

BCLRB No. B308/93
(Leave for Reconsideration of IRC No. C217/92 and BCLRB No. B49/93)

BRITISH COLUMBIA LABOUR RELATIONS BOARD

ISLAND MEDICAL LABORATORIES LTD.

("IML")

- and -

DUECK CHEVROLET OLDSMOBILE CADILLAC LIMITED

("Dueck")

-and-

TEAMSTERS LOCAL UNION NO. 213

("Teamsters")

-and-

HEALTH SCIENCES ASSOCIATION OF BRITISH COLUMBIA

("HSA")

PANEL: Stan Lanyon, Chair
Brent Mullin, Vice-Chair
Keith Oleksiuk, Vice-Chair

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Ed Norman, for the Teamsters

CASE NOS.: 13557 and 14425

DATE OF HEARING: May 25, 1993

DATE OF DECISION: September 21, 1993

DECISION OF THE BOARD

I. NATURE OF APPLICATION

This matter arises from the consolidation of two applications for reconsideration. One concerns a decision of the Labour Relations Board and the other a decision of the Industrial Relations Council. In each case the employer applies for a reconsideration of a decision that the bargaining units proposed by the respective unions was appropriate for certification.

The first application is that of Dueck Chevrolet Oldsmobile Cadillac Limited, pursuant to Section 36 of the *Industrial Relations Act* for reconsideration of IRC No. C217/92. The second application is that of Island Medical Laboratories Ltd., pursuant to Section 141 of the *Labour Relations Code*, for leave to apply for reconsideration of BCLRB No. B49/93 . The two matters were consolidated due to the similarity of the applications.

II. TRANSITIONAL

Dueck's application is for reconsideration of a decision of the Industrial Relations Council, and was filed under the *Industrial Relations Act*.

The right to appeal is a substantive right, and in Dueck's case is one which had crystallized prior to the *Labour Relations Code* coming into force. Therefore, Dueck is entitled to have the decision reconsidered, without having to apply for leave to reconsider. However, the provisions of the Code dealing with the requirement that the Board determine that a bargaining unit is

appropriate for bargaining are the same as the equivalent sections in the *Industrial Relations Act*. Therefore, for the purpose of the substance of this matter it is of no consequence as to whether the *Labour Relations Code* or the *Industrial Relations Act* applies (see *Speed-Erect Foundations and Framing Systems Ltd.*, BCLRB No. B1/93).

III. LEAVE TO APPLY

IML brings its application pursuant to Section 141 of the *Labour Relations Code*. Therefore, with respect to IML, the Board must determine whether or not leave to apply for reconsideration should be granted. After reading the submissions of the parties and hearing oral argument, the Board is satisfied that IML has demonstrated a good arguable case of sufficient merit such that leave to apply for a reconsideration should be granted. Among other things, we find that there are conflicting authorities as to the appropriate principles to be applied in determining whether or not a unit is an appropriate bargaining unit. Therefore, following the test established in *Brinco Coal Mining Corporation*, BCLRB No. B74/93, IML is granted leave to apply for reconsideration and its application will be considered on the merits.

IV. FINDINGS OF THE ORIGINAL PANEL

1. Island Medical Laboratories Ltd. - (BCLRB No. B49/93)

This case involved an application by the Health Sciences Association ("HSA") for a certification of a bargaining unit of "medical laboratory technologists employed by IML at Lower Vancouver Island sites, including Yates Street, Sooke, Royal Oak and Duncan". The Employer objected to the application on the basis that the bargaining unit was inappropriate.

The original panel found that, although the most appropriate unit at IML would be broader than the proposed unit, a narrower unit was appropriate for collective bargaining.

The panel found that the medical laboratory technologists ("RTs") constituted a special group of employees who shared a distinct community of interest arising out of their status as paramedical professionals. The RTs had different educational backgrounds, qualifications, skills, nature of work and interests from the other employees at IML. This finding was not disturbed by the performance of overlapping functions at the periphery of the RT's core activities. It was also found appropriate to separate the Lower Vancouver Island sites from the up Island sites because, although there was a close connection between the sites in terms of business operations, there was no day-to-day operational interchange of employees generally or in particular between included and excluded RTs.

2. Dueck Chevrolet Oldsmobile Cadillac Limited - IRC No. C217/92

In this decision the trade unions applied for certification of a group of employees described as "mechanics and mechanics' helpers". The Employer objected to the application for certification arguing that the proposed unit was inappropriate for collective bargaining. The original panel found that the issue to be determined was:

Have the mechanics and mechanics helpers in the service area shown evidence of a community of interest sufficiently distinct from the employees in the other areas (body shop and parts department) to justify a separate unit for service area employees? (p. 2)

The panel found that administrative efficiency and convenience in bargaining did not favour an all-employee unit because the parts, service and body shop did not operate jointly. With respect to the common framework of employment conditions, the panel found that that factor led to the question of whether "it was possible to draw a defensible boundary around the mechanics and mechanics' helpers?". The panel relied on the fact that the mechanics had separate foremen, a separate dispatch system and used a separate "Mitchell's"

book to determine their flat rate for pay. The panel also found that the mechanics "clock-in" system was distinct from the bodymen and parts area. The panel held that although the mechanics, mechanics helpers and bodymen shared similar skills and had some interaction, that was not fatal to the application.

