second, it describes how positions are to be assigned now between the City's bargaining units. The descriptions are based on what is appropriate now. If times change, no doubt future Board panels, where appropriate, will reconsider portions of the unit descriptions we set out. We reject the "but we used to do that work" type of argument. Some of the changes we make may well involve changes from the past. It is counterproductive to keep calling back to earlier times to support arguments against what is a rational allocation for today's circumstances.

(ii) Prime Function Test

Whether a person falls within a bargaining unit depends upon their job functions, not on their particular job title. The determination is based upon the person's prime function. Incidental functions that, considered alone, might point to a different unit allocation will not override the allocation based upon the person's prime function.

Underlying this is an important concept. These bargaining units define people, not work. Subject to any restrictions negotiated into any collective agreements, it is the City's responsibility to assign its work amongst its employees. The Labour Relations Code does not allocate "bargaining unit work." A person's appropriate unit allocation depends on the work that person routinely and primarily performs, generally referred to as their "prime function." Parties frequently negotiate collective agreement terms that say, directly or indirectly, that work will only be assigned to certain people. However, this is a function of their negotiations, not of the Code itself.

Prime function goes beyond a percentage count of how much time a person spends doing one task or another. It refers as well to the person's core function; the purpose of having them do their job; its *raison d'être*.

The following quotation describes what we mean by prime function. Although it is written in the context of distinguishing managerial positions from bargaining unit positions, the same notions help distinguish between employees working in two abutting bargaining units. The quotation is taken from:

Falconbridge Nickel Mines Ltd. [1966] O.L.R.B. Rep. Sept. 379.

Most of the persons in dispute have more than one function and generally speaking it is the weight or emphasis attached to the different functions which must determine on which side of the managerial line that the persons fall. Senior or skilled employees often have more responsibilities than other rank and file employees and they exercise certain control and discretion over the other employees because of their greater experience and skill. It is the Board's difficult task to determine whether the additional responsibilities are managerial functions within the meaning of section 1(3)(b) of the Act or are merely incidental to the prime purpose for which the employee is engaged (i.e. to perform work properly performed by persons within the bargaining unit). If the majority of a person's time is occupied by work similar to that performed by employees within the bargaining unit and such person has no effective control or authority over the employees in the bargaining unit but is merely a conduit carrying orders or instructions from management to the employees, the person cannot be said to exercise managerial functions within the meaning of section 1(3)(b) of the Act. On the other hand, if a person is primarily engaged in supervision and direction of other employees and has effective control over their employment relationship, even though the person occasionally performs work similar to the rank and file employees when an emergency arises or to relieve an employee during occasional periods of absence or even to perform a particularly important job requiring special skill and experience, such occasional work in no way derogates from his prime function as a person employed in a managerial capacity. When assessing a person's duties and responsibilities the Board does not look at any one function in isolation but views all functions in their entirety. As stated in the *McDougall* case above referred to, titles alone are not of much assistance in determining what a person's functions really are.

While the case cited above would seem to indicate that while a person may have minor supervisory functions or very limited confidential functions in matters relating to labour relations, if such functions are merely incidental to their main function and are of such a nature that they cannot be said to materially affect the employment relationship of the respondent's employees, such persons should not be excluded from collective bargaining by reason of section 1(3)(b) of the Act. Unless a person who regularly performs work similar to persons in a bargaining unit has independent discretionary powers rather than merely incidental reporting functions which are subject to the discretion and authority of higher persons in management, there is no reason to exclude such a person from collective bargaining.

See also:

Brauns Construction v. Labourers' Local 92 [1992] Alta.L.R.B.R. 10 at 15:

Voting Rule 17(1)(a) has not changed the test historically used by this Board in determining inclusions in a bargaining unit. Voting Rule 17(1)(a) states that persons eligible to vote are those “persons employed in the bargaining unit and at work on the date of the application.” This still requires the Board to ascertain whether the person was employed in the bargaining unit on the date of the application. “Employed” in the bargaining unit means more than simply performing the work of the bargaining unit employee. To find out whether an employee is “employed” in the bargaining unit requires an examination of those factors set out in *Rimar* and the other cases dealing with the prime function test. The work tasks being performed by an employee on the date of the application do not necessarily result in that employee being employed in the bargaining unit.

The prime function test as outlined in *Rimar* requires the consideration of a number of factors including both the employers’ and employees’ classification of their position, rates of pay, duties responsible for and work performed, and circumstances of their hiring. These factors, without restricting ourselves, and such others as may be relevant in the circumstances, will be looked at to determine what the employee’s prime function was at or around the date of the application. We agree with the Union that neither *Canadian Patent Scaffolding* or *Waschuk Equipment*, stand for any different principle.

Brauns’ position of the “snap-shot” approach would leave us with great difficulties and many ambiguities. When would the “snap-shot” be taken? At what time of the day? What if an employee performs more than one job function during the day? Which job should we or must we look at? If a scaffolder is in the process of moving the scaffold to a different site at the time of the “snap-shot” does that make him a labourer? Or, what if there just so happens to be a major snow fall the day before the application, requiring the employees to shut down their present job site and prepare for a move to another job site. Are they all labourers? Obviously, the “snap-shot” approach would cause too many problems and would prove to be far too inaccurate a reflection of what the employee’s true job functions may be.

In looking at a person’s duties for the purposes of bargaining unit assignment, the Board assesses the person’s prime function. This means that a person may be employed in tasks that make it clear they are assigned to a particular unit. However, in the course of their duties, they may nonetheless be given and perform ancillary duties which, if considered alone, might suggest a different assignment. The Board use of

this prime function test is inconsistent with the following positions taken by both ATU 569 and IBEW 1007, which we reject.

... a presumption must be that if an employee performs any work specific to Transit or Power, then the person is in the unit of ATU 569 or IBEW 1007. Only if an Arbitration Board, constituted under the collective agreement of ATU 569 or IBEW 1007, decides that a person or the work or both are excluded from the unit, is then the person or work, placed into the tag end unit?

Whether the work function is a prime function, ancillary to, or collateral to the core, becomes a collective agreement or collective bargaining issue, rather than jurisdictional.

The effect will be:

- (1) All work of “Transit” or “Power” will be excluded from the concept of Inside or Outside.
- (2) All work within “Transit” or “Power” will be allocated to the bargaining agent representing employees performing work of transit or power.
- (3) All employees, will be allocated to the unit where the work is generically described.

The thrust of this argument is that if anyone has any connection to “Transit” or “Power” they are presumptively within the ATU or IBEW unit. The question of whether the connection involves only ancillary transit or power functions is a question for the ATU or IBEW to decide in collective bargaining with the City. Therefore, goes the argument, such persons can only fall within the CSU or CUPE units if ATU or IBEW agree, or if an arbitrator acting under one of their agreements rules that they are excluded from that agreement.

We reject this argument totally. It amounts to saying ATU and IBEW have rights to a departmental unit for each of the Transit and Power departments. It ignores the fundamental proposition that each union can only negotiate with the City for the persons for whom they have bargaining rights. To do otherwise would be to encroach upon the certificates of other civic unions. Section 149 protects one Union’s unit from negotiated incursions by another trade union.

149 No trade union and no person acting on behalf of a trade union shall

(b) bargain collectively or enter into a collective agreement with an employer or employers’ organization in respect of a unit, if that trade union or person knows, or in the opinion of the Board ought to know, that another trade union is the bargaining agent for that unit of employees;

There is no authority for a trade union to bargain terms for people falling outside their unit if those persons already fall within an abutting unit. This follows naturally from these principles:

- The bargaining units cover all employees and do not overlap.
- An incumbent in any given position will fall in only one bargaining unit.
- Bargaining units cover “persons,” not “work.”

Unit allocation depends first upon an interpretation of the Board’s unit description, not upon an interpretation of any one union’s collective agreement.

In this rebuttal, ATU and IBEW give another clear indication of their approach to bargaining units.

What will work is a simple, straightforward pronouncement that the units are “all employee” units for ATU 569 and IBEW 1007. Secondly, that the function of the employee’s position and the duties and responsibilities are not determinative of where the person may fall. The test is one of functional coherence and interdependence of the position in the organization.

The standard tests to be applied must be within those principles applied in arbitration jurisprudence on issues relating to bargaining unit work. *Canadian Labour Arbitration Brown and Beatty (3d) p. 5:1200*. The concept of “bargaining unit work has generally been understood to mean work customarily performed by a member of the bargaining unit.” This principle focuses on the bargaining unit work first.

In the City of Edmonton bargaining units, bargaining unit work is not the standard applied. The standard has been duties and responsibilities of the person, based upon an exclusivity of bargaining units. If a person is a clerk, he or she is not in a specialized unit of ATU 569 or IBEW 1007 but rather is in CSU 52. That particular position makes no sense. It was not the position prior to 1978 nor does it lend itself to change in the method of performing work.

We disagree with this approach also. Being certified involves being certified for persons who perform certain types of work; it does not involve ownership of the right to the work. It indeed lends itself to changes in the method of performing work. If the way of performing the work so changes that the position leaves one category and enters another, then the person’s unit allocation changes. Historical arguments about who did the work before the nature of the job changed become irrelevant. We believe an unwillingness to accept this concept has given rise to many unnecessary disputes between these parties.

Our decision is that a person's appropriate bargaining unit allocation must be assessed by looking at the person's prime function. Performing ancillary or incidental tasks that might, if they were the whole of that person's job, place them in another unit, will not justify changing the person's unit allocation. Nor will the fact that another union's collective agreement purports to give that Union's members exclusive rights to perform that work. Such clauses may give rise to a grievance claim for damages, but they cannot predetermine unit allocations.

(iii) Units Based neither on Job Title nor on Departmental Structure

The Board administers bargaining unit descriptions on the basis of the functions people perform in their jobs and not on the specific titles given to those jobs. Job titles can be important within a large organization like the City, particularly in respect to its classification systems. However, the employee's community of interest depends upon the job's content, its working conditions and its experience or educational requirements, not on its name. The Board's policy on this is well established and we affirm it for the administration of these units.

The City divides its organization into departments with organizational charts that identify reporting relationships. Such departmental organizational structures change over time. In the past the Board has deliberately avoided framing bargaining unit descriptions around the, then current, City administrative structure.

Employees have a natural tendency to identify with the department in which they work. This is particularly true when the department has a clear visible public purpose like running a transit system or providing power to the community. Such identification is reinforced by efforts to strengthen the department's corporate image. They may adopt distinct logos, sponsor community activities, or engage in other activities that create the image of a freestanding department distinct from the City itself.

Despite these visual images of separateness, the City nonetheless maintains a high degree of consistency and centralization in its employment policies. This creates consistency in employment and enhances employee mobility in areas involving similar skills. The City also periodically reorganizes its structure. While core functions often remain untouched, peripheral or support services can change as departmental and reporting structures change.

Departmental managers may sometimes work to reinforce the "independent department" view of their own area. Managers accustomed to operating within their own sphere of influence may not always welcome centralized direction or centralized collective bargaining over some of their areas of responsibility. Such tensions are inevitable in a large civic organization. Some departmental managers might prefer one departmental union, covering all, and only, departmental employees. Despite this, the City has chosen a degree of centralized control and cross-departmental uniformity. This creates commonality of working

conditions that transcend the countervailing community of interest factors that arise from departmental allegiance.

We remain committed to a multi-unit structure in the City. We also remain convinced that it is unsound to base civic unit descriptions on the City's departmental structure. That structure is too liable to change. It also fails to reflect the community of interest that continues to exist across the City's departments for many categories of employee.

(iv) The CSU 52 Unit will be an “all employee - except” unit

The City of Edmonton is a diverse operation. There are some areas of responsibility that defy categorization. This makes it necessary to have one unit which covers all employees except those specifically assigned elsewhere; that includes the “tag-ends.” The Board has decided that CSU should be that unit.

The units for fire, police, senior police, ATU, IBEW, CEPU and CUPE each have defined boundaries. The CSU will consist of all employees other than those who fall within those units. It has the most diverse employee group.

(v) Doubtful Allocations to be based on Community of Interest Factors

Inevitably, there will be persons whose duties place them on the border line between two units. These are people for whom it could be said “a good argument could be made either way.” In such cases, the Board believes the person's allocation should be based on an assessment of where that person's community of interest best lies. As the summary set out above makes clear, no one factor governs a person's community of interest. It is not enough to say their community of interest lies with CSU because they spend some time working in or out of an office. Similarly, it is inadequate to say they belong in ATU, or IBEW because the work they do is in some way related to the transit or power systems.

What is needed, in those few cases where a genuine ambiguity exists, is a thorough review of the position and an assessment based on all the appropriate community of interest factors. Part II sets out factors relevant to each unit, and provides guidelines for making any necessary unit determinations. Where the unit description, and consideration of those factors, leave the allocation in doubt, then community of interest criteria should be used to decide the question.

V. The Borders between the Four Main Bargaining Units

The four bargaining units involve six borders. Our review canvassed issues about each of these borders, which we discuss border by border rather than unit by unit.

