

## #9 BARGAINING UNIT DESCRIPTIONS

### I. INTRODUCTION

Bargaining units describe people who can be grouped together for collective bargaining. The *Labour Relations Code* allows a union to be certified for an “appropriate bargaining unit”. There may be more than one way of describing an appropriate unit.

This Bulletin describes the principles the Board uses to determine appropriateness. It also states the Board's policy on certain bargaining unit questions where its practice is well-established. Finally, it gives suggestions for writing bargaining unit descriptions.

For many industries, the Board decides on the appropriate bargaining unit on a case-by-case basis. The Board has a wide discretion in defining circumstance-appropriate units. This Bulletin is provided for guidance only; it is not a definitive statement of what bargaining units the Board will accept.

For other industries, the Board uses standard bargaining units. This Bulletin covers firefighters, teachers, and the public sector. Information Bulletin 10 discusses standard units for hospitals, nursing homes and community health. These reflect the traditional bargaining unit structure of employers to which that Bulletin has historically applied. Information Bulletin 11 sets out standard bargaining units for the building trades in the construction and related industries. *See: Bulletins 10, 11.*

### II. GENERAL PRINCIPLES

An appropriate bargaining unit is a grouping of employees that makes “labour relations sense”. *See: Re: City of Edmonton Bargaining Units [1993] Alta.L.R.B.R. 362; General Teamsters 362 v. Southland Transportation [1997] Alta.L.R.B.R. 443; Kidd Creek Mines Ltd. [1984] OLRB Rep. March 481; Island Medical Laboratories Ltd. (1993) 19 CLRBR (2d) 161.*

There are several occasions when the Board may examine the appropriateness of a bargaining unit and determine how the unit should best be described.

- Before it grants a certification, the Board must be satisfied that the unit applied for, or one reasonably similar, is appropriate.
- In successorship applications involving integration and intermingling, the Board may be asked to examine the continued appropriateness of one or more bargaining units.
- Finally, under its general reconsideration power, the Board may be asked to consider the continued appropriateness of a unit in the context of significant change in the workplace.

- There may be more than one appropriate bargaining unit in a given case. The Board may certify any bargaining unit that is appropriate. It is not required to certify only the most appropriate unit. *See: Section 34(1)(c); AUPE 113 v. Legal Aid Society [1983] Alta.L.R.B. 83-002.*

In a successor or reconsideration case, the Board determines whether the existing unit continues to be appropriate in the form certified. The Board presumes a unit remains appropriate until evidence convinces it otherwise. *See: CUPE 3203 v. Horizon School [1995] Alta.L.R.B.R. 439.*

The Board considers the following factors in deciding whether a unit is appropriate. None of these factors alone dictate a result. The Board weighs these and other competing considerations in each case. As well, the Board may use these factors differently depending upon the question before it: certification, successorship or reconsideration. *See: CUPE 3203 v. Horizon School [1995] Alta. L.R.B.R. 439; South Peace Health Unit #20 SNAA v. Mistahia Regional Health Authority et al. [1996] Alta. L.R.B.R. 362; East Central Regional Health Authority v. AUPE et al. [1996] Alta.L.R.B.R. 327; AUPE v. Good Samaritan Society [1997] Alta.L.R.B.R. 88; and UFCW 401 v. Freson Market [1995] Alta.L.R.B.R. 491.*

### **Community of Interest**

Do the employees in the proposed unit have common interests? Do they have common skills and working conditions? Do they do similar work? Do they work together, or in a close functional relationship to one another? Will they have conflicting goals in collective bargaining?

This factor favours smaller bargaining units. The greater the community of interest between employees in the unit, the more likely it is that the Board will find the unit to be appropriate.

### **Bargaining History**

Is there a history of collective bargaining with the employer? Does the employer already bargain with several bargaining agents? Would the application "carve out" a group of employees from an existing, viable bargaining relationship?

The Board is more likely to approve a small bargaining unit where the employer already operates with several units and several bargaining agents. On the other hand, the Board will not certify a unit that "carves out" a small group of employees from an existing viable bargaining unit unless there are compelling labour relations reasons to do so.

### **Nature of Employer's Organization**

Where an employer operates in several locations, the Board will consider the degree to which the operations are integrated or interdependent. If employees are highly mobile between departments or locations of the employer, the Board is less likely to find a departmental or localized unit appropriate. *See: CSU 52 et al. v. City of Edmonton. [1993] Alta.L.R.B.R. 362.*

### **Viable Bargaining Structures**

Larger bargaining units tend to promote more effective bargaining and representation by the trade union than small units. The larger the bargaining unit proposed, the more likely it is that the Board will find it appropriate, so long as the employees share a community of interest.