With respect to industrial stability, the panel found that this factor was less of a concern where there was no trade union representation already at the work site. Finally, with respect to lateral mobility, the panel found that both parties had accepted there had been no lateral mobility among the employees. The panel concluded that the unit proposed by the trade unions did have interests distinct from the body shop and parts employees; therefore, the unit was appropriate for collective bargaining.

V. POSITIONS OF THE PARTIES

1. Island Medical Laboratories Ltd.

IML argues that the unit applied for is not appropriate for collective bargaining. IML notes that the application affected only one out of three classifications of employees involved in the clinical/analytical/technical aspects of its business and one classification of a substantially larger number of classifications in the Employer's business as a whole. Further, the application covered only four of the seven locations at which IML employs RTs and covers only 70 RTs out of a total of 106. IML argues that the distinction between the Lower Vancouver Island sites and the more northern sites is purely artificial and does not take into account the integrated and interdependent nature of its operations.

IML argues that where a union is certified for a unit smaller than an all-employee unit, the demonstrated community of interest must encompass all employees who share the same community of interest. That is to say, it is not only the employees within the proposed bargaining unit that must share a

community of interest, but it must be determined that they do not share a community of interest with employees outside the proposed unit. IML relies on *Loomis Armored Car*, BCLRB No. 407/84; *Whistler Mountain Ski Corporation*, IRC No. C83/90; *Jim Pattison Industries Ltd.*, BCLRB No. 39/79, [1979] 2 CLRBR 517; and *Progressive Products*, IRC No. C167/88. IML argues that the panel erred in not applying the test in this manner.

Second, IML argues that the panel erred in not giving any weight to its interests or to the interests of the excluded employees in the proposed unit.

Third, IML argues that the panel erred by failing to give weight to the functional coherence and interdependence of the Employer's operations, relying on *Whistler, supra*.

Fourth, IML argues that the panel erred by failing to give weight to the extensive overlap in job duties between the RTs and the other employees who perform clinical/analytical/technical duties.

Fifth, IML argues that the panel erred in holding that the separate geographic locations contributed to the community of interest, noting that previously the Union had successfully organized the RTs and the other clinical/analytical/technical employees.

IML further argues that the only true exception to the all-employee unit is that created in *Woodward Stores (Vancouver) Limited*, BCLRB No. 129/74, [1975] 1 CLRBR 114, where, due to difficulty in organizing, the Board will exercise its discretion to certify a smaller unit in order to facilitate the achievement of collective bargaining. Even under the *Woodward Stores* approach, IML notes that the Board has stated that it will not carve out "totally artificial units, based solely on the extent of organization by the union (and sufficiently to give the latter a majority)".

2. Health Sciences Association of British Columbia

In response, HSA argues that the original panel's analysis accurately reflects the Board's policy with respect to determination of appropriate bargaining units. HSA argues that the determination includes an element of discretion and requires that the determination be made on a case by case basis weighing all the relevant factors. HSA argues that the original panel properly considered the application of the "community of interest test".

3. Dueck Chevrolet Oldsmobile Cadillac Limited

Dueck argues that the facts relied on by the panel including separate foremen, separate Mitchell's book, and a separate clock-in system are not factors which identify a distinct community of interest. Dueck also points to other findings of the panel to show that in its operation there is a broader community of interest which would at least include the bodymen. The panel effectively certified one classification of employees within the employer's operation.

Dueck argues that the Board's decision in *Whistler, supra*, was "...accurate in its analysis of the law and in particular in identifying the confusion that now exists in the jurisprudence".

In oral argument Dueck noted that certification of the bargaining unit proposed by the Teamsters amounted to certifying a single job classification in an integrated operation. Dueck argues that it is not the practice of the Board to certify every trade in the industrial sector and that that approach had been specifically rejected by the Council in *Lega Fabricating Ltd.*, BCLRB No. 5/77, [1977] 1 CLRBR 389 and *Chimo Structures Ltd.*, BCLRB No. 5/76, [1976] 1 CLRBR 373. Finally, Dueck noted that the panel found that the Board had not previously certified a unit of mechanics and mechanics' helpers.