ATU 569 and IBEW 1007

- General

CUPE 30 and CSU 52

- General
- Construction and Maintenance Work
- Physical Supervision or Maintenance of Facilities
- Service and Repair of Vehicles and Equipment
- Operation of Specific Systems
- Custodial Workers
- Water and Wastewater Treatment Plant Employees
- Inspectors

CUPE 30 and ATU 569

- General
- Custodial Workers
- Construction Work
- Facilities and Grounds Maintenance

CUPE 30 and IBEW 1007

- General
- Electrical Generation and Distribution
- Electricians
- Water and Wastewater Treatment Plant Employees

ATU 569 and CSU 52

- General
- Office and Clerical Employees
- Technical Employees
- Specialized Transit Systems
- Storekeeping (Transit)

IBEW 1007 and CSU 52

- General
- Office and Clerical Employees (Power)
- Storekeeping (Power)
- Meter Readers

THE BORDER BETWEEN ATU 569 AND IBEW 1007

There are few areas where these two units intersect. Basically, the IBEW 1007 unit and the ATU 569 unit operate in different spheres. The only significant point of contact involves electrical work performed on the transit system. In particular, there is work on the power lines that supply electricity to the LRT or to the City's remaining trolley busses. No difficulties have arisen between the parties in allocating employees between these two units, so we do not need to spend time defining that line.

Should a dispute arise, the question would be one of fact. Is the person in the position primarily engaged in the construction, maintenance and operation of the electrical distribution system, or in the operation, service and maintenance of the public transit system? Should the answer remain unclear, the question would be one of community of interest. In particular, one would need to assess whether the background and skills needed for the position bore more similarity to those persons working within the IBEW unit than the ATU unit, or vice versa.

THE BORDER BETWEEN CUPE 30 AND CSU 52

The City, in its submission, says "there have generally been few, if any, disputes brought to the Board in respect to the boundary line between CSU #52 and CUPE #30." This is correct, and we find no reason for major disruptions to the status quo. There are areas of ambiguity, so we will describe the dividing line. We agree, in general terms, with the following City submission.

The City agrees with CUPE #30's suggestion contained in their submissions of June 13, 1989, that changing of technology and increased specialization have created a blur between the traditional line drawn between white collar and blue collar workers. The same changes have eliminated or at least substantially reduced the utility of the word "technical" as a descriptive term that might assist in making jurisdictional allocations. The result is there are now a number of classifications within the City which might arguably fit either into CSU #52 or CUPE #30. It is the position of the City of Edmonton that while it might be possible to develop unit descriptions which eliminate that area of potential overlap that can only be done if there is a willingness to substantially narrow the current scope of either CSU #52 or CUPE #30.

It is the submission of the City of Edmonton that in light of the absence of any substantial history of jurisdictional disputes as between the CUPE #30 and CSU #52 such substantive alterations of present unit boundaries is not warranted. Unfortunately, absent such an alternation of unit boundaries, a new unit description for CUPE #30 (assuming CSU #52 is a tag-end) will require both a general description to refer to the trades and labouring aspects of the unit plus an additional specific description of those classes within CUPE #30 which fall into the grey area.

As suggested, we include some areas needing specific mention in the CUPE unit description set out in Part II.

The current CUPE unit description fails to give a clear picture of the unit's scope. The dividing line between the CUPE and CSU units is partly defined by who is hourly paid. This gives little guidance and could be changed unilaterally by the City. The reference to construction and maintenance work appears to leave out many categories of persons who currently, and in our view appropriately, fall within the CUPE unit. The reference to the listed departments, while helpful, runs the risk of becoming outdated should the City's organizational structure change.

We will discuss the elements of the CUPE unit as we now define it. As we do so, we will define the points at which these elements within the CUPE unit abut the CSU unit, and identify distinguishing features. The CUPE unit involves persons employed in:

- Construction and maintenance work
- The physical supervision and maintenance of facilities
- The service and repair of vehicles and equipment
- The operation of animal and pest control systems, garbage disposal and control systems, and waste-water treatment systems.

The key points of intersection with CSU are:

- Where people work in relation to construction or maintenance without being directly involved in its physical process
- Where people's prime function is to provide programs within facilities rather than to perform work involving stewardship of the facilities themselves.

After dealing with these more general principles, we will turn to three specific topics concerning these two units:

- Custodial workers
- Water and waste water treatment plant employees (although we note this issue involves the CSU interface with IBEW as well as CUPE), and
- Inspectors.

Construction and Maintenance Work

The CUPE unit includes the persons directly involved in constructing and maintaining the City's physical plant. These persons bring trades and labour skills to their work. They build and maintain a wide variety of things. This includes the City's roads, with their attendant signage, parking meters, boulevards, bridges and underpasses. It includes the City's water distribution system, with its reservoirs, pumping stations and lines. It includes parks with their signage, trails, picnic areas and playground equipment. It includes the wide assortment of buildings, warehouses, sheds, yards and garages from which the City provides its services. We capture the scope of this physical plant by using the words "public works, buildings, facilities and grounds." Obviously, these words overlap, but collectively they capture the scope of work performed within this unit. We leave, to discuss below, the way the CUPE unit's construction and maintenance work on public works, buildings, facilities and grounds fits with the ATU unit, in respect to transit related physical plant, and the IBEW unit, in respect to power related physical plant.

Many people, currently within CSU, are involved in the preliminary steps of construction, or in work ancillary to construction such as procurement, quality control or accounting related to the City's projects. Examples might include draftspersons, surveyors, planners, architectural construction or engineering technologists, materials technicians or development control officers. However, their involvement is less direct than the persons, mostly tradespersons and labourers, who carry out the direct hands-on construction or maintenance work.

Where do we draw the line between people "employed in construction or maintenance..." so as to be included in the CUPE unit, and people employed in work related to such projects but not directly "employed in construction or maintenance?" The question is thus: how directly does the person have to be engaged in such construction or maintenance work before the person should be assigned to the CUPE unit?

In the past, catchwords have been used to distinguish between the CSU and CUPE units. They have been called "inside" and "outside" units and "white collar" and "blue collar" units. Each distinction has some

validity, but each is too simplistic and imprecise to be helpful. CSU argues instead that the common task shared by members of its unit is the “provision of services.” Unfortunately, the same can be said of virtually every other civic employee. We agree with CUPE when they say “How can one describe the typing of a letter as a service but not the fixing of a pothole.... This is a distinction that is neither sustainable nor insightful.”

CSU asks us to restrict CUPE’s unit to tradespersons, foremen and labourers, terms which they define as follows:

Labourer - an individual who:

- (i) performs manual work
- (ii) who does not require post-secondary education or vocational training in order to perform his or her job; and
- (iii) does not perform technical assistant functions.

Tradesperson - an individual who performs work requiring a certificate of proficiency or other similar trade designation.

Foreman - an individual who is involved in planning, organizing, assigning and supervising the day-to-day activities of employees classified within the CUPE 30 bargaining unit.

CSU thus proposes using educational level as a key test to differentiate between CSU and CUPE positions. If the position requires post-secondary education, it should be in CSU’s unit. At the same time, CSU excludes technical assistants from its definition of labourers. It thus seeks to exclude from CUPE those now in the CSU unit who do not have post-secondary training. CSU makes this point at p. 26 of its written argument.

A number of CSU #52 members are involved in either the preliminary steps of construction (eg. draftsmen, surveyors, planners, architect technologists, construction technologist, engineering technologists, landscape architects and technicians) or in the testing and inspection of construction work during progress or upon completion (eg. materials technicians, development control officers, building inspectors).

These individuals, unlike CUPE 30 labourers or tradespersons, require either post-secondary education or, as is the case with technical assistants, high school graduation, including some coursework related to their area of specialty. As such, the functions

performed by these individuals are significantly different from those performed by CUPE 30 members.

We do not find a test based primarily on level of educational requirements helpful. Education and construction technology are both changing rapidly. The notion of a young person graduating with the training necessary for a life-time career is outdated. Today, most employees will have to continue retraining throughout their careers, to keep up with new workplace demands and changing technologies. Much of this will be done through post-secondary institutions. Those involved in building construction are no exception to this reality.

CUPE offers a different view of how the line between these groups of employees ought to be drawn.

We submit that the operative test for inclusion in CUPE Local 30 v. CSU 52 should not be one of whether a person performs a portion of their duties within an office environment or possesses technical skills, but rather whether a person requires field or trade knowledge to perform their duties and whether the job duties require interface with related field or trade groups of employees. For reasons previously discussed in earlier submissions, inside-outside or blue-collar-white-collar are no longer useful tags.

We offer the following definition for technical workers:

“Workers possessing specialized skills or knowledge acquired through post-secondary courses.”

The category of technical workers has developed because of the high degree of specialization in industry and of post-secondary course work in their specialized areas. However, post-secondary course work in itself does not create a community of interest. Office and clerical workers who have specialized skills share a community of interest with other office and clerical workers. Maintenance workers who have specialized skills and training share a community of interest with other maintenance workers. As between CSU 52 and CUPE 30, the goal should be to group technical workers with other workers who have similar basic training and with whom they interface.

The City’s position on this question appears closer to that of CUPE than of CSU. They would avoid using the word technical as a demarcation line. They believe the test ought to be based on the person’s degree of involvement with the construction and maintenance activity that is the focus of the CUPE unit.

We agree that office and clerical employees do not share a community of interest with employees in CUPE, no matter what the focus of their office and clerical activities. They should fall within CSU’s unit and be specifically excluded from the CUPE unit. Administrative and professional employees will also normally

fall to CSU rather than CUPE. This is not just because they work in an office. It is because working in an office is one indication that their involvement in the construction and maintenance lacks the directness of contact with the trades and labour personnel, and the projects themselves, to create a community of interest with that group. We would see such administrative and professional people as being only indirectly involved in construction and maintenance work.

The tests to differentiate these two units in respect of the construction and maintenance of public works, buildings, facilities and grounds are as follows:

- Is the individual in any way employed in the construction or maintenance of the City's public works, buildings, facilities or grounds. If they are, then:
- Are the person's functions office or clerical? If they are, the person falls within CSU.
- Is their involvement in the construction or maintenance work direct or only indirect? If it is direct, they fall within CUPE.
 - Those directly engaged will normally have field or trade experience, and will be involved with the project itself, or else work regularly and directly with those who are.
 - They will more frequently be working on projects than in support of projects.
 - Direct work will normally involve regular field visits to projects being carried out by persons within CUPE, or by outside trades personnel, and will involve direct dealings with those persons over the projects being undertaken by them.
 - Recruitment for those positions will more frequently be directed at, and hirings made from, the persons within CUPE than those within CSU.
 - Job requirements will normally include some form of trades or labour experience, although this may be supplemented by other experience, qualifications or training.

Physical Supervision or Maintenance of Facilities

The City owns or operates many parks, arenas, swimming pools, parking lots, rinks, golf courses, cemeteries and similar facilities. Some are small operations, others are large facilities incorporating many different activities. The people who work within those facilities are currently assigned to either CSU or CUPE. On what criteria are people appropriately assigned to one unit or the other?

We have decided to include in the CUPE unit description, and thus exclude from the CSU unit, people employed in the physical supervision of facilities. This encompasses a significant group of non-construction employees already assigned to CUPE who share common employment concerns with others in CUPE. We have already referred to the maintenance of public works, buildings, facilities and grounds. Many of the persons we refer to here will be at least partially involved in maintenance. However, with public facilities, physical supervision, the stewardship of the property itself, is an added element which usefully serves to distinguish the nature of some jobs from mere office and clerical work.

In drawing the dividing line between CSU and CUPE in this area, the following tests apply. If the position is primarily office and clerical it will fall in CSU. For other positions, the question is whether the primary focus of the job relates to the stewardship of the physical facility, or instead to the programs offered within the facility. If the former, it falls to CUPE, if the latter, to CSU. As an example, a gardener at the Muttart Conservatory would focus primarily upon the physical facility, whereas a person employed to answer the public's question about plants would focus primarily on the programs offered within the facility.

We begin with parking lot attendants. There are currently two levels of Parking Lot attendants within the CUPE bargaining unit. The Level II position is a working-level foreman supervising the Level I position. The class specifications for the Level I position describes the kind and level of work as follows:

This is routine, semi-skilled work in the operation and maintenance of City underground and surface parking facilities.

Employees of this class attend entrance and exit booths at parking facilities, calculating and collecting charges for public parking, explaining charges to customers, operating cash registers and balancing cash tapes to collected monies. In addition, the incumbents are charged with the responsibility of maintaining the facilities in a clean and orderly state, including parking lot area, parkade floors, ramps, stairwells and related facilities. This involves operating a small sweeper, driving a refuse truck to a designated dump site and emptying the refuse.

Employees patrol the parking facilities ensuring security of vehicles and making minor repairs to facilities. Work assignments are routine resulting in limited opportunity for independent decision-making. Supervision is received through daily inspection of work areas and verification of cash tape balance.

CSU describes these jobs as essentially clerical in nature. They suggest the maintenance tasks are incidental and insignificant in comparison to the prime functions of collecting parking fees. CSU argues that career advancement into the clerical area would be enhanced for these employees if they were reassigned to the CSU unit. We are not convinced by either argument. In addition to the clerical aspects involved in the job

— the issuing of tickets and the taking of money — there is a maintenance and a security aspect. The parking lot attendants maintain a presence at the facilities. This enhances security by discouraging vandals, car thieves and others using the facility for illegitimate purposes. They are stewards of the City’s property.