### **Avoidance of Fragmentation**

Multiple bargaining units within one employer's operations are more difficult and costly for an employer to administer. They also tend to restrict the job mobility of employees. The Board may not

find a bargaining unit to be appropriate if it would unduly fragment the employer's bargaining structure.

### **Agreement of the Parties**

If the trade union and employer agree that a proposed unit is appropriate, the Board may give the agreement some weight. The Board will, however, reject an agreed unit if it is not otherwise an appropriate unit.

## **III. SPECIFIC BOARD POLICIES**

Although each bargaining unit is evaluated on its own merits, the Board has developed several “rules of thumb” that parties should be aware of. These include:

### **Full-time and part-time employees**

The Board usually includes full-time, part-time and casual employees in the same “all-employee” unit. The Board will not normally certify separate units of full-time and part-time employees.

### **All-employee units**

A unit of all employees of an employer will be considered appropriate unless there is insufficient community of interest between the different parts of the unit.

### **“Tag-ends”**

Some certification applications, if successful, would leave only a few small portions of an employer's workforce unorganized. In such cases, the Board may consider a proposed bargaining unit inappropriate if it would exclude these “tag-end” positions.

### **“Office” and “Plant” Units and “Tag Ends”**

In industrial operations, the Board will generally find both a “production” or “plant” unit, and an “office and technical” unit to be appropriate. A plant unit is normally described as: “All employees except office and clerical, security and quality control personnel”. Some certification applications, if successful, would leave only a few small portions of an employer's workforce unorganized. In such cases, the Board may consider a proposed bargaining unit inappropriate if it would exclude these “tag-end” positions.

A unit including plant and office and technical employees will not normally be appropriate unless the applicant union can demonstrate substantial support within both the plant and the office portions of the unit.

### **Public-Sector Units**

The *Public Service Employee Relations Act* stipulates that employees of the Crown in right of Alberta form a single bargaining unit. See: *PSERA Sections 10, 11, 16*.

For other public-sector employees, a unit of all employees is the preferred bargaining unit. However, the Act provides that the Board may certify another bargaining unit if it is more appropriate than an all-employee unit.

## IV. UNIT CONSIDERATIONS FOR SPECIFIC INDUSTRIES

The Board has wide discretion in reviewing bargaining units but does so based upon experience as well as policy and labour relations considerations.

### **The Retail Industry**

In the retail industry, a unit comprising employees at several locations within a geographic area (for example the City of Calgary) may be appropriate where a single-location unit for an employer with several locations would not. However, if an employer's operations in a geographic area have not previously been certified, a single location unit may be appropriate if it is otherwise a viable unit on its own. *See: UFCW 401 v. Freson Market [1995] Alta.L.R.B.R. 491; AFCW 401 v. Color Your World [1985] Alta.L.R.B. 85-056; UFCW 401 v. Mariposa Stores et al. [1986] Alta.L.R.B.R. 661.*

### **Security Guard Services**

A bargaining unit may not be appropriate if it includes security guards with other employees. If the guards are employed to protect property against the acts of fellow employees, the Board normally requires guards be excluded from the unit. They may be certified as a separate and/or site-specific unit. *See: Steelworkers 5885 v. Canadian Protection Services [1991] Alta.L.R.B.R. 89.*

### **Firefighting**

The Code says there shall be only one firefighter bargaining unit for each employer. It consists of all officers and technicians assigned exclusively to fire protection and fire prevention (even though those duties may include ambulance or rescue functions) as well as mechanics and tradespersons. The standard firefighter bargaining unit description is: *See: Sections 35(2), 1(o); Red Deer Fire Fighters Association 1190 v. Int'l Association of Firefighters 263 et al. [1986] Alta.L.R.B.R. 282; City Firefighters Union 237 v. The City of Lethbridge [1988] Alta.L.R.B.R. 246.*

“All firefighters.”

Volunteer firefighters are also excluded from the unit because they are not employees. *See: The City of Spruce Grove v. Firefighters 3021 [1988] Alta.L.R.B.R. 365.*

### **Education**

Most of these employers have two types of employees: teaching personnel and non-teaching personnel. Usually, the Board finds “All teachers” and “All employees except teachers” are appropriate units. *See: EPSB v. ATA et al [1991] Alta.L.R.B.R. 463; EPSB v. LRB and ATA [1991] Alta. L.R.B.R. 724 (Q.B.); and Edmonton School Dist. #7 and LRB v. ATA [1992] Alta.L.R.B.R. 650 (C.A.).*

Teaching personnel covers qualified professional teaching staff. According to Section 1(j) of the *Teaching Profession Act* “teacher” means a person holding a permanent or temporary certificate of qualification as a teacher issued by the Minister under the *School Act*. This includes guidance counsellors and teacher-librarians who have teaching qualifications. The Board considers principals and assistant or vice-principals as teachers, because the *Teaching Profession Act* refers to them as that.