4. Teamsters Local Union No. 213

The Teamsters argue that the thrust of Dueck's argument was to disagree with the significance or lack of significance the panel placed on various portions of the evidence. The Teamsters argue that Section 36 of the *Industrial Relations Act* is not intended to review findings of fact by the original panel.

VI. ANALYSIS AND REASONS

1. Introduction

This decision is concerned throughout with the integration and balancing of two fundamental principles of the Code in the determination of an appropriate unit: access to collective bargaining and industrial stability.

Our analysis and reasons are set out in the following order: first, the history and purpose of certification is discussed; second, the statutory scheme of certification is briefly described; third, the doctrines in *Insurance Corporation of British Columbia*, BCLRB No. 63/74, [1974] 1 CLRBR 403; and *Woodward Stores, supra*, are examined; fourth, the evolution of the concept of community of interest is traced from *ICBC* and *Woodward Stores* through to *Canadian Kenworth Division of Paccar of Canada Ltd.*, BCLRB No. 22/79, [1979] 2 CLRBR 64; and *B.C. Coal Ltd.*, BCLRB No. 36/82, [1982] 3 CLRBR 177; fifth, there follows an analysis of the *ICBC* criteria (primarily, industrial stability) in relation to the "building block" approach to all-employee units in *Crest Motor Hotel Ltd.*, BCLRB No. 189/87, (1988), 17 CLRBR (NS) 223; sixth, *MacMillan Bloedel Limited (Alberni Pulp and Paper Division)*, BCLRB No. 393/84, (1985) 8 CLRBR (NS) 42, (hereinafter referred to as "*Alpulp*"), and the doctrine of "extraordinary remedy" are discussed; seventh, the IML and Dueck decisions are reviewed in light of the foregoing policy analysis.

2. Certification - History and Purpose

We rely on two labour law texts in describing the history and purpose of certification: Adams, *Canadian Labour Law*, 2nd Edition, (Canada Law Book Inc., May 1993); and A. W. Carrothers, E. Palmer, and W. B. Rayner, *Collective Bargaining Law in Canada*, Second Edition, (Toronto: Butterworths, 1986).

The single most significant piece of legislation in the development of the North American scheme of labour relations was the *National Labour Relations Act*, Chapter 372, 49 Stat. 449, (1935), (the "*Wagner Act*"). The *Wagner Act* brought "...a new and positive meaning to the role of law in labour relations" (Adams, p. 1-11, para. 1.150). It recognized the right of employees to belong to trade unions, free from employer coercion or interference, and imposed a duty upon employers to bargain in good faith. It established three components of labour relations - certification, prohibitions against unfair labour practices and the duty to bargain in good faith - that have remained a core part of all labour relations schemes in North America since that time. In addition, the *Wagner Act* also established the National Labour Relations Board. This scheme has proved immensely important to the development of Canadian labour law.

The Federal Government of Canada asserted jurisdiction over labour relations in 1944 by enacting Order-in-Council P.C. 1003. This represented Canada's first comprehensive labour relations policy. It contained the same basic elements as the *Wagner Act* - certification, prohibitions against unfair labour practices, and the duty to bargain in good faith. P.C. 1003 had a significant impact on the development of labour relations in Canada: "Of all the sources that influenced the contents of post-war legislation, the War Time Labour Relations Regulation of 1944 had the most direct impact" (Carrothers, *supra*, p. 50).

These principles were adopted by and incorporated into the *Industrial Relations and Disputes Investigation Act*, S.C. 1948, c.54. In 1948, the national emergency underlying the Federal Government's jurisdiction over labour relations was declared at an end and most of the provinces brought their labour relations into line with this federal policy. Canada therefore has a basic

core of labour laws which recognize the right of employees to associate and bargain collectively.

Canadian labour law also has an international component. The Federal Government has made commitments at the international level, specifically the Treaty of Versailles and to the Conventions of the International Labour Organizations ("I.L.O."). In 1972, Convention No. 87 was included in the preamble to Part 5 of the *Canada Labour Code*, stating that Canada had assumed international reporting responsibilities with regard to freedom of association.

Finally, in 1982, the *Canadian Charter of Rights and Freedoms* was enacted and freedom of association (Section 2(b)) was made imperative as a basic freedom (see: re *Public Service Employee Relations Act*, (Alta.) [1987] 1 S.C.R. 313; *Public Service Alliance of Canada*, [1987] 1 S.C.R. 424; *Retail, Wholesale, Department Store Workers' Union*, (Sask.), [1987] 1 S.C.R. 460; *Professional Institute of the Public Service of Canada v. Northwest Territories (Commission)*, [1990] 2 S.C.R. 367; *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211).

The moral commitment of provincial and federal governments in Canada to the public policy of collective bargaining is based upon, as Carrothers states, "...the philosophy that the labour of a human being is not a commodity or article of commerce" (p. 3).