CSU draws an analogy to cashiers at the City’s recreational facilities. There is much similarity in the money handling tasks. However, the physical location of the work is quite different and so are the working relationships with other employees. We find, in the case of parking lot attendants, their community of interest falls with those in the CUPE unit. The maintenance and “physical presence” aspects of the job make it more a “physical supervision and maintenance of the facility” job than an “office and clerical” job. The parking lot attendant’s position falls within the terms of the CUPE unit as we have defined it.

Similar considerations apply to the people working at the smaller rinks, parks, golf courses, arenas and similar facilities. The people involved may have cash handling and ticket selling responsibilities, but may also be there because they physically supervise the facility. They are there to maintain a presence, to attend to opening and closing the facility, to perform routine maintenance functions and generally make sure it is used for its proper purpose. In many cases there will be a seasonal aspect to such jobs — open air pools in summer and ice rinks in the winter. Opening hours conform to public demand rather than the normal office and clerical work week. Many attracted to such positions will be students or others not pursuing long-term careers with the City.

In larger facilities, different considerations apply because of the mix of employee types involved. This is true, for example, in the recreational complexes, the Muttart Conservatory and the historical exhibits.

If the person’s job is clearly office or clerical in nature, they properly fall within the scope of the CSU unit. If the person is employed primarily in servicing, maintaining and physically supervising the facility, then they appropriately fall within CUPE. There are easy examples of both of these assignments. A booking coordinator, for example, clearly carries out primarily office or clerical functions. A swimming pool service person, on the other hand, primarily carries out service and maintenance functions related to the facility itself. In between fall a series of positions that are less obvious.

When ticket issuing and cash handling tasks are paramount, the position would be office and clerical. The Recreational Facilities Attendants I currently in CSU appear to be positions of this kind. If, however, the *raison d’être* of the job has more to do with maintaining a physical presence at the site, and to performing security, maintenance and equipment handling tasks, then we believe CUPE would be the more appropriate allocation. It is employees of this type that we describe as being employed in the physical supervision and maintenance of facilities.

Lifeguards and Aquatics Instructors are in a somewhat special position. They are currently assigned to the CUPE unit. One of their tasks is to protect the safety of those using the facility. Other functions involve keeping the pools clean, properly chlorinated, and free of vandalism. Aquatics instructors are more directly

involved in program delivery, coaching swimmers. However, they also perform some of the same tasks as lifeguards. Those seeking longer term careers with the City would most likely seek jobs involving the administration of recreational programs, which fall within CSU.

In this area, the parties have asked us to outline the general criteria for bargaining unit allocations, and to allow them an opportunity to discuss the allocation of specific positions or individuals. We have given these criteria. Particularly with respect to lifeguards, aquatic instructors and other pool, arena and recreational personnel, we think a consultation process would be helpful. The witness gave us information on the City's operations in this area. However, this was insufficient to enable us to accurately weigh the mix of duties between involvement with the supervision and maintenance of the facility and involvement with the programs delivered within the facility.

We are not persuaded to add the words "lifeguards and aquatics instructors" specifically to the CUPE unit description. If their duties indeed primarily involve program delivery, with only incidental building maintenance functions, then we would find their community of interest falls with CSU. No specific mention would be appropriate. If their prime function does relate to the physical supervision and maintenance of the facility, then the words in the CUPE unit description are sufficient to cover their positions.

Service and Repair of Vehicles and Equipment

The City employs tradespersons and helpers to service and repair its fleet of vehicles and other equipment. These persons have trades training, or work closely with those who do. Their community of interest is clearly with the CUPE unit. CUPE currently represents these people.

The parties agreed on the following facts about the servicing of City equipment.

1. The City has an automated fuelling system which allows each driver of a gasoline powered vehicle to fill up his or her own vehicle.
2. Propane powered vehicles are filled up by employees in CUPE 30.
3. All Fire Department vehicles are repaired by employees in the City Fire Fighters Union.
4. All Edmonton Transit buses and LRT vehicles are refuelled and repaired by employees in ATU 569.
5. All other vehicles and motorized equipment including DATS vehicles and Edmonton Transit's light duty trucks and cars and all small engined equipment are repaired by employees in CUPE 30 with the exception of some specialty work which is contracted out.

6. Broken desks, drawers, cabinets and shelving are repaired, in the main, by employees in CUPE 30.
7. Repairs of general office equipment, typewriters, and furniture upholstery are all contracted out.
8. The City generally purchases service agreements from vendors of photocopiers, word processing hardware, the City's mainframe computer hardware, mini-computer hardware and personal computer hardware. In the case of personal computers many of those were purchased from and are maintained and repaired by Ed Tel.

The Board heard no submissions to suggest these allocations were dysfunctional. We make no change in this area.

Operation of Specific Systems

Persons currently in CUPE operate some systems or services that need specific mention. It would be straining the words "construction or maintenance of public works, buildings, facilities or grounds" to suggest they were included with those terms. However, in most of these cases the person's community of interest is clearly with CUPE. This is because of the nature of the work, type of working conditions involved, education and training requirements, and history of prior representation. In most but not all cases no other union suggests a change from the present CUPE unit allocation. It is therefore only a matter of properly identifying those positions within the unit description. Without that, they might be thought to fall to CSU.

The operations of the water treatment plants and of the waste water treatment plants are two such systems. We deal with them specifically below. Below in this section, we deal with CSU's claim. Under the CUPE/IBEW interface heading, we deal with whether IBEW or CUPE should represent people in the water treatment plant and the waste water treatment plant. These two systems will be mentioned specifically in the appropriate unit descriptions.

Persons working in animal and pest control fall within CUPE's unit. This continues to be appropriate but needs specific mention. The City employs people to spray for mosquitoes, trap stray or nuisance animals and to run the City pound. It requires inspectors to enforce its dog bylaw (see below under inspectors).

Persons working on garbage disposal and control also fall within the CUPE unit. This too continues to be appropriate given the nature of the work, the skill level and the working conditions. This includes the process of refuse collection and the supervision and maintenance of the City's refuse disposal sites. It includes the enforcement of the City's garbage bylaw (see below under Inspectors).

We now turn to three topics about which specific submissions were made during the review process.

Custodial Workers

Up until December 1990, the people employed as custodial workers or caretakers fell within the CSU bargaining unit. At that time, a group of those employees applied to change their representation to CUPE. The Board decided such a move would not affect the appropriateness of either unit. It granted the change in June, 1991, after a large majority of the employees concerned voted for such a move.

Custodial workers clean the City's premises. They may be called cleaners, caretakers, janitors or custodians. They operate caretaking equipment and provide routine minor building maintenance.

The Board's view is that employees doing such work properly fall within the CUPE bargaining unit. The work is often done on a shift-work basis, frequently outside regular office hours. The City of Edmonton centrally administers most of its custodial work. The employees would be more likely to move to other CUPE positions than to the type of position falling within the CSU unit. People moving into custodial positions would be more likely to come from other CUPE positions than from CSU positions. The required level of education and skill is more closely allied to that of the labourers within CUPE than with the office and clerical employees within CSU.

We have decided that building maintenance should fall within the CUPE bargaining unit description. We view custodial work as a subset of building maintenance. Therefore, we have specifically not used "custodial" in either unit description.

Water and Wastewater Treatment Plant Employees

CSU now represents certain clerical and laboratory personnel working in the water and waste-water treatment plants. CSU argues that because of this, other staff in each of these facilities should also be allocated to CSU. These people are now represented by IBEW in the water treatment plants and by CUPE in the waste-water treatment plant. We describe the operation of those plants below, in respect to the IBEW-CUPE interface.

CSU seeks to represent Water Plant Operators (currently in IBEW), Waste Water Plant Operators (currently in CUPE) and the Water Sampler - Utility Worker I (currently within IBEW). CSU argues that the Operators require post-secondary training which distinguishes them from the tradespersons in CUPE. We do not accept that as an important distinction. The incidence of post-secondary training in what used to be strictly "trades" fields is increasing. We anticipate that increasing numbers of people working in construction and maintenance jobs will need such training. Such increased training of itself should not remove them from the unit appropriate to their work activities. We find CSU's "trades and labourer only" concept of CUPE's unit unconvincing.

CSU attempts to draw a relationship between the plant operators and the laboratory technicians because each perform tests on the water or waste water at the plants. Geographically, those people work close by. However, the laboratory staff tend to work regular day-shift hours, in laboratory environments, while the operators work on scheduled shifts throughout the plant. While some working relationship exists between the two groups, we would not call it “functional interdependence.” Even CSU’s witness agreed there was little interchange between the operators and those working in the laboratory. The operator’s day-to-day working relationship is likely to be far stronger with those employed in plant maintenance.

The Board found little, beyond geographical location, to suggest that any of these employees share a community of interest with employees in the CSU unit. We agree that the laboratory employees (with the exception of the sampler) share a broader community of interest with other employees within the CSU unit. Their hours and conditions of work, and their training, distinguish them from the persons responsible for the process and maintenance functions within the operating areas of the plants. We make no change in this area insofar as reallocating any person to CSU.

We have used the words “operating and maintaining the water treatment plant” in the IBEW bargaining unit. The laboratory and the office and clerical staff at the water treatment plants do not fall within that term as we intend it. This is more fully explained in respect to the IBEW-CUPE interface dealt with below.

Inspectors

The current CSU 52 unit lists certain inspectors who are included, and certain others who are excluded from the unit. It includes:

... construction inspectors, water service inspectors and by-law inspectors (except heavy equipment inspectors, contract inspectors, field inspectors, industrial waste inspectors, and electrical inspectors)....

Obviously the title “inspector” holds no magic. All four units contain job titles including that word.

CSU suggests the majority of assignments in this area are correct. Indeed, many of these inspector assignments were worked out by agreement between CSU and CUPE at the time of their certification in 1974 -1975. This included the Contract and Field Inspectors referred to below. However, CSU argues that four positions placed in the CUPE unit are anomalies, and so we deal with them specifically. They are:

Contract Inspectors I and II
 Field Inspectors I, II and III
 Water Utility Locators
 Water Distribution Systems Inspectors

CSU argues that Contract Inspectors I and II should be assigned to CSU not CUPE. This is because, in CSU's view the job actually requires some post-secondary training. They argue that "recent successful applicants, for temporary Contract Inspector positions, have frequently been students enrolled in post-secondary Engineering programs." The position descriptions of the Contractor II describes the kind and level of work as follows:

This is supervisory inspectional work ensuring that contractors adhere to contract specifications set out for designated construction or maintenance projects.

Work of this class includes supervising and participating in the activities of Contract Inspector I's and Labourers engaged in the investigation and inspection of a wide variety of construction projects to ensure that all operations conform to the methods and standards set out in the specifications. Work involves considerable contact with contractors, developers, and materials testing personnel in determining the quality and quantity of work completed. Responsibilities include the preparation of daily and weekly reports, training of new employees and recommendations for disciplinary action. Work is checked on a daily basis by a supervisor who views progress reports and problems occurring in the area.

For the reasons already given, we do not find the post-secondary education argument convincing. The job description for these positions convince us that incumbents in such positions could be appropriately allocated to CUPE. The work is directly involved in the construction and maintenance of the City's physical plant. It is not just a supporting role to such activities. The job obviously involves a lot of field work, and requires experience in the physical processes of construction. Knowledge of the construction industry and related trades is a prerequisite. The job obviously involves regular and direct contact with tradespersons working in the field.

Field Inspector is a term used in both the CSU and CUPE agreements. The positions allocated to CUPE, which CSU contests, all concern inspection and enforcement work involving Edmonton's Dog and Garbage Bylaws. They are in a three level class series. Field Inspector II's are working supervisors for Field Inspector I's. Field Inspector III is also a working supervisor position, although with more administrative responsibilities in place of much of the hands-on work. Promotion would naturally occur through these levels. It makes sense that they all have the same bargaining unit allocation. Typical duties for the level I position include:

Investigates complaints pertaining to all infractions of the garbage bylaw; serves notice both verbally and in writing to violators; checks volume and cost of waste for commercial establishments; sets reasonable times for compliance within terms of the bylaw; carries out follow-up inspections.

Patrols designated areas and investigates complaints concerning vicious dogs, excessive barking and dogs at large; catches and transports a variety of stray or obnoxious animals.

Receives complaints regarding alleged violations of the Garbage and Dog Bylaws; releases dogs to owners and collects fines, sells impounded dogs; maintains a variety of records on impounded dogs and fines assessed.

Assists in the feeding and care of impounded animals; destroys unclaimed and diseased animals as assigned.

Records inspections and information to be used as evidence; issues notices of violation; may be required to present evidence in court on behalf of the City.

The work of these Field Inspectors are specific to the two bylaws. The incumbents' work is directly linked to the City's pound and its garbage collection services. Employees directly employed in those two operations are now allocated to CUPE. In contrast, the Field Inspectors allocated to CSU investigate and enforce a wide variety of acts and bylaws. The CSU positions appear to involve less physical activity, and a wider variety of responsibilities. In our view, the current allocation of each of these positions is correct, and we make no changes in this area. This is an example where job titles do not help with unit allocations. They need to be made on the basis of the underlying job functions.