There are several groups of non-teaching personnel. These groups include persons providing administrative or general support functions as well as those involved in teaching but who do not hold permanent or temporary teaching certificates. *See: ATA v. Calgary Islamic School [2008] Alta. L.R.B.R. LD-008.*

The *School Act* has been interpreted to provide that there may only be one bargaining unit of teachers for each employer. The standard teacher bargaining unit description is:

“All teachers.”

*See: Section 97(3) of the School Act.*

### **Manufacturing**

The appropriate manufacturing unit is usually “All employees except office, clerical and sales personnel”.

The unit description includes all persons involved in the manufacturing or production process. Persons associated with such units include shipping and receiving, cleaning, maintenance, service and production personnel. Include quality control personnel if they do routine testing and do not have disciplinary powers. Exclude quality control and security personnel from the bargaining unit if a potential for conflict of interest exists.

The term, “office and clerical” refers to “white-collar” kinds of work. Such units cover secretaries, clerical workers, certain professional personnel and technical personnel (such as draftspersons) involved in an office or administrative setting.

Sales personnel usually do not have a similar community of interest with the operations personnel. The only exception is when the union can show support from these employees. There is a difference between inside and outside sales personnel. Consider “counter”, “parts department” or “inside sales” personnel are normally part of the “office and clerical” unit. Consider employees paid on a commission basis as sales personnel, and excluded from the unit. If paid on a wage or salary basis, then consider them part of the office and clerical unit.

### **Medical & Health Laboratories**

An appropriate unit may be “all employees” for smaller labs or “all employees except office and clerical personnel” for larger labs where it may be desirable to carve out the office and clerical employees. *See: HSAA & CUPE 2147 v. Dynacare Kasper Medical Laboratories et al. [1997]. Alta.L.R.B.R. 464.*

### **Mining**

“All employees except office and clerical personnel” is normally the appropriate bargaining unit. It includes all mining operations personnel. Include equipment operators, time-keepers, security personnel, maintenance and service personnel, drivers, janitors, shipping and receiving personnel. Exclude security personnel if they admonish employees and are in a conflict of interest position. Include them if they are simply “watchpersons”. In the past, the Board occasionally certified a specific craft unit such as “operating engineers”. However, the Board now avoids such craft units.

### **Transportation and Storage**

Normally, “All employees except office and clerical personnel” is the preferred unit. This unit generally includes warehouse, shipping and receiving, and maintenance personnel, as well as mechanics, dock workers, drivers, swamper or driver’s helpers. Also, this unit includes dispatchers (assuming they are not managerial or part of the office unit) and cleaning staff.

The Board usually includes all drivers operating in or out of a geographic location. (Employees temporarily absent from Alberta are still normally under provincial jurisdiction). The only exceptions are drivers operating interprovincially who are under federal legislation. The Board sometimes certifies "truck drivers" units after weighing concerns about the impact of carving out such a unit.

### Utilities

Normally the Board certifies the operating unit apart from the office and clerical unit. The unit description is usually "All employees except office and clerical personnel". This unit description would cover all employees employed in various locations in Alberta. The operating unit includes plant operators, and other operations personnel engaged in the facility. Operating personnel includes steam plant or operating engineers, shift engineers, and apprentice operators. This also includes maintenance trades such as electricians, apprentices, labourers, laboratory personnel, and instrumentation personnel.

The Board does not usually certify small office and clerical units for individual plants. Normally, the Board certifies them on a regional or provincial basis. The unit description usually is "All office and clerical employees". This unit normally includes office workers, data processing, finance and administration personnel as well as secretaries and receptionists. *See: Energy and Chemical Workers 666 v. ICG Liquid Gas and Teamsters Local 362 [1989] Alta.L.R.B.R. 43.*

## V. WRITING BARGAINING UNIT DESCRIPTIONS

Persons writing bargaining unit descriptions should use the following guidelines when writing unit descriptions:

- **Omit statutory exclusions:** Do not expressly exclude those persons automatically excluded by Section 1(1) of the Code.
- **Use "all employees" followed by limitations:** For all inclusive employee bargaining units, use "All employees" followed by:
  - any limitation based on a division of the employer's operations, or a specific institution;
  - any geographical limitation;
  - any exceptions; or
  - a combination of the above.
- **Include restrictions based on the employer's operating divisions:** Where an employer has several locations, geographical limitations should appear in the unit description ("all employees of the employer at the Edmonton plant") not as part of the employer's name ("XYZ Industries Ltd., Edmonton").
- **Include geographic limitations:** For geographical limitations use the following forms:
  - "All employees in the Edmonton plant except office and clerical personnel."
  - "All employees at the 123 Street shop in Red Deer."
  - "All employees in Lethbridge except office, clerical and sales personnel."