A critical element in this recognition is the rejection of the 19th century doctrine of employment at will - the right of the employer to fire its workers for "good reason, bad reason, or no reason at all". There is, therefore, expressed in public policy, a recognition of the value of one's employment, the inequality in bargaining power between employers and employees, and the need for fairness in addressing this imbalance.

Simply put, an employee, in the absence of a collective agreement, has no vested rights. The ability of an employee to not simply accept what is offered

but to be able to bargain what he or she considers to be desirable in order to provide protection from material and legal insecurity, directly results in that employee having greater rights, voice and dignity (see Paul Weiler in *Reconcilable Differences*, (Toronto: Carswell Company Limited, 1980, pp. 15-33).

Finally, a collective bargaining relationship that achieves a greater balancing of the power between employers and employees, that vests employment rights in employees, that allows decisions to be challenged and disagreements to be settled by neutral arbitrators, without economic disruptions, establishes the rule of law in employer-employee relationships.

This, as Weiler notes, is "...intrinsically valuable as an exercise in self-government" (p. 33).

3. Statutory Scheme

There is no common law equivalent to certification. Its origins lay in the *Wagner Act* which was specifically enacted to replace recognition strikes conducted by unions for the purpose of obtaining union recognition and a first collective agreement.

Part 3 of the *Labour Relations Code*, Acquisition and Termination of Bargaining Rights, sets out the legislative scheme with regard to certification.

The effect of certification is to give a union the exclusive bargaining authority on behalf of all employees in the proposed unit. This exclusive bargaining authority is set out in Section 27 of the Code. The scope of the unit is the key both to securing trade union representation and in setting the appropriate framework for collective bargaining. This affects the potential bargaining power of both the employer and the union.

This scheme contemplates that an application for certification can be

made when 45% of the employees in a proposed bargaining unit have signed membership cards in a union. The form of this membership card is set out in Part 2 of the Labour Relations Regulation. If an application for certification is supported by more than 45% but less than 55% of employees in the unit, a vote is ordered. In order to be successful, a union must obtain a majority of votes cast. If a union applies with 55% or more of the employees having signed membership cards, the union is normally granted an "automatic certification". In that case there is no requirement for a vote. These provisions are set out in Sections 18 and 23 respectively. In addition, two other determinations are made: first, a union must meet the definition of "trade union"; and second, the unit applied for must be an appropriate unit.

This certification scheme borrows heavily from our democratic traditions of majority rule. As Carrothers notes, labour relations boards across Canada are given "extensive discretionary powers" in relation to the issue of appropriateness. In this area the jurisdiction of the board is the "least violable by judicial review" and seems limited only by "...the limits of the constitutional and geographical jurisdiction of the Board" (p. 371).

4. Community of Interest: Introduction

The issue in these two appeals is the appropriateness of the proposed bargaining units. We will therefore review *ICBC, supra, Woodward Stores, supra, Canadian Kenworth, supra, and B.C. Coal, supra*. A reading of these decisions combined with the experience of this Board convinces us that on applications for certification, the "community of interest" concept is the test employed in determining an appropriate unit. On *initial* applications, access to collective bargaining is the most important principle to consider in determining appropriateness.

In regard to the *second or additional applications* (the expansion or addition of bargaining units) it is our conclusion that industrial stability, as set out in *ICBC, supra*, should be given increasingly greater weight. We set

out the "building block" approach (see *Crest Motor Hotel Ltd., supra*), to the expansion of bargaining units which, in our view incorporates the "all-employee" unit as the most desirable bargaining unit.

Finally, this Board rejects the "extraordinary remedy" test set out in *Alpulp, supra*, for the varying, merging and consolidating of existing bargaining units.

- A. *Insurance Corporation of British Columbia, Woodward Stores (Vancouver) Limited, Canadian Kenworth Division of Paccar of Canada Ltd. and B.C. Coal Ltd.*

I.C.B.C.

The Insurance Corporation of British Columbia was a recently created Crown corporation in 1974. It implemented the provincial government's participation in the insurance business and had a monopoly over all motor vehicle insurance. It employed approximately 1600 people; 1,000 at the head office in Vancouver, with 600 others at centres throughout the province. Three unions applied for certification (C.U.P.E., O.T.E.U. and the Teamsters). A fourth union (B.C.G.E.U.) asked to be put on the ballot. The three applications for certification had essentially divided up the employees by function. The potential result of granting all the applications for certification was a multiplicity of bargaining units.

The crucial policy conclusion in *ICBC* is the appropriateness of an all-employee unit. The negotiation and administration of a single collective agreement, covering all employees, rather than several agreements, furthers industrial stability. Among the four factors listed - administrative efficiency and convenience, lateral mobility, common framework of employment conditions, and industrial stability - clearly industrial stability is the most significant. Indeed, although the other factors facilitate the administration of collective agreements (e.g. one seniority list), and simplify collective bargaining, their underlying purpose is the furtherance of industrial stability. Therefore, the *ICBC* policy conclusion that industrial stability is enhanced in preferring a single bargaining unit over multiple bargaining units is as fundamental to our labour relations scheme today as it was in 1974.