The Water Utility Locator does "... technical and independent work locating various underground water distribution system components and marking the location above ground, primarily for the Provincial Alberta 1st Call System." The Alberta 1st System is a co-operative program run by Alberta's major utilities. It encourages contractors and others to call before digging in the hope of avoiding damage to underground utilities. Water Utility Locators respond to calls from those about to dig. They go out to the location involved to locate and mark buried pipes and other utility components. We find this function is clearly an aspect of maintaining the utility. The likely career path for someone employed in this job would be into CUPE's unit, probably working elsewhere on the water distribution system. We find no basis for making a change in this allocation.

Water Distribution System Inspectors are in a similar position. These persons also do Alberta 1st marking. In addition, they detect and isolate leaks in the City's watermain system. This is a field position working directly on the physical plant. Some of the work is clearly technical, as the tools now used include electronic testing devices. However, it is direct maintenance work. We find this position is clearly within the CUPE unit.

THE BORDER BETWEEN CUPE 30 and ATU 569

The transit system includes substantial physical plant. Issues arise periodically about whether persons employed doing construction or maintenance work on transit buildings, facilities or grounds fall to the ATU unit or the CUPE unit.

The present ATU unit expressly excludes construction and building maintenance. The ATU urges us to delete these exclusions. Their position is that all transit related building, facilities and grounds maintenance work should be done by persons within the ATU unit. They also argue that all transit specific construction should be done by persons within the ATU unit, unless it is contracted out. Their submission reads:

The Board should delete the exclusion of building, facilities and grounds maintenance work in ATU 569's unit.

Evidence will be presented to the Board of the work performed by members of the bargaining unit for:

- (a) building maintenance, both inside and outside maintenance, including Transit garages and Transit facility sites;
- (b) facilities - maintenance, including rail lines, right-of-ways, transit shelters and LRT Stations;
- (c) grounds maintenance of Transit. This would include grounds of Transit buildings and facilities and, as well, grounds adjacent to the rail lines of the LRT System.

The maintenance of buildings, facilities and grounds by members of the ATU unit, including bus cleaners in the garages, will be described.

Total maintenance of the Transit System is done by the members of the ATU 569 bargaining unit except for that maintenance work contracted out. This work which is contracted out is done either by other departments of the City, or by private contractors. The work may be tendered for bids.

There are no employees of "Edmonton Transit" in CUPE 30.

Construction work, specific to Transit, is done by members of ATU 569's bargaining unit. Construction of LRT rail lines and adjacent components are routine. Major construction of

buildings or tunnels are done through the contracting of such work to other departments of the City or to private contractors.

CUPE argues that employees performing buildings, facilities or grounds maintenance work in the public transit system are not an integral part of that system. Instead, their community of interest lies with those who do similar work elsewhere in the City.

The City's position is that ATU currently has, and should continue to have, "persons performing some work in respect to buildings, facilities and grounds construction or maintenance where those persons fall into the [following] three qualifications."

- 1) Where the primary functions of a position relate to a specific specialized unit such as IBEW and ATU and involvement in general grounds, facilities or building maintenance or construction is incidental, those workers should remain in the specialized unit.
- 2) Where, notwithstanding that the primary functions of a position focus on grounds, facility or building maintenance or construction, there is a need for specialized knowledge or training in operational and safety matters peculiar to a specialized unit in order to ensure the safety of workers and others and the integrity of the physical plant, the person should remain within the specialized unit.
- 3) Where, notwithstanding that the primary functions of the position involve considerable work of a grounds, facility or building maintenance or construction nature, the position is that of a trades helper to a person within a specialized unit and involves a natural progression into the specialized unit, those persons should remain in the specialized unit.

The ATU submission focuses heavily on work. We have already adopted the general principle that it is a person's prime function that is important. Therefore, we accept the City's first point. People within ATU might well, as an ancillary or incidental function, perform some grounds, facilities or building maintenance. If a bus driver, once a week, takes an hour to mow a lawn, that does not switch that driver's unit allocation to CUPE. Therefore, it is not enough to demonstrate that ATU members have done such work, if they have only done so ancillary to other work that puts them clearly into ATU.

ATU also argues that "transit" contracts-out work to other City departments. This may be the internal mechanism used within the City. However, it does not follow that, if the Transit division does not "contract out" that work, it must, of necessity, fall to be performed by ATU members. The employees who do that contracted out "transit work" are still City employees, even if they do not report to officials within the Transit division.

We turn to the specific types of work. Building maintenance work consists of building repair, such as painting, renovation and similar tradespersons work, and custodial work. The current ATU unit description excludes such work specifically. That specific exclusion should continue. We deal specifically with custodial work below. For the other types of building maintenance, we find nothing unique about transit buildings, or about those who work to maintain them, to justify removing them from the large body of persons who maintain the rest of the City's buildings. Their working conditions and labour relations concerns are similar, and their community of interest clearly lies with the CUPE unit.

People engaged in bus and train maintenance and repair currently fall within ATU. They are included in the terms "... maintenance of the public transit system..." and are not excluded by the building maintenance exception. CUPE is not asking us to change this allocation for these mechanics and related employees even though they represent similar employees elsewhere.

We find it is appropriate that those working to maintain the busses and LRT trains fall within the ATU unit. There is a long history of successful representation. These people have a lot of direct working contact with the drivers. They work out of the same bus garages. Inter-unit promotion or transfer is not a major factor. We find a strong community of interest exists to justify the ATU allocation.

Vehicle and equipment service and repair is included within the CUPE unit. This includes the repair of DATS vehicles, and light duty cars and trucks. It excludes specialized transit vehicles like busses and LRT cars. Similarly, equipment repair falls to ATU if it has a specialized transit aspect to it, but to CUPE if it is ordinary trades service and repair work. Transit switching equipment repair and track repair would fall within the terms "maintenance of the transit system" because of the specialized and transit related knowledge required. Repairing broken desks would fall to CUPE.

The remaining areas of contention are:

- custodial work;
- construction work, which is currently excluded by specific words;
- facilities and grounds maintenance.

We will deal with these issues in turn.

Custodial Workers

When, in 1990, the City's custodial employees applied to move from CSU to CUPE, ATU applied for intervenor status. It wished to argue that the custodians working on transit department facilities should, for historical and current reasons, be returned to ATU. The Board denied ATU intervenor status, partly because of this broader review.

ATU argues that people performing custodial work in respect of transit facilities ought to be in the ATU unit. It argues that ATU historically has represented bus cleaners, who also did janitorial work in the transit buildings.

This issue was canvassed in detail in 1984. See:

ATU 569 v. The City of Edmonton, CSU 52 and CUPE, Local 30 (83-028, Mellors, Vice-Chair).

In that decision, the Board held that people primarily employed cleaning the transit buildings fell within the CSU unit. They worked mopping, wiping tables and doing other routine janitorial work. This, the panel held, was custodial work. It formed part of building maintenance, which was excluded from the transit unit.

Two of the employees in issue cleaned LRT trains, but also performed some janitorial work on transit buildings. The City assigned those two to the ATU unit. The Board approved the City's use of the prime function test, described above. The Board said, at p. 17:

He [The City's witness, K. Kreklewetz] testified that the custodial duties of Scalzo and Arlia as distinct from the cleaning of the L.R.T. trains was secondary. In other words, if the trains were dirtier than usual, such as in the spring of the year, and required extra cleaning the trains came first. Whereas the duties of the eight persons, the cleaning of offices, lunchrooms and garage areas are primary. They, to the knowledge of the Board, do not have any secondary duties. ... Their duties are according to the testimony of Kreklewetz custodial and clearly are outside those of a bus cleaner.

The Board is satisfied upon the evidence and argument presented the eight persons are not included in Local 569's bargaining unit. In so determining this, the Board rejects Mr. Stewart's argument that the activities of these persons, *Barb Madsen, Kelly Madsen, Keith Spraklin, Jane Flocari, Katherine Welyki, Rose Melnychuk, Bill Lindsay, and Margaret Harvey*, places them within the scope of the unit described in Certificate 19-55 as varied: "All employees engaged in the operation, service and maintenance of the public transportation system." The eight persons are custodial workers and as such are part of building maintenance, thus bringing them within the exclusions listed in the unit description. The exclusions as listed are "office clerical, technical, construction and building maintenance personnel."

The ATU applied to have the Board reconsider this matter, but the Board declined to vary the decision. See: Decision number 84-016 (Dubensky, Chair) between the same parties. For 10 years at least, custodial work

in transit buildings has not been done by employees within the ATU unit, unless such work was just incidental to some other prime function.

The ATU raises two policy reasons for having persons doing transit custodial work fall within the ATU unit. They argue that:

- The transfer of custodians from CSU to CUPE will mean ATU will have an interface with two other unions instead of one for transit department employees;

This is unconvincing. Our unit descriptions will be sufficiently clear on this point to avoid further serious jurisdictional argument.

- Having these positions within ATU's unit allows continued employment for persons who need temporary light duty assignments for medical or similar reasons.

This is cogent, but insufficient to convince us to change the pattern set by the Mellors' decision referred to above. Most custodians would not be light duty assignees, they would be regular employees. As such, their community of interest clearly lies with persons in similar occupations throughout the City. We are not persuaded to assign any custodians to the ATU unit.

Construction Work

The current ATU unit description excludes construction work. ATU suggests their members routinely do construction work on LRT lines and adjacent components. We have not been pointed to any position, in ATU or elsewhere, the primary function of which is transit or LRT construction. It may be that some incidental construction work is performed by individuals primarily employed in the maintenance of the transit system.

Maintaining the transit system will, of necessity, involve the periodic replacement of track, controls, signals etc. It will also involve installing some new equipment. We see this as maintaining the system. It is distinct from the construction that would be involved, for example, in building a new extension to the LRT. Such major new construction, according to the ATU and the City, is contracted out.

We have kept the exclusion of construction in the ATU unit description. We do so recognizing that maintaining the system requires specialist knowledge and may involve some activity which, reviewed on its own, may seem like construction. However, reviewed against the wider transit system, such work is ongoing maintenance of the system. The construction exclusion serves to exclude work on major extensions to the system. It also serves to exclude construction activity requiring no specialized transit system knowledge or skill. Such construction work falls outside the terms "maintaining the public transit system."

Facilities and Grounds Maintenance

We find no basis for concluding that employees primarily employed in grounds maintenance should be assigned to the ATU unit. We doubt that many persons are so employed. If persons are primarily engaged in grounds maintenance we would expect them to be assigned to such work throughout the City's operation, not confined to one division. However, to the extent they exist, their jobs would essentially be outdoor labouring positions. Their community of interest would clearly fall within CUPE.

We believe the expressed problems in this area arise almost entirely from transit employees being asked to do ground maintenance as a minor ancillary function. This is then escalated into a claim for all such work, to the exclusion of those persons in CUPE who are assigned such work as their prime function. Grounds maintenance employees ARE ASSIGNED TO CUPE AND THUS EXCLUDED from the ATU unit.

There are several points of contention over facilities maintenance. First, there is the question of people who clean such things as bus shelters and LRT platforms, or who remove the garbage that accumulates there. Second, there is snow removal and track cleaning where the train tracks cross over the roads. Third, there is the question of people who repair bus stops, bus shelters and similar aspects of the transit system.

We view the question of custodial work at LRT stations, bus shelters and similar facilities in the same way we view that work in buildings. We see nothing peculiarly "transit" in the work to distinguish it from the custodial work performed on City facilities. Nor do we see the working relationships of the persons involved in such work being sufficiently strong to justify placing them within the ATU unit. Cleaning on the trains and the busses is the exception in this area. We do not see this exception extending to other facilities like LRT stations and bus shelters.

The snow removal and track cleaning where train tracks cross roads appears to us to be a "claim to the work" issue, not properly a question of bargaining unit allocation. We doubt anyone is primarily employed in this activity, even in Edmonton's climate. If the task of persons is primarily related to keeping the LRT right of ways clear, then that would properly be maintaining the transit system. Conversely, if the primary function of the person assigned the work was snow removal for the City's roads, then that would be road maintenance which falls within the term "maintenance of public works" as used in the CUPE unit description.

We view the service and repair of bus stops, bus shelters and similar equipment the same way. If this is routinely performed by City employees who maintain similar, non-transit equipment throughout the City, then those employees would fall within CUPE. If the City has crews dedicated to such work only for transit, then, we would see these employees as also falling within CUPE. We see nothing sufficiently specialized in that work, even if transit specific, to justify an allocation to the transit unit as opposed to the CUPE unit, where most employees with similar skills and work fall. However, if this is simply part of the job of persons whose primary function is to maintain specialized transit system equipment such as rails, signals,

control devices etc., then such persons would appropriately fall to the ATU. The level of specialized knowledge, specific to the transit facilities, would justify reallocation. Such positions would also involve a much higher degree of working integration with other employees within the ATU unit.

THE BORDER BETWEEN CUPE 30 AND IBEW 1007

Construction and maintenance of electrical facilities involves extraordinary risk and requires specialized training. This feature justifies having persons in the IBEW unit perform construction and maintenance work on the City's electrical system that might otherwise fall within the scope of CUPE's unit.