- **Name specific exceptions:** For exceptions, use common generic terms wherever possible, like the ones in these examples.
  - “except those employed in construction”;
  - “except office and clerical personnel”;
  - “except office, clerical, and sales personnel”;
  - “except office, clerical, quality control and security personnel”;
  - “except office, clerical, sales and construction personnel”;
  - “except office, clerical and technical personnel”;
  - “except custodial and maintenance personnel”;
  - “except quality control and security personnel”;
  - “except quality control personnel”; or
  - “except security personnel.”

Where several classes of employee need excluding, exclude them in the following order.

1. office;
  2. clerical;
  3. technical;
  4. sales;
  5. quality control;
  6. security;
  7. custodial;
  8. maintenance; and
  9. construction.
- **Exclude other bargaining units:** For exceptions based on a second bargaining unit, refer first to the other certificate. Do not include the other union name or unit description. This avoids having to change the certificate if the name of the other union changes. For these type of units, use the following form:

“All employees except those covered by Certificate No. 234.”

In cases of voluntary recognition, use the name of the union holding the voluntary recognition:

“All employees except those represented by CUPE 123.”

- **Presume province-wide units:** Units without geographic restrictions are province wide. The only exceptions are construction and maintenance units which are for the union's territorial scope. All other geographic restrictions are expressed.
- **Presume all employee types:** Units are for all employees (full-time, part-time and casual) unless there is an exception expressed, such as:

“All employees except part-time and casual personnel.”

- **Use generic job types not specific titles:** While specific job titles seem clear at the time of application, they may become confusing as the organization of the workplace changes but the certificate does not. For units based on a particular type of job or employee type use “all

employees employed as ..." (list the job type or types using as generic a description as possible consistent with clarity)". Follow this with any exceptions as shown above.

- **Use function not qualification-based descriptions:** Describe employees on the basis of the job functions they perform, not on the qualifications they hold. Therefore, use plumbers not journeymen plumbers, nurses not registered nurses, etc. Do not refer to any specific work jurisdiction assignments, but refer to classifications, if necessary. Also, do not refer to "journeymen" or "indentured apprentices" when referring to trade classifications. The Board does not differentiate between qualified and unqualified tradespersons.
- **Use standard terms:** The Board uses certain standard terms in preference to others. Use:
  - personnel instead of staff, persons, workers;
  - employee instead of worker;
  - except instead of excepting, save and except, excluding;
  - plant instead of factory, manufacturing facility;
  - driver instead of truck driver; and
  - Calgary, not City of Calgary (only in unit descriptions when adding a geographic limitation, not if the reference is to the employer's name or division name).
- **Avoid sexist terms:** Use gender neutral terms wherever possible. For example, use:
  - bartenders, not tapmen;
  - firefighters not firemen;
  - tradespersons not journeymen;
  - housekeepers not maids.
- **Use standard descriptions:** The Board has established standard unit descriptions in some industries which must be followed unless a panel rules otherwise.

Previous certificates can be useful tools for describing bargaining units and to show the uniform language the Board attempts to use. A list of all current certificates is available online at: <http://www.alrb.gov.ab.ca/activecertificates.html>.

## **VI. REASONABLY SIMILAR BARGAINING UNIT**

Trade unions should apply for certification for a bargaining unit that it believes to be appropriate considering the factors above as guidelines. If the unit applied for is not appropriate, but, in the view of the Board, a reasonably similar unit would be, the Board may amend the unit. The Board may then grant a vote, in the amended unit, on the strength of the 40% support within the unit originally applied for. If no reasonably similar unit would be appropriate for collective bargaining, the Board will dismiss the application. *See: Sections 35(1)(b) and 36(2); GCIU 34-M v. The Calgary Herald et al. [1993] Alta.L.R.B.R. 222.*

## **VII. APPLICATIONS FOR DETERMINATIONS**

The Board has the authority to determine whether persons are or are not employees within the meaning of the Code and the Act and whether or not a person falls within a given bargaining unit. Parties to a difference over any such question should first meet and attempt to resolve the issue themselves. In the event such a matter cannot be resolved, the parties should consider using the



arbitration procedures in their collective agreement. If necessary, the Board may hear the application. For more information on determinations, see Information Bulletin 22. *See: Section 12(3)(b), (o); PSERA Section 3(2)(b), (p).*

*See also:*

Information Bulletins 8, 10 and 11  
Rules of Procedure

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