There are two vital points to note about the *ICBC* decision. The first is the factual context of the decision. The Insurance Corporation of British

Columbia is a public sector employer. It was an entirely new employer, non-union, province-wide, and had and continues to have a virtual monopoly over car insurance. The employer was not only tolerant of collective bargaining, "but rather anxious for it to get underway". Thus, access to collective bargaining was not a concern. Finally, a Government report (the "Higgins Report"), which examined collective bargaining in the public sector, recommended that there not be fragmented bargaining units in the public sector. All these factors were influential in Chair Weiler's conclusion that there was a "presumption" (p. 412) in favour of all-employee units.

The second point, and the most crucial to our discussion, is the fifth *ICBC* factor in determining appropriateness - community of interest. Although it formed only a small part of the decision, and was not extensively discussed, it later became the basic policy rationale for granting certifications for bargaining units which were narrower than all-employee units.

The reason for granting certifications for less than all-employee units was straightforward - it furthered the express purpose of the *Labour Code* of facilitating the securing of collective bargaining rights. Indeed, the *ICBC* decision states that the granting of certifications at that time, on the basis of community of interest, was "common":

It is common to find certifications granted by this Board where narrower unit boundaries are drawn. The usual reason for that description of the appropriate bargaining unit is the Board's judgment about the *community of interest* of the employees. There is a simple explanation for the importance of this factor. The point of certification under the Code is to secure collective bargaining for the employees. (p. 409; emphasis in original)

Quite clearly, therefore, community of interest may include an all-employee unit, but also may commonly include a less than all-employee unit. Indeed, it may be precisely what *Whistler, supra*, stated *ICBC* did not allow: "a

scaled down version of an all-employee unit". We will return to this point later in our decision.

There was an express recognition by the Weiler Board that the facts surrounding a public sector employer and the policies which applied to it, could not be transferred directly to private sector employers who were not hospitable to collective bargaining. *ICBC* and *Woodward Stores*, were decided in June and September 1974 respectively, and represent two significant pillars underlying the statutory policy of appropriateness. However, there is no statutory distinction which leads to the *ICBC* and *Woodward Stores* "split" in policy. Appropriateness is almost entirely a policy creation. In the *Woodward* decision we see the other "pillar" of this policy of appropriateness.

Woodward Stores

Woodward Stores (Vancouver) Limited was a family controlled business with a chain of department stores in British Columbia and Alberta. It exhibited a high degree of central control from the head office which was located at the West Hastings Street store in downtown Vancouver. It employed approximately 8,500 employees in British Columbia of which approximately 5,000 were in the Lower Mainland. There were three unions already certified at Woodward Stores, including the Meat Cutters, the I.B.E.W. and the Retail Clerks when the Graphic Artists had applied for the advertising department employees.

The application was for 20 employees who had separate quarters of their own and included layout artists, copy writers and traffic employees. The department was responsible for newspapers, radio, television, catalogue and flyer advertising. The bulk of the department's work was with the production of newspaper and catalogue advertising. The Graphic Artists' employees represented only 18 out of 136 employees in the department. The total employee complement at the Vancouver location was 2,800. Included in the department was a display group whose function was 'in-store' advertising. The evidence indicated that "much the same skills and talents" were exhibited by these

individuals as those who were to be included in the bargaining unit (one group did 'in-store' advertising and the other did 'out-of-store' advertising). Indeed, the Board said that a "good case" could be made for both of these employees to "be grouped together for the purposes of collective bargaining" (p. 121). The simple reason they were not was that the display employees "...evinced no interest in collective bargaining":

The only result of merging the two departments into one bargaining unit would be to deny collective bargaining to the advertising department employees who do want it.
(p. 122)

The Bakery Workers also applied seeking collective bargaining rights about the same time. They applied for three separate bargaining units - Vancouver, Oakridge and New Westminster. The Vancouver store produced a variety of baked goods for all the stores, and had the greatest number of bakery employees (47 out of 105). In addition, 84 of the 105 worked in the Lower Mainland stores. There was some evidence of functional integration and inter-store transfers of temporary employees. The Board concluded that an appropriate bargaining unit would be a single unit composed of all three locations.