The IBEW unit currently also includes all the electricians and some related tradespersons in the City's general construction and maintenance workforce. This presents a separate issue in need of definition.

IBEW represents the technicians and maintenance crews in the City's Water Treatment plants, but not those in the Waste Water Treatment facilities. The Board must decide whether this allocation continues to be appropriate for collective bargaining. CSU also asserts claims to some of the employees in the Water Treatment plant, which we dealt with above in respect to the IBEW/CSU interface.

Thus, the IBEW unit, as presently bargained for, covers three distinct groups of employees. They are:

- Employees engaged in the construction, maintenance and operation of the electrical generation and distribution system.
- Electricians and tradespersons in trades closely related to electricians, working throughout the City.
- Persons engaged in the operation and maintenance of the water treatment plants.

There are questions about the extent to which this includes office and clerical people, but we will defer dealing with that question until we turn to the CSU-IBEW interface.

Electrical Generation and Distribution

The City generates and distributes its own power, using three coal or gas fired generating stations. It has built, and continues to expand, its distribution system from these stations. High voltage lines, substations and transformers move power into an industrial and residential network that reaches into every home and business in the City.

Obviously, there are inherent dangers working with electricity which calls for special training and experience. Most of the employees working to construct, maintain and operate this system will have some

form of electrical or powerline training. If not, they will normally work closely with those who do. Not unnaturally, those trained in these electrical trades have selected the International Brotherhood of Electrical Workers to be their bargaining agent. The similarity of training these employees possess — trade qualifications perhaps combined with additional specialized or technical training — creates a strong community of interest. This is heightened by working for the utility under similar conditions of employment.

Electricians and similar tradespersons attain their qualifications serving an apprenticeship. The City employs many such apprentices. It is beyond question that common interests, working environment and job progression give these apprentices a strong community of interest with the fully qualified tradespeople.

There are a number of helpers and similar employees who are not electrical or related tradespersons or apprentices. Where do they fit? Again, we refer to the tests suggested by the City:

The first involves persons employed in the construction or maintenance of buildings, facilities and grounds related to the power or transit systems. Presumptively, in the City's view, all such work falls to CUPE. However, the City suggested that this general rule is subject to three exceptions. In summary, these were where:

- 1) A person's prime function may give them a community of interest with the core transit or power unit, but they may nonetheless perform ancillary work that involves grounds, building and facilities maintenance.
- 2) A person may be involved primarily in construction or maintenance of a kind that requires a specialized knowledge necessary to the integrity of the physical plant. For example, construction work involving high power lines, or in a power substation.
- 3) Persons involved in construction or maintenance work in the capacity of tradesperson's helpers working with tradespersons from ATU or I.B.E.W. In such cases the persons might be expected to progress into those ranks and should remain in that specialized unit.

We have already indicated our acceptance of the first point as a general principle. The second point is achieved by the description of the electrical generation and distribution system in the unit description. We describe the unit as including persons "directly engaged in the construction, maintenance and operation of the electrical generation and distribution system." The electrical generation and distribution system is that part of the City's physical plant devoted to generating and distributing power. Almost by definition, work on that system requires specialized knowledge. It is a dangerous environment requiring special skill and care.

We accept the third point. Many helpers and similar employees have a prime function working right alongside the tradespersons and apprentices “directly engaged in the construction, maintenance and operation of the electrical generation and distribution system.” We find that they too should fall within the IBEW unit. Such employees customarily work in crews, so they mix together regularly, working on common projects. They customarily work the same schedules under common supervision and have the same general working conditions. An individual’s lack of specialized electrical training does not detract from the fact that such training is the focus of the overall work crew within which they are employed. Not infrequently, helpers will move on to become apprentices and then tradespersons. However, even with employees for whom no such progression is likely, allocation to the IBEW unit remains appropriate if they are attached to a work crew which uses such expertise.

Both CUPE and IBEW units engage in construction work. Inevitably, the question arises whether some work has sufficient electrical content to justify its assignment to IBEW crews. CUPE raises several areas where this is an issue. They say, in their written brief:

... we submit that the Board should clarify that the I.B.E.W. certificate is limited to work which is specifically of an “electrical nature” and that general construction work such as duct line work which does not require any electrical knowledge should not be within the jurisdiction of the I.B.E.W. certificate. Generally, the duct line work is done many days before the installation of the electrical lines and there is no requirement for electricians to be in attendance when the duct lines are formed. The work essentially involves concrete and soil which is work that CUPE Local 30 members do. CUPE Local 30 also does the duct work for traffic light installations. CUPE Local 30 used to do all of the duct line work in the city. Another example would be high limb trimmers. CUPE Local 30 members presently work as pruners in the forestry section of parks and recreation yet members of I.B.E.W. Local 1007, with no electrical training, trim trees around electrical lines. CUPE Local 30 submits that that work should be performed by CUPE Local 30 members.

This is not a new issue. CUPE raised it specifically in 1973 when it sought to amend its application for certification to read “... All employees ... employed on construction (which shall include all underground work relating to traffic lights, duct lines, power and telephone vaults, excluding work done by journeymen electricians and communication technicians)...” As noted in the brief history above, CUPE withdrew its application to amend following discussions between the parties.

Issues such as this cannot be resolved (at least in the context of bargaining unit descriptions) on a “whose work is it?” basis. In any project involving electrical system construction there will be some tasks involving little electrical know-how. Our job is not to tell the City how to organize its projects. Our task is to say to which unit certain persons belong. This comes down in each case to the employee’s prime function. If the City hires persons to regularly perform construction work that has no electrical job content, then those persons should fall within the CUPE unit. However, if those persons regularly perform work that has an

electrical content, but incidentally perform work where that content is not evident, then they would fall to IBEW.

This issue is whether the work in question is “construction or maintenance of the electrical generation and distribution system.” We use these words for a labour relations purpose. By the “electrical distribution and generation system” we mean that part of the physical plant that (at least at the work crew level) requires electrical or related skill, knowledge and qualifications to perform. Again, we think it helpful to focus on the work crew. If the City employs a work crew without any component of electrical training, the work of that crew would be ordinary construction or maintenance and not what we would view as employment in the construction or maintenance of the electrical generation and distribution system.

Electricians

The City’s need for electricians extends beyond its role as an electrical utility. For example, it also employs electricians for its normal maintenance crews, which repair, service and install electrical equipment. IBEW has historically represented these electricians, in addition to those involved in power generation and distribution.

The one factor, beyond history, justifying a continued IBEW allocation for these employees is their skill, training and qualifications. As electrical and related tradespersons they have much in common with those with similar qualifications employed in the electrical generation and distribution system. There is no doubt a countervailing community of interest with the other tradespersons, primarily employed within the CUPE unit. However, the bargaining history favours retaining the status quo, but only for so long as the much larger utility group remains a part of the City’s structure.

In the current unit description, electricians and related trades fall within the IBEW unit through the use of the words “installation, construction, maintenance, repair and operation of electrical and/or related communication equipment.” Broad words such as “operation of ... electrical ... equipment” are unhelpful. Hardly a single civic employee falls outside that category if taken literally. What gives these employees their community of interest with those employed in electrical generation and distribution is their trade training and the use of that training in their daily work. We think it best the unit description reflect that fact directly.

We therefore describe these employees as “electricians and electronics technicians”. Within this we include communication technicians, who represent a subset of electronics technicians. Their inclusion is based not on the identity of the equipment they work on but their specialized skills, knowledge and qualifications as electrical or related electronics tradespersons.

Water and Wastewater Treatment Plant Employees

Historically, IBEW has represented the process employees and some maintenance employees within the City's Water Treatment plants. However, the employees at the City's Wastewater Treatment plant fall within the CUPE bargaining unit. Employees working on the City's reservoirs and water distribution system also fall in the CUPE unit.

The Water Treatment Plant employees currently represented by IBEW are not electricians, nor is the plant directly related to the City's power distribution system. This representation emerged long ago when the City located its water treatment facility right next to its Rossdale generating station.

The issue is whether this anomalous group of employees should remain as part of the IBEW bargaining unit, or should become a part of either the CUPE unit or the CSU unit.

We begin by describing the plants themselves. The issue primarily concerns the Water Treatment plant employees. However, the Wastewater Treatment plant employees are important because of the comparisons drawn to prove community of interest. They are also important to consider because of the suggestion that, if the Water Treatment Plant employees appropriately fall within the IBEW bargaining unit, then so do the Wastewater Treatment Plant employees.

The City distributes fresh water to the community. To do so, it treats water drawn from the North Saskatchewan river. It operates two treatment plants, the downtown Rossdale facility and the newer E.D. Smith plant, located in the City's southwest. Once treated, fresh water is pumped to reservoirs for storage, then into the supply network for use.

The City also returns water to the North Saskatchewan. Effluent from the City's sewage system goes to the Goldbar Wastewater Treatment plant. There, it is processed to remove pollutants and then returned to the river.

The water treatment plants fall within the City's Public Works Department, Water Branch, Water Treatment Section. Wastewater treatment services fall under the Drainage Branch of the Transportation Department.

Water Treatment and Wastewater Treatment each include operations, maintenance, laboratory and administration areas. There is no dispute that the administration employees are, and should remain, within the CSU unit. Similarly, the laboratory staff, except utility workers employed as lab-samplers, fall within the CSU unit.

The operators and maintenance employees make up the bulk of employees at the two Water Treatment Plants. An Operations Supervisor and a Maintenance Supervisor at each plant supervise these employees.

At both plants, pumping stations pump water from the North Saskatchewan River into the plant. The water is treated first with alum in the purification process, then with lime which softens it. It is treated with fluoride and chlorine and then filtered. The plants then pump the water into the City's Water storage and distribution system. Water mains take the water to ten reservoirs located throughout the City. From there, the water goes into the mains system for customer use.

The construction and maintenance of the reservoirs and the water mains system, if done using the City's own workforce, is done by CUPE personnel. The water treatment plant operators monitor the reservoir levels using remote sensor and control equipment. They adjust the plants' supply based on that monitoring. They also advise of anomalies revealed by this equipment. At the Rossdale plant, the Water Treatment operators adjust the quantity of water pumped through the system in coordination with available power supplies. They also use the Rossdale Power station for warming the water in cold weather.

The plants operate 24 hours a day. Operators work a compressed work week, on a 6 week rotation shift schedule. These Water Treatment Plant Operators are required to have a certificate in water treatment and waste water treatment from Westerra (a N.A.I.T. campus).

All operators must maintain Water Treatment Operator certificates, ranging in levels from I-IV, issued by Alberta Environment. If they do not, their employment may be terminated.

Operators operate plant equipment and monitor a variety of sensitive chemical feeds entering into the water. They decide the dosage of each type of chemical going into the water, check equipment and do random chemical tests to ensure water quality standards are met.

The Rossdale plant has 24 permanent operators and 4 casual operators. The E.L. Smith plant has 16 permanent and 4 casual operators. All operators are in the IBEW unit.

The maintenance crews in the Water Treatment plants look after the maintenance and repair of all equipment used in the plant operation. All such work is done in the maintenance shops in the plants, except some specialized or larger jobs which are contracted out. Most are qualified tradespeople, including millwrights, machinists, welders, electricians, instrument technicians and plumbers. There are also a few utility workers without trade tickets who help the tradespeople. All of these tradespeople, except the one plumber, are in the IBEW unit. This one plumber belongs to CUPE. He appears to have wider duties and works at both the Rossdale and the E.L. Smith plants. The utility workers are in the IBEW unit.

The Rossdale plant has a total of 10 permanent and 1 casual tradespersons, and 2 permanent and 2 casual Utility Workers. The E.L. Smith plant has a total of 10 permanent and 3 casual tradespersons, 3 permanent Utility Workers and 1 Building Operator.

The Building Operator is in charge of all heating, ventilation and air conditioning in all buildings in the 2 plants, the reservoirs and the main water yard. He regularly checks all the buildings. If there are problems, he diagnoses them, and sends in the appropriate repairpersons. The Building Operator is in CUPE's unit.

The Waste Water plant operates as follows. Sewage is treated using the natural properties of the wastewater alone. Bacteria and other organisms in the wastewater break down organic materials. No chemicals are used. A series of treatment processes remove over 90% of the pollutants in the wastewater. The effluent is discharged back into the river, downstream from the water treatment plants. Provincial regulations govern the quality of the discharge.

The plant operates 24 hours a day using Wastewater Treatment Plant Operators. They, like the Water Treatment Plant Operators, are required to have formal training from Westerra's Water Treatment and Waste Water Treatment program before being hired. Then, after a year, they have to pass the Alberta Environment Wastewater Treatment Operator Level I certification examination for Operator I positions; Level II and Level III certifications are required for Operator II and Shift Foreman positions respectively. There is no interchange with Water Treatment Operators, each group being very specialized.

These operators operate and inspect various types of pumps and equipment in the plant. They collect samples at various stages and perform tests on them to ensure that the controlled environment for bacteria and other organisms is maintained and other standards are met.

There are a total of 4 shift foremen, 23 operators, a Labour Foreman and four labourers. All are in CUPE's unit.

Maintenance of all plant equipment is done in the plant's shop by a crew made up of qualified tradespeople, including millwrights, machinists, instrument technicians, electricians and 2 labourers. Everybody, except for the 6 instrument technicians and electricians in IBEW, belong to the CUPE unit.

CSU's position, as noted above, is that the employees at the Water Treatment Plants and at the Wastewater Treatment Plant do not fit in either the IBEW or the CUPE unit. Instead, they argue, they share a community of interest with the Laboratory Assistants and Technicians within the CSU unit.

CUPE's position is that the Wastewater and Water Treatment Plants are very similar. The employees work under similar conditions with similar training. They recognize the historical and geographical reasons for IBEW representation. However, they urge that the community of interest for the operators and for the maintenance tradespersons clearly falls with the employees in the CUPE unit. They say the water treatment plant employees share a specific community of interest with the wastewater plant employees. CUPE recommends that the electrical and the instrument technicians remain with IBEW, because this happens with the rest of the City's construction and maintenance crews.

IBEW rely upon the stability and viability of their unit, over time, which has, so far, included the water treatment plant employees. While anomalous, their representation of employees has not raised difficulties before the Board or in bargaining. They also rely upon the indications of employee opposition to any change. They argue that, like electricity, water is a utility.

The City's position is that the people in the water treatment facility share no community of interest with the persons who comprise the remainder of IBEW's membership. They say the Water Treatment Plant Operators have considerably more community of interest with Wastewater Treatment Plant Operators represented by CUPE.

The employees at the water treatment plants chose to intervene in the proceedings through their spokespersons Norman Spitzer, Allan Pazder and Kevin Moore. They filed a detailed submission and gave evidence before the Board in favour of continued IBEW representation. They supported their position with a survey, taken amongst the affected employees.

The employee spokespersons testified that 100% of the Water Treatment Plant employees they surveyed wanted to retain IBEW representation. The asked employees:

If you could choose between CUPE Local 30 and I.B.E.W. 1007 who would you choose?

The employees were also asked to indicate, in order of preference, between CUPE, IBEW and ECWU (now CEPU - the union representing power plant operators) who they would vote for. The survey included space for additional comments. Fifty-eight of the 62 employees responded to the survey, all supporting continued IBEW representation.

As the employees' incumbent union, it is not surprising that IBEW has strong employee support. CUPE noted that positions taken by some of the City's managers and of IBEW may have influenced the level of support. We heard evidence of a meeting between employees, the water treatment plant managers and representatives of the City's industrial relations department. There was nothing sinister in this meeting, but some managers within the plant appear to have expressed views supportive of continued IBEW representation.

A more significant point, in our view, is that the survey offered no opportunity for CUPE to address the employees on its position. We sense, from the selected comments reproduced in the employees' submissions, that the employees in question view CUPE as a "labourers union," with no room for tradespersons or other people like operators with specialized skills and training.

We find that the majority of community of interest factors point to an allocation in the CUPE unit. However two factors persuade us not to reallocate these employees from IBEW to CUPE at this time.

First, there is the history of successful bargaining through IBEW. IBEW is correct in its assertion that this group has not proven to be dysfunctional either in collective bargaining or in bargaining unit administration. The Board's bargaining unit determinations are not based on what is most appropriate, they avoid what is inappropriate. This allocation is clearly an historical anomaly, arising out of the first plant's geographical location. However, it has not, over time proved itself to be inappropriate.

Second, employee wishes are important. We found the survey somewhat tainted by the manner in which it was written and obtained. Had CUPE had an opportunity to present this side of the issue the results might have been less overwhelming. However, the evidence of the witnesses attending convince us that IBEW enjoys considerable support amongst the operators at the plant.

We add a caution however. This is an anomalous group. It is tacked on as part of the much larger IBEW unit. At the time of this review there was some suggestion that Edmonton Power might become a separate entity in the same manner as Edmonton Telephones. This has not yet happened. Should this come to pass, it would not be appropriate to leave this comparatively small group as a separate unit, once divorced from the vast majority who work within Edmonton Power. The Board's view is that, should this come about, the remaining unit would be inappropriate on its own. The logical unit for continued collective bargaining would be as part of the CUPE unit. Also, should employee wishes in this group change, and a majority support a move to CUPE, the Board would entertain their request in the same manner as it did with custodians.

We find no basis for any change in the status of employees at the waste water treatment plant who, in our view, are appropriately allocated to CUPE.

THE BORDER BETWEEN ATU 569 AND CSU 52

This has been a contentious border for many years. In a broad sense, the disputes involve people working for the transit department, and on the transit system, but in an office or administration environment rather than directly employed on the busses or trains. It also involves people engaged in work on the system that can be described as technical.

A specific issue concerns the definition of the Public Transit System. The ATU 569 claims that the City's specialized "Disabled Adult Transit System" or "DATS" ought to fall within the ATU unit.

A second, specific concern relates to the storekeeper function within transit.

Office and Clerical Employees

ATU advances two views of an appropriate transit unit. First it suggests “the appropriate unit of Edmonton Transit was in 1955 and still is today “all employees of Transit.” Its second position is that an appropriate unit would be

“All employees in the operation, service and maintenance of the public transportation system.”

Under this proposal there would be two units in the Edmonton Transit System, which they describe as follows:

The administrative unit (office and clerical) would include Finance, Human Resources (Planning) and Transit Studies and Systems (Engineering) areas. The core of this unit would be “staff” or administrative support personnel as compared with those operational employees in the line structure.

The operational, service and maintenance unit would be “all employees” who functionally run the Transit system. This unit would include all employees from information clerks on the telephone or at the LRT Stations to clerks performing a secretarial function for employees in the line structure of the Transit System. This would include all employees in Custom Transportation as well as any “para-transit” services, but would exclude any ambulance or police transportation.

We see no reason whatsoever to have two units of “Transit” employees. We find that, throughout their submissions, the ATU have tended to treat “Edmonton Transit” as if it were an independent employer rather than part of a department within the City of Edmonton. At present, and as far back as 1955, all the people within this first proposed unit would fall into the CSU unit. What the second unit really proposes (as far as office and clerical employees goes) is to return to the pre-1978 unit description. This can be seen from the inclusion of information clerks and employees performing secretarial functions for employees in the line structure of the Transit System.

Our view of the history of the ATU and CSU units convinces us that the Board, in 1978, intended to exclude all office and clerical employees from the ATU unit because of their greater community of interest with people in the CSU unit. This decision was confirmed by the Board and by the Courts in the series of challenges and rulings detailed above.

We believe these decisions were correct. Despite vigorous submissions by the ATU, we remain firmly convinced that the larger community of interest for office and clerical employees lies with the other office and clerical employees working for the City, and not with a “transit-only” unit.

The core of the transit unit is, and will remain, bus drivers, dispatchers, mechanics and others working directly on the transit facilities. Office and clerical employees are unlikely to become bus drivers and vice versa.

We have a further reason for not splitting “operational office and clerical” employees from “administrative office and clerical employees.” Office and clerical functions are relatively easy to identify. The split between “operations” and “administrative” is not easy to identify. The history shows that ATU has tenaciously pursued every possible ambiguity in unit assignments for many years. We are not persuaded to foist this new ambiguity on the relationship.

The ATU argues that “the functional coherence and interdependence of the unit of ATU 569 is identified by the word transit.” They go on to say “the nature of the work performed relates to the services of transit.” But it is not enough to say “they all work together for a common cause.” Far more important is what employees do — do they drive, do they type, do they answer telephones, do they fix busses? Bus mechanics and word processing clerks work under substantially different conditions, using different skills learned from different training. They seek out different career paths and often work different hours.

We find no convincing evidence of ill effects caused by all office and clerical employees having been excluded from the ATU unit for almost 15 years. A comparison of the ATU collective agreement terms with those of CSU suggests ATU would have to negotiate a wide variety of new provisions to adequately represent such employees. These would be issues of little concern to the majority of employees now in the ATU unit. They might well, as a result, receive a low bargaining priority in such a unit.

It is our decision to continue the specific exclusions of office and clerical employees from the ATU unit. All such employees fall within the CSU unit.

Technical Employees

The current ATU bargaining unit excludes technical employees. ATU asks us to delete this exclusion. The core of the ATU’s bargaining unit has been, and remains, the people who drive the busses and L.R.T. vehicles and who collect fares from the public. Added to that are the people who supervise this system as inspectors and dispatchers. No party disputes the appropriateness of their assignment to the ATU unit.

Busses and trains need to be maintained. Only CSU advanced an argument that people engaged in that work should be assigned elsewhere; to CUPE. As noted above, we do not find their arguments on this compelling. We believe bus and train maintenance should remain part of the core ATU unit. Some of this maintenance work is technical in nature. Many of those employed in these tasks have Journeyman Heavy Duty or Motor Mechanic certificates. Others may have technical institute diplomas in mechanical

technology. As the transit system becomes more complex, the qualifications of those directly engaged in these tasks will predictably become more technical and complex as well.

Two cases involving the ATU bargaining unit illustrate the difficulty, in practice, in applying the current “technical” exclusion in the ATU unit. The City of Edmonton applied to the Board to determine whether Vehicle Equipment and Service Technicians were within CSU 52’s unit because of the technical exclusion in the ATU unit description. See:

City of Edmonton v. Amalgamated Transit Union 569 and CSU 52 (85-058, October 29, 1985, Dubensky, Chair).

The Board described the facts, and its decision as follows, at p. 2:

A transit employee (in management) left the City causing a vacancy. The City decided to split up the work he had done into two, creating two new (non-management) positions which are called Vehicle Equipment and Service Technician (Diesel Coach Technician) and Vehicle Equipment and Service Technician (Trolley Coach Technician). As a result of the reference by the investigator to the term “technical” and by the City’s use of the word “technician” in the job titles Counsel for the ATU led expert evidence to show that the terms “technical” and “mechanical” were synonymous. The question before us is whether these two men should be in CSU 52 by virtue of the exclusion in the ATU 569 unit description, or should remain in ATU 569. Following the Board’s usual practice of ascertaining what work in fact the individual does, rather than considering the job title which is affixed to that particular work, it is necessary to examine the evidence given by Mr. Greenham.

Mr. Greenham has been in the City employee [sic] for a period of 26 years. He was elevated to Garage Foreman I, and while occupying that position was within scope of the ATU unit description. It is his evidence that there was no difference between the Garage Foreman I and Diesel Coach Technician positions. It is further his evidence that he is doing the same type of work, but the reports which he has to prepare are a little different and he does this reporting work more often. It is also his evidence that when he acted as Garage Foreman I he also did reports. In any event, as Diesel Coach Technician, it is his evidence that 70% of his work is similar to that of Garage Foreman I.

The evidence of Mr. Charles, the Director in City Transit, states that both Paul and Greenham are involved in setting standards, dealing with employers, trouble shooting, and as a rule do not have any men directly under them. They can, however, have men under them when they are engaged in special projects or when they are dealing with outstanding problems. He also points out that part of their responsibilities are the preparation of reports

and also preparing a set of standards which would be enforced in all transit shops. The question therefore is, does this work fall within the unit description?

At page 3, the Board framed the issue and continued:

... does the work done by Paul and Greenham concern the operation, service and maintenance of the Public Transit System, and if it does, are they excluded from the scope of the ATU 569 certificate because they are “technical employees.”

It is the Decision of the Board that notwithstanding the titles affixed to their job description, that they do come within the scope of the unit as described in the certificate held by ATU 569, and their duties are not “technical” in the sense used in the exclusion.

It is therefore our conclusion that these two men clearly should be in the ATU 569 unit.

Unfortunately, the decision gave no assistance about what “technical in the sense used in the exclusion” did involve. Even in their ordinary dictionary sense, “technical” and “mechanical” overlap considerably.

The second case involved a schedule/shift designer position. It came before the Board as a managerial or confidential exclusion question. The City maintained it was excluded while ATU maintained it was in the bargaining unit. The Board ruled the persons were not excluded as a managerial or confidential employees. It held, as a consequence, that the position should fall in the ATU unit. Now, CSU argues that the positions are technical in nature, and should have been found to fall within its bargaining unit. See:

Amalgamated Transit Union, Local 569 v. The City of Edmonton [1990] Alta.L.R.B.R. 486 at 493 and at 507.

The decision involved no discussion of the “technical” exclusion question. This is presumably because CSU was not a party to the proceedings. The panel said, at p. 507:

We find Mr. Thompson is an employee. He impressed the Board with the degree of technical skill and expertise brought to this position. It is an important position where the quality of work can have a major impact on the efficiency of the City’s operations. However, the job is complex and professional not managerial. [*Emphasis added*]

The description of the job, contained at p. 493, confirms that the work is largely technical in nature. However, the job also involves physically driving busses around actual or proposed routes. It requires the training and the license to drive a bus, as well as considerable bus driving experience. These skills are prerequisites to being able to plan and test the proposed routes and schedules. Our conclusion is that the position is indeed technical. However, we also find that the appropriate community of interest for the

position is with the ATU unit. The individuals involved will almost inevitably come from that unit because of the job requirements. The hands-on testing work gives the incumbents a directness of involvement with the system itself that distinguishes them from others employed in administrative or professional support work for the system.