There are several important policy issues to note in *Woodward Stores*. First, to focus on a long-range inquiry of how collective bargaining should best be carried out may result in no collective bargaining being established, especially in regard to traditionally difficult to organize sectors. This was the case in the retail sector in British Columbia. The Board had evidence before it that the retail sector in British Columbia exhibited a low union density. Community of interest factors were accordingly "relaxed" in order to facilitate the establishment of collective bargaining. Therefore, at the initial stage of securing collective bargaining rights, "an appropriate" bargaining unit was not to be sacrificed for the most rational or ideal bargaining unit. The *Woodward Stores* decision employed the following strong language:

It is an absolutely fundamental policy of the Code that the achievement of collective bargaining is to be facilitated for those groups of employees who choose to use this procedure as a means of settling their terms and conditions of employment.

...However, we will not reject applications for small bargaining units on the basis that a large unit is a more rational structure for hypothetical collective bargaining in the distant future, where the result would be the denial of actual bargaining rights now.
(p. 119)

A second and linked policy conclusion in *Woodward Stores* was that once collective bargaining was established, after a time, rather than creating a new bargaining unit, existing units would have to be enlarged or merged with the ultimate goal of creating an all-employee unit. Further, trade unions did not have "property rights" in either the continued existence of certifications or collective agreements where the existing unit was found to be no longer appropriate. We will return to this policy in our discussion of industrial stability.

In summarizing *ICBC* and *Woodward Stores* we set out the following principles of appropriateness:

- (a) There are two fundamental purposes in making determinations of appropriateness: industrial stability and access to collective bargaining.
- (b) In furtherance of industrial stability a single bargaining unit of all employees is preferable to multiple bargaining units.
- (c) Community of interest is a "common" basis for the granting of certifications for a narrower unit than an all-employee unit.
- (d) In traditionally difficult to organize sectors, community of interest factors are "relaxed" to assist in the establishment of collective

bargaining.

- (e) Once collective bargaining has been established, after a time, rather than creating new bargaining units, existing units will either be enlarged or merged.

Therefore, in making the decision to grant or dismiss an application for certification for a unit narrower than all-employee, the most significant factor in *ICBC* and *Woodward Stores* was community of interest. Increasingly, both as a matter of practice and policy, the *ICBC* criterion of community of interest was merged with the *Woodward Stores* test of a "reasonably coherent and defensible boundary". (Indeed, the additional *ICBC* factors such as common framework of employment conditions and lateral mobility were also collapsed under the community of interest umbrella.)

The analysis of *ICBC* and *Woodward Stores*, was extensively discussed by all parties to these appeals. Both employers relied upon *Whistler, supra*.

The Council in *Whistler* dismissed the application for certification on the grounds that the union was not able to show a "...unique community of interest sufficient to outweigh the practicality of an all-employee unit" (p. 19). The Council stated that the proposed unit was "nothing more than a scaled-down version of an all-employee unit" (p. 19). Further, the variation in the skills of employees within the proposed unit and those excluded was as great within the bargaining unit as it was among employees outside the bargaining unit. Additionally, community of interest was drawn in the widest possible terms:

The nature of the work generally is servicing the visitor to the mountain. In that sense it is a community of interest which spans both the employees sought to be included in the bargaining unit and the employees sought to be excluded from the bargaining unit. In terms of individual duties performed, the variance in the nature of the work is as great amongst groups within the proposed unit and amongst groups within the excluded group as it is between the excluded

and the included. (p. 21)

The Council, in its review of "community of interest" stated that there had been a regrettable blending of the community of interest test set out in *ICBC* and the *Woodward Stores* test. The result was the "relaxing" of the community of interest test in *ICBC* without the onus of showing that the industry was one which was traditionally difficult to organize. This resulted in certifications based upon "...the mere existence of some minimal defensible boundary" (p. 18).

To "correct" this, the Council in *Whistler* tried to reconstruct what it saw as the "original intention" of *ICBC* and *Woodward Stores*: defining community of interest as requiring a "...unique community of interest sufficient to outweigh the practicality of an all-employee unit and thus justify the division" (p. 19). This statement was intended to reflect the following passage from *ICBC*:

In each case, then, the Board must decide whether the distinctive needs of special groupings of employees are strong enough to outweigh the practical arguments in favour of one all-employee bargaining unit. (p. 410)

First, simply as a defined term, the choice of "unique" is arguably capable of a more restrictive meaning than the term "distinctive". Second, the subsequent policy development of community of interest did precisely what *Whistler* stated it did not - "distinctiveness" in *ICBC* became blended with the concept of a "reasonably coherent defensible boundary" set out in *Woodward Stores*. (It should be noted as an aside that in *ICBC* Chair Weiler saw several potentially different communities of interest among the employees of *ICBC*. However, it was not where the unions had drawn it in their applications for certification (p. 410).)