CSU 52 argues that, if allocated to ATU, the promotion opportunities for these individuals would be minimal. This might be persuasive but for their proximity to management. The most likely area of promotion would be to an excluded position where the bargaining unit the employees came from, and seniority, would play little if any role.

We conclude that we should drop the “technical” exclusion from the wording in the ATU unit. The question of whether a person falls within the CSU unit or the ATU unit should not depend on such an imprecise term. Instead, we believe the person should be included in the ATU unit if their work involves them directly in the maintenance or operation of the transit system. Examples of this include those involved in training, or safety supervision.

They should be excluded if their work with the system is supportive but indirect. This would be the case with other planners, for example, whose work did not involve them in test runs but was confined to office work, computer analysis and like duties. The tests for differentiating the two units in this area are similar to those described for the CUPE/CSU interface.

Specialized Transit Systems

The ATU urges the Board to rule that the transit bargaining unit covers specialized transit programs. In particular, it is concerned over the past allocation of the Disabled Adult Transit System (D.A.T.S.) outside the ATU 569 unit. The parties agreed upon the following statement of facts about the operation of the D.A.T.S. system.

1. The DATS operation provides transportation both on a pre-booked or scheduled basis and on an “on demand” basis to disabled persons registered with DATS.
2. The actual physical transportation of DATS patrons takes place either in City owned vehicles whose drivers are provided under contract by Grey Goose Bus Lines (25%), in Yellow Cab sedans under a purchase order between the City and Yellow Cab (30%) or by privately owned and operated vans under purchase orders between the City and the individual owner-operators (45%).
3. The City owned DATS vehicles are maintained by City employees in the Mobile Equipment Services Branch of the Public Works Department in CUPE 30.

4. The administration, scheduling and dispatching of the DATS system is carried out by employees of the City, the bulk of whom are in CSU 52, as shown in the attached organizational charts.
5. The Supervisor, Support Services acts as the interface between the City and the driver supervisors at Grey Goose and Yellow Cab and the owner operators of the vans. She will bring to their attention concerns or complaints that have been raised regarding their activities.
6. The Service Technician monitors service by methods such as surveys of patrons and following and observing DATS vehicles. Any concerns are brought to the attention of the Supervisor, Support Services. The Service Technician does not raise concerns directly with the operators.
7. The Reservation Clerks receive calls from patrons wishing to book trips. The requests are entered into a computer. Requests for immediate (“on demand”) service are immediately referred by the Reservation Clerks to the Dispatchers.
8. The Schedulers review requests for service in the booking computer and design schedules and routes for the operators. Those Schedules and routes are faxed or left for pickup by the operators. There are a number of regular routes whose operators simply phone in to check for changes.
9. The Dispatchers communicate with operators regarding the daily changes in services such as requests for “on demand” trips, cancellations, “no shows” and revisions to schedules and routes as a result of vehicles running behind schedule, breakdown or accident.

This issue was considered, in depth, by an earlier Board panel (the “Lucas Panel”):

Amalgamated Transit Union Local 569 v. The City of Edmonton, Canadian Union of Public Employees, Local 30 (No. 2) [1986] Alta.L.R.B.R. 35.

In that case, the ATU asked the Board to rule that the City’s D.A.T.S. system fell within the words “the public transportation system.” The decision gives an extensive review of how the City operated the D.A.T.S. system at the time. The decision refers to additional descriptions given in an earlier case also involving D.A.T.S. which dealt primarily with issues arising out of the City’s practice, at that time, of contracting out its D.A.T.S. work. See:

Amalgamated Transit Union, Local 569 v. The City of Edmonton et al. [1986] Alta.L.R.B.R. 19.

In the second decision, the panel gave the following ruling on what the Board meant by the public transportation system, at p. 39:

It is our view that DATS does not fall within the phrase, “the public transportation system” as used by this Board when revising the ATU Certificate in 1978.

... in its broadest sense “the public transportation system” could include virtually all means of conveying the public and so, for example, would encompass airlines. The phrase must be limited in the context of its use, but even in an urban setting it could include taxis and limousine services, as well as a transit system. If the phrase is equated with “public transit” that too includes all forms of transportation for the general public, and particularly fixed route transit, as that is what we mainly have in Canada. Services for the disabled would not normally be within either of those phrases and such services are usually thought of as being encompassed by the term “para-transit.” This too is a broad term and could include car pools, dial-a-bus, airport limousines and jitney buses. (This latter term means small bus designated to carry paying passengers over a regular route according to flexible schedules.) Generally “para-transit” will cover all modes of transportation available to paying passengers which do not operate on a fixed route and fixed schedule basis. The use of this term has arisen within the last 15 years.

Transportation for the disabled is not integrated into a fixed route transportation system. It grew out of early experiments with the dial-a-ride concept and it experienced much growth and attention during 1981, the Year of the Disabled. In Edmonton the service has evolved from the use of sedans to include vans and mini-vans and, in the case of the ACT Recreation Centre, school buses. Initially the vehicles were privately owned, and some are as is the case with Yellow Cab Ltd., but as more of them had to be specifically adapted to meet the needs of the disabled, they quickly came to be City owned.

and at p. 41-2:

Based on what we heard, public transportation seems to connote the conveyance of passengers by a variety of vehicles, operating on roads or rails, that are available on request or at pre-determined times, and at either requested or pre-determined locations, to any member of the public able to pay the required fare. On this basis transportation for the disabled would not be public transportation because the service is not generally available to the public, rather it is limited to those who have qualified and are registered as users of the service. The fact that the vehicles themselves are specially adapted to meet the needs of the disabled is not an influencing factor. Other transportation services of a similarly restricted nature and which would not be part of the public transportation system are ambulances, police cars or vans, private school buses and buses operated for the benefit of particular church groups.

In our view, when this Board spoke of “the public transportation system” it was not intended to include transportation services available only to restricted or prequalified groups. The fact that the City may be involved in the provision of transportation for the disabled, or of an ambulance service, does not in our opinion convert that special transportation service into a public one. This Board, in the 1978 variance to the Certificate of ATU, appears to have had only one transportation system in mind and that was “the public transportation service.” This mean the service to which the public, as a whole, had access regardless of whether that service was fixed route, fixed schedule, or was supplied with the use of buses, vans or mini-vans.

CSU urges the Board to continue to use these tests. Essentially, we have decided to do so. “Public,” as defined in this decision is an appropriate term because it indicates that the service must be available to the public as a whole. Transportation appears to us to be an overbroad term. We substitute in its place the term “Transit”, which we find more in line with the services actually covered. It serves to distinguish and thus exclude things like ambulances.

Our examination of the present scope of D.A.T.S. related employment convinces us not to make any change in this area. All the driving is performed by persons contracted to the City, or working for third-party contractors. City employees actually involved with DATS fall into two basic groups.

The first are office and clerical employees who could, in any event, fall into CSU. This includes “dispatchers” whose tasks and working environment are quite different from those within ATU. The second group is the people who keep the fleet mechanically in good shape. Persons doing this work appropriately fall to CUPE, since it is not specialized bus and LRT train work. It is more like the vehicle and equipment repair done by persons within CUPE.

We restrict our comments to the current D.A.T.S. operations. There are forms of “para-transit” that could fall within the definition of the public transit used by the Lucas panel. We are not inclined to make any unit determination rulings on the basis of such an ambiguous term as “para-transit”.

Storekeeping (Transit)

At present CSU’s unit description specifically excludes “transit stores employees, power stores employees and telephone stores employees.” Those same terms are not specifically used in the IBEW or ATU unit descriptions. However, it is implicit that transit stores employees are “engaged in the operation, service and maintenance of the public transportation system” except to the extent they may be office and clerical employees. The same is (or was) true in respect of the other two units (power and telephones).

CSU argues that this exclusion of storekeeping employees promotes departmentalization of employees, contrary to their best interests. Instead, it argues that all storekeeping positions should be allocated to the

CSU unit. They argue that the storekeeping positions assigned to ATU are within the Finance and Systems Branch. They argue as well that they are surrounded by and supervised by persons in CSU 52. However, this appears to be because those jobs are office and clerical and, therefore, different in nature from the more physical Storekeeper function.

CSU's unit currently contains two storekeeping series Storeman I-II and Partsman I-III, plus Storekeepers, Stores Administrators, Buyers, Purchasing Assistants and Materials Planning Technicians I-III. ATU's unit has Stores Co-ordinators, Clothing Officers, Parts Foreman and Partsmen. We have examined their job specifications. There is no doubt a similarity of functions and training exists. There are minor variations, but these are insufficient of themselves to create separate communities of interest.

Transferability and promotability factors would favour an allocation to CSU. The City operates stores throughout the City's operation. Storekeepers require similar qualifications, no matter where in the City's operation they work. The more senior stores related positions (which appear to relate to general stores, not those specific to transit) fall with CSU 52.

Historically, ATU has represented transit stores employees. Geographically, they are located in the bus and LRT garages. Such employees clearly work directly with, and are functionally related to, those working with mechanics on the busses and trains. Their working conditions are similar to the mechanics. Like the mechanics, their hours of work differ from bus drivers, but are similar to others in ATU on a day shift. Again, we exclude all people employed as office and clerical people within stores from these comments.

Except for those who are office and clerical, we find that storekeepers are directly engaged in the maintenance of the public transit system. They are, in our view, appropriately left in the ATU unit because of the direct functional relationships with others in that unit. We therefore make no change in this area.

THE BORDER BETWEEN IBEW 1007 AND CSU 52

This border raises some of the same issues as between ATU 569 and CSU 52. In this area particularly, the use of the word "technical" has caused confusion and disputes. This is because many employees working as planners, technicians, draftspersons etc. have technical skills which they apply in furtherance of the goals of providing electricity to the citizens of Edmonton.

Unlike the ATU unit, the IBEW unit has never expressly excluded office, clerical and technical employees. This has generated disputes, particularly as formerly technical trades tasks have, as a result of technological change, taken on features of office and clerical work.

As with transit, there is a specific concern raised over the storekeeping function.

There is also a specific concern raised over Meter Readers who are currently allocated to the IBEW 1007 unit because of their connection to the utility.

Office and Clerical Employees (Power)

IBEW's position is that some office and clerical employees either do, or should, fall within their unit. Its submission on this point reads:

The Labour Relations Board must acknowledge that some persons performing office and clerical work are part of the IBEW unit. The distinction between the units to be drawn on the following basis;

The All Office and Clerical Unit except (those in the unit of IBEW) shall include Administrative support employees in the six functional units.

The "Administrative Organization Chart," of the City of Edmonton, deletes separate functional areas of responsibility in generic terms. These generic terms describe the very essence of an "office and clerical" unit in any organization. The terms Finance, Personnel, Computing Resources, and Planning and Development are all administrative, support services to the operational line structure.

The Functional Chart of Edmonton Power describes generally the same functional break down. Each branch has employees of both an administrative and operational function. The demarcation line between the two units is more objective and ascertainable, if it is the work function in an organizational sense, rather than specific duty which is the determining factor. The "core" or essence and nature of the unit becomes the focus.

IBEW appears to contemplate the office and clerical employees within the Edmonton Power department being divided into two groups — those in administrative support and those engaged in the "installation, construction, maintenance repair and operation of electrical or communication equipment." IBEW appears to recognize that such employees do essentially similar work. However, they argue that we should separate bargaining units because the function of their work is either essential to the utility (which they call operational) or only administrative support for the utility.

This argument is based on a wider proposition. That is, IBEW argues, because Edmonton Power is a utility, there must be one bargaining unit covering all the employees of that utility except perhaps those engaged solely in administrative support. This is not a proposition we accept. There is no magic to the concept of "a utility" as defined by the Public Utilities Act or otherwise. Utilities, just like the City as a whole, get their work done by employing employees. Those employees have different skills, different backgrounds and career paths and different collective bargaining interests. The argument that all employees of a utility must

be in one unit suffers from exactly the same defects as saying all employees of a civic department must be in one unit.

We have reviewed the history of the IBEW unit and the CSU unit, briefly summarized earlier in this decision. The units granted in 1949 clearly did not purport to cover office and clerical employees. The rewording of the certificates in 1973 was not intended to add office and clerical employees into the IBEW unit. In 1975, when the Board certified CSU, it clearly intended that the CSU unit, granted then, would include all office and clerical employees, including those within the Edmonton Power department. We find no historical support for IBEW's proposition that CSU 52 was to represent all office and clerical employees except those in IBEW.

We find the Board's approach of having all office and clerical employees in one unit is sound. It has been consistent for almost 20 years. It favours the mobility of a group of employees whose skills generally equip them to work throughout the City as opportunities arise. It makes little sense to assign a group of office and clerical employees to a unit, the majority of which consist of tradespersons with technical electrical training and work duties.

We wish to make this decision patently clear. We accept the submission from the City of Edmonton that we should describe the CSU unit by using the words: "All office and clerical employees and all other employees except" While our initial reaction was that this was redundant, given the years of litigation over this point, we think it nonetheless advisable. We will also say, specifically in the IBEW unit, that it excludes office and clerical personnel. Our review of the current collective agreements suggests this will make little difference to the current unit assignments, although we acknowledge that IBEW disputes some positions assigned elsewhere.

We believe this allocation is appropriate now and for so long as Edmonton Power remains associated with the broader civic administration. Including office and clerical employees in the IBEW unit could render it inappropriate in the civic multi-union environment. We believe this would also be inconsistent with the Board's policy expressed over many years.

Storekeeping (Power)

Our considerations in respect to Storekeepers assigned to IBEW are essentially the same as those already set out in respect of ATU. We see them as appropriately falling within the IBEW unit except when their duties are primarily office and clerical. The Board made this decision directly at page 17 of the March 6, 1975 decision when it certified CSU (see above). We find this allocation remains appropriate.

Meter Readers

The IBEW unit currently contains a series of three Meter Reader classifications. The City employs about 50 Meter Reader I's whose job it is to walk a route, accurately reading and recording the metered water and electric consumption of residential, commercial and industrial utility customers. The class specifications lists the following examples of typical work:

Reads water meters and electric kilowatt hour and commercial demand meters on an assigned rout or upon special instructions.

Verifying the addresses on the reading list to the address of the premises.

Checking the meter number on the list to the actual meter number.

Recording the reading on the reading list.

Checks to see that meters are functioning properly and reports any defective meters or unusual situations to supervisor.

Maintains individual work type and volume statistics, and submit completed work to the supervisor in accordance with schedules and departmental procedures.

Responds to customer enquiries by telephone or in person regarding reader activities, reading dates, keys, access, etc.

Fills out report with meter number, reading and address for meters not found on reading list.

Sorts and prepares service orders for reading process, maintains key files, scrutinizes records for account requiring special attention, prepares and delivers reading materials to and from the reading input control area as required.

Reports miscellaneous incidents pertaining to pets, and damaged or broken articles.

The Meter Reader II's supervise employees engaged in meter reading. They deal with customer complaints and training new employees. They supervise the maintenance of records about meter readings. They conduct some field audits, but normally work in an office setting. The Meter Reader III supervises the whole section. The Meter Reader III position is similar but has greater responsibility and a higher level of administration work than the Meter Reader II.

The Meter Readers report to the Director of Meter Reading in the Finances Department of the City. Within the meter reading section are a series of clerical positions doing data input work arising from the meter reading process. There are also support staff such as the route planner.

Meter Installers fall within IBEW. Obviously, the meter is a key component of the electrical distribution system for the utility because it holds the key to its revenue. Meter Readers have been assigned to IBEW in the past without apparent bargaining difficulty. In the Board's view, this continues to be appropriate. Meter Readers are directly employed in an activity that falls within the words "operation of the ... electrical distribution system." They will remain in IBEW.

Part II General Principles

- The employees of the City of Edmonton fall into one of six bargaining units established under the Labour Relations Code.
- The certificates describing these units cover all City employees and do not overlap. An employee in any given position will fall in only one bargaining unit.
- The question of which unit an employee falls within is a question of fact to be decided by applying the principles set out below which describe each of the units.
- These certificates cover employees as defined by the Labour Relations Code. Section 1(1)(l) of the Labour Relations Code automatically excludes some people from the definition of employee:

l In this Act,

(l) "employee" means a person employed to do work who is in receipt of or entitled to wages, but does not include

(i) a person other than a firefighter who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations,

(ii) a person who is a member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of Alberta and employed in his professional capacity, or

(iii) a firefighter who is the chief or a deputy chief of the fire department in which he is employed;

- Similarly, Police Officers are covered by separate legislation, so section 4(2)(d) of the Labour Relations Code excludes them.

4(2) This Act does not apply to

(d) employees who are police officers of a municipal police service appointed pursuant to the Police Act, except to the extent that this Act is made applicable by the Police Officers Collective Bargaining Act;

- The bargaining units set out below automatically exclude police officers and persons who are not employees within the meaning of the Labour Relations Code.
- The descriptions below refer to the units by using the name of the trade union currently representing the unit. This is for ease of reference only. The choice of bargaining agent remains for the employees within the various units, which may change over time. No trade union has any proprietary right to represent any particular group of employees.
- When a bargaining unit description contains an exclusion based on another certificate, identified by number or union name, the exclusion refers to that certificate as modified in future and to any successor certificate no matter what its number.
- Bargaining unit descriptions should be interpreted as living descriptions. They describe not only who falls within a given unit, but also how new positions, or changed positions, should be allocated within the City's multi-union environment.

The CSU Local 52 Unit.

All office and clerical employees and all other employees except CEPU, ATU, IBEW, CUPE and Fire.

- All office and clerical employees fall into this bargaining unit and not into any other city bargaining unit. The exceptions to "all other employees" do not apply to "office and clerical employees".

The CUPE 30 Unit.

All employees directly engaged in the construction or maintenance of public works, buildings, facilities and grounds; in physical supervision of facilities; in service and repair of vehicles and equipment; and in the operation of animal and pest control systems, garbage disposal and control systems, and waste water treatment systems; except office and clerical employees, IBEW, ATU and Fire.

- There are no office and clerical employees included in this bargaining unit.
- Public works include the City's roads, bridges, water distribution system, sewage and wastewater systems, garbage disposal sites and similar amenities.
- Buildings include premises occupied by the City whether owned or leased.
- Facilities include the City's cemeteries, conservatories, greenhouses, zoos, golf courses, parking lots, pools, arenas and similar facilities.
- Grounds include the parks, landscaping, lawns and similar areas surrounding the City's public works, buildings and facilities.
- Building maintenance includes caretaking, custodial work, cleaning and janitorial services. Persons primarily employed in such capacities fall within this unit and not in any other unit.
- Maintenance of the zoo includes the physical care of the animals. Maintenance of the greenhouses and the conservatory includes maintenance of the plants and exhibits within those facilities. Maintenance of historical exhibits includes physically maintaining the exhibits themselves where this involves predominately trades or labour work.
- Electricians and electronics technicians are excluded from the unit because such people are specifically included in the IBEW unit.
- Persons employed in the operation and maintenance of the Water Treatment plants are excluded from the unit because such people are specifically included in the IBEW unit.
- Persons will be employed in the physical supervision and maintenance of facilities when their job's prime function has more to do with maintaining a physical presence at the facility, to providing security, and to performing maintenance and equipment handling tasks, than office and clerical duties.

- The following considerations help establish whether a person is directly employed in the construction or maintenance of public works, buildings, facilities or grounds.
 - Those directly engaged will normally have field or trade experience, and will be involved with the project itself, or else work regularly with those who are.
 - They will more frequently be working on projects than in support of projects.
 - Direct work will normally involve regular field visits to projects being carried out by persons within CUPE, or by outside trades personnel, and will involve direct dealings with those persons over the projects being undertaken by them.
 - Recruitment for those positions will more frequently be directed at, and hirings made from, the persons within CUPE than those within CSU.
 - Job requirements will normally include some form of trades or labour experience, although this may be supplemented by other experience qualifications or training.

The IBEW 1007 Unit.

All employees directly engaged in the construction, maintenance and operation of the electrical generation and distribution system; directly engaged in maintaining or operating the water treatment plants; electricians and electronics technicians; except office and clerical employees, and CEPU, ATU and CUPE.

- There are no office and clerical employees included in this unit.
- The electrical generation and distribution system includes the communications system and control systems related to electrical distribution and generation.
- The terms “directly engaged in maintaining or operating the water treatment plants” includes the operators, tradespersons, helpers and samplers employed at the plants. It excludes those employed in the laboratory.
- “Electricians and electronics technicians” includes communications technicians and other tradespersons with analogous electrical or electronics based trades when employed in positions requiring that training.

- The exclusion of CEPU unit excludes all power engineers at power production plants.
- The exclusion of CUPE excludes persons employed in the construction and maintenance of public works, buildings, facilities and grounds.
- Work will be construction or maintenance of the electrical generation and distribution system, and not construction and maintenance of public works, buildings, facilities and grounds, when that work requires specialist knowledge of the electrical generation and distribution systems.
- An individual will be performing work requiring such specialist knowledge if that person is routinely assigned to crews with such a specialist focus even if that individual personally has no such specialist knowledge and works only as a helper, trainee or apprentice in support of others in the work crew who do have such knowledge.

The ATU 569 Unit

All employees directly engaged in the operation, service and maintenance of the public transit system except office and clerical employees, construction employees, CUPE and IBEW.

- There are no office and clerical employees included in this unit.
- The service and maintenance of the public transit system includes the mechanic and storekeepers who maintain the transit system. It also includes those who clean busses and LRT trains.
- The “public transit system” means the systems that convey passengers by vehicles, on road or rail, on request or at pre-determined times at either requested or pre-determined locations, to any member of the public able to pay the required fare.
- The “public transit system” excludes transportation services available only to restricted or pre-qualified groups. It, therefore, excludes transportation systems for the disabled, school children and ambulance services.
- The “public transit system” includes any use of the facilities of the City’s transit buses and LRT for special functions on a rental or contract basis.
- Work will be “maintenance of the public transit system” and not “construction and maintenance of public works, buildings, facilities and grounds” when that work requires specialist knowledge of the public transit system.

- The exclusion of construction employees excludes persons employed on major extensions to the system. It also excludes persons employed on construction work with no specialist transit component. It does not exclude the replacement, modification or addition of specialized transit equipment as part of the ongoing maintenance of the public transit system.

The C.E.P.U. Unit

All power engineers at power production plants.

- There are no office and clerical employees included in this unit.

The Edmonton Firefighters' Unit.

All full-time firefighters except the Chief and Deputy Chiefs.

- There are no office and clerical employees included in this unit.
- Persons employed to service firefighting equipment are considered firefighters for the purposes of this unit description.

Part III

I. Implementation

The collective agreements between the City and CSU, IBEW, CUPE and ATU all have a nominal expiry date of December 25, 1993. Any changes in bargaining unit allocation due to this decision should be implemented so that they come into effect at the same time as the various renewed collective agreements. This will allow each set of negotiations to deal with the necessary terms and conditions for any employees thus reallocated.

The collective agreement negotiations will not all end at the same time. An employee may currently be allocated to a unit that settles before a settlement in the unit to which that employee will be assigned in future. If so, the following conditions will apply:

- The employee's bargaining agent will switch from the former union to the new union as of the effective date of the former union's new collective agreement.

- The employee's terms and conditions of employment will continue (except for bargaining agent status and authority) as set out in the former union's collective agreement until the effective date of the new union's new collective agreement.

To facilitate the transition, if any dispute arises about the appropriate bargaining unit allocation of any particular positions any party may apply to the Board for a summary determination. The matter will be assigned under s. 9(7) to a Chair or Vice-Chair member of the panel. That Chair or Vice-Chair will provide a ruling, following such inquiries as the Board considers necessary. In the event of ambiguity, the Chair or Vice-Chair may refer the matter to a full panel if it is appropriate to do so. This will only apply from the date of this decision until January 1, 1994.

II. Future Applications

The Board establishes the following guidelines for future applications. There are two types of applications likely:

- An application under s. 11(3)(o) to determine if a person is included or excluded from a unit (a "determination application").
- An application to reconsider all or part of this decision or a unit description (a "reconsideration application").

Determination Applications

For determination applications, the applicant must, in future, provide the Board with:

- The name of the incumbent to each position concerned.
- The current job description or position posting for each position along with its current unit allocation.
- Details of how, applying the bargaining unit description wording and the explanatory principles set out in Part II of this decision, the applicant concludes that the position falls within a particular bargaining unit.
- Details of discussions between bargaining agents and the City about the appropriateness of the current or proposed allocation. This should include the explanations provided by the City, and by each bargaining agent involved, about the appropriate allocation for the position using the Part II principles.

The Board will not process determination applications unless such discussions have taken place, and a real difference remains.

All parties are encouraged to participate in such direct discussions when a dispute arises. All parties are encouraged to provide their position on disputed allocations. This should be in a format that makes it clear how they arrive at their allocations based upon the principles set out in Part II of this decision.

The Board will decide such determination requests on the basis of the unit description and the explanatory principles. However, the Board reserves the right, in suitable cases, to modify or clarify its explanatory principles. The Board also reserves the right, of its own motion, to reconsider a unit description if, following a determination application, it finds it appropriate to do so. What the Board will decline to hear are arguments, on determination applications, that indirectly seek to reconsider a bargaining unit description (or explanatory principles) whether they relate to the applicant's unit or another unit.

Reconsideration Applications

The Board's general policies on reconsideration applications are set out in Information Bulletin 6. If a party seeks reconsideration of a unit description or of an explanatory principle, they must provide the Board with:

- Details of why the change is necessary, including any labour relations difficulties that have arisen under the current description or principles.
- Specific wording for the change to the unit description(s) or principle(s) the applicant seeks.
- A list of the persons the change would affect, along with current position descriptions for those persons.
- Details of any change in the City's operations, or in the organization of the work force that have given rise to the application.
- Details of discussions held between the City and any affected bargaining agents about the proposed reconsideration or change in the organization.

It is the Board's intention to keep Part II of this decision current and to issue it as a separate document. It will re-issue that document, with changes, following any application which results in an amendment.

The Board hopes this decision will clarify its bargaining unit allocations. By following these procedures in future, the Board hopes the parties involved will have to spend far less time debating bargaining unit allocation issues. Responsibility for administering these unit allocations rests primarily with the parties. In the past it has been an activity that has consumed far too much of their collective resources.