It is this Board's view that the most serious conceptual error made by the *Whistler* panel was in regard to the issue of community of interest. This is true not only in relation to *ICBC*, and *Woodward Stores*,, but also in regard

to subsequent decisions, specifically *Canadian Kenworth, supra*, and *B.C. Coal, supra* - neither of which were reviewed in the *Whistler* decision. In these decisions we see a "regrettable blending", as the *Whistler* decision describes it, of the community of interest test. Indeed, in our view this "blending" has been neither inadvertent nor regrettable, but rather an express part of the evolution of the doctrine of appropriateness.

The two cases that best capture this development are: *Canadian Kenworth* and *B.C. Coal*. We will therefore proceed to an analysis of those decisions.

Canadian Kenworth

In *Canadian Kenworth*, CAIMAW had an existing certification for the plant production employees. The total employee complement was 635 employees of which approximately 455 were covered by the certification. The balance of the employees were salaried personnel, including management, office and sales staff and a data processing group. CAIMAW filed an application to vary its certification to include the data processing department. The original panel rejected the union's application for certification on the grounds that it would be inappropriate to sever off a small portion of the office staff and include them with the production employees. The data processing department serviced all the data processing needs of all the departments of the employer. Therefore, there was a strong functional relationship between data processing and all other aspects of the employer's operation. In addition, this functional relationship was predominantly with the non-union departments of the company, especially the office staff. The accounting department was the predominant user. On reconsideration Chair Munroe granted the variation of the certification on the basis of community of interest. He stated the following:

It is our view that the data processing employees share no less a community of interest with the plant production workers than they do with the rest of the office staff. In the words of the panel in *Insurance Corporation of British Columbia*, cited earlier, we are satisfied that the interests of the presently certified

unit and those of the data processing group "...can reasonably be reflected in one set of negotiations and [their] working conditions can be incorporated into one document". We are also satisfied that a rational line can be drawn between the new bargaining unit thus created and the balance of the office complement which will remain excluded. (p. 71)

First, the fact that the data processing employees may have shared an equal community of interest with employees who remained outside the bargaining unit did not prevent their being included in the bargaining unit. In this case they were included because in the words of *ICBC* their "working conditions can be incorporated into one document". Further, the Board was satisfied that a "rational line" could be drawn between those employees included and the remaining office staff excluded. "Distinct" or "distinctiveness" was equated with the term "defensible boundary". This is, of course, a far less stringent community of interest test than that of uniqueness set out in *Whistler*.

Second, the unit sought did not need to be the most appropriate, or the only appropriate unit. The *ICBC* criteria were to be used in determining what was "an appropriate unit".

Third, these *ICBC* criteria were to be employed not only in initial applications for certification, but also when a trade union sought to enlarge its bargaining unit.

Fourth, although the various components of a proposed bargaining unit may not be appropriate, separate and apart from the whole, only the combined unit need be an appropriate unit.

Fifth, in dealing with community of interest, the Board will make the distinction between a functional relationship between departments and the functional integration between employees. We will discuss this distinction in greater detail later in our decision.

Sixth, Chair Munroe set out a policy of appropriateness distinct from an

attempt to place all applications, other than those in the traditionally difficult to organize sectors, within only the *ICBC* framework. The preference for an all-employee unit is simply "a preference", not an "invariable" rule (p. 66). Chair Munroe went on to discuss clear exceptions to the rule: the traditional craft certification, the separation of plant employees from office and sales personnel, the traditionally difficult to organize sectors, and the geographical separation of employees. In addition, this list was not seen as "exhaustive" of the Board's discretion in regard to the determination of what constitutes an appropriate unit.

Finally, as previously stated, when the Industrial Relations Council distanced itself from the *Whistler* decision in *Moonlight Building Maintenance Ltd.*, IRC No. C227/90 (Reconsideration of IRC No. C111/90), it did so by stating that the policy on appropriateness would remain as set out in *Canadian Kenworth*.

B.C. Coal

Chair Kelleher's decision in *B.C. Coal, supra*, is also a reconsideration decision. B.C. Coal started a new mine close to its existing operations for which the United Mineworkers of America ("UMA") was certified. B.C. Coal operated three mines in the Elk River Valley, with approximately 1,500 employees, all three consisting of a single bargaining unit. An additional mining operation was being constructed some 50 kilometres from the existing mine sites. The International Union of Operating Engineers had been certified when ten employees were on site although it was projected that the eventual employee complement number would be approximately 400 employees. The majority of the original panel concluded that the Operating Engineers' bargaining unit was appropriate for collective bargaining. The Vice-Chair on the original panel, however, dissented and was of the view that the only appropriate unit was one which encompassed both the employees at the new operation and the existing operations. On appeal, two issues were argued: build-up and appropriateness. In regard to appropriateness, the UMA argued that the

operations were functionally integrated including the sharing of computer facilities, rail lines, and the interchange of supervisory personnel between the two operations. In addition, the mine employees would be doing essentially the same work. The Board decided that because of the geographical separation and the "functional distinction" of the Greenhills operation, a "defensible boundary" could be drawn around the new operation.

Chair Kelleher captured most fully the distinction between an appropriate unit, a more appropriate unit and a most appropriate unit. In *B.C. Coal* there was an express finding that the unit proposed by the UMWA was both a more appropriate and a most appropriate unit. Notwithstanding that the *ICBC* factors clearly pointed to an all-employee unit in the circumstances of this case, there was a sufficient community of interest to draw a "defensible boundary" around the Greenhills site - specifically, geography and a functionally distinct operation (no employee interchange and separate work processes). Therefore, where community of interest factors were sufficient to meet the test of "an appropriate unit" the Board was compelled to grant the certification:

While the Board prefers large broad-based bargaining units, each case must be considered on the merits of the particular certification application before the Board. In terms of administrative efficiency, industrial stability, and the other factors considered in Insurance Corporation of British Columbia, it appears obvious to us in this case that a unit comprising both the Sparwood and Greenhills operations would be a more appropriate unit. However, we cannot deny the Operating Engineers' application on that basis, since, for reasons stated earlier, we have also concluded that the specific unit applied for is an appropriate unit. (p. 184)

It may be that in certain employment circumstances an all-employee unit is equated to a more appropriate or most appropriate conclusion. Indeed, there is a recognition that the *ICBC* factors not only assist in determining what constitutes an appropriate unit, but also tend to support the conclusion of an all-employee unit; in other words, the result is to some degree contained in the factors used to determine the result. Therefore, the *B.C. Coal* analysis is helpful in making the distinction between an appropriate unit and an all-

employee unit, which may be an appropriate unit, but may also amount to a more appropriate or most appropriate determination. This distinction combined with the use of the *Woodward Stores* language in *Canadian Kenworth* (a rational line) and in *B.C. Coal* (a defensible boundary) strengthens considerably the ICBC factor of community of interest in the determination of an appropriate unit.

B. Community of Interest: The Factors

Community of interest is utilized as a concept in determining appropriateness in every jurisdiction in Canada. Only one province - Nova Scotia (*Trade Union Act, R.S.N.S. 1989 c.475, s.25(14)*) - actually uses the words "community of interest" in its statute. However, "all labour boards whether dictated by statute or not "apply the concept of community of interest in determining appropriateness" (Adams, para. 7.50). Its origin lay in the United States, first arising in the 1937 decision *Goodyear Tire & Rubber Co.*, 3 N.L.R.B. 431 (1937). In the Third Annual Report of the National Labour Relations Board (1938), the Board further discussed the concept of community of interest:

The appropriate unit selected must operate for the mutual benefit of all the employees included therein. To express it another way, the Board must consider whether there is that community of interest among the employees which is likely to further harmonious organization and facilitate collective bargaining. (p. 174)

Further, in Canada, it is clear that the test is "an appropriate unit", not a more appropriate or most appropriate unit:

The overwhelming majority view in Canada is that a labour relations board may certify an appropriate unit which need not be the most appropriate unit. This view has been endorsed by the Supreme Court of Canada dealing with what was then s. 126 (now s. 28) of the *Canada Labour Code* and holding that "the statute makes clear that what is an appropriate bargaining unit is

for the Board to determine. (Adams, p. 7-7, para. 7.130)

Therefore, where an all-employee unit is equated with a more appropriate or most appropriate unit, but there is present amongst employees a community of interest sufficient to establish "an appropriate unit", a certification may be granted.

The factors used to define community of interest are set out in *Usarco Ltd.*, [1967] OLRB Rep. September 525, which was influential at the time it was issued. These factors are as follows:

1. Nature of work performed
2. Conditions of employment
3. Skills of employees
4. Administration
5. Geographic circumstances
6. Functional coherence and interdependence

We note that in *Usarco, supra*, the Ontario Board also considered three other factors in addition to community of interest in determining the appropriateness of the bargaining unit: centralization of management authority, economic factors and source of work. These additional factors have not been commonly referred to in British Columbia and appear to correspond generally with the administrative structure and functional integration factors noted below. It is obvious, however, that the *Usarco* factors as a whole, were adopted, changed and incorporated into our own case law since *ICBC*.

For example, the *ICBC* factor of a common framework of employment

conditions can be seen to include the following *Usarco* factors: nature of work performed, conditions of employment and skills of employees. Administrative efficiency and convenience fit within the *Usarco* factor of administration. Lateral mobility fits within the factor of functional coherence and interdependence. This is precisely why community of interest has always logically overlapped with the other four *ICBC* criteria of what constitutes an appropriate unit.

In acknowledging community of interest as the crucial factor in the determination of what constitutes "an appropriate unit", the concept needs greater clarification. We begin with the factors set out in *Usarco*, and *ICBC*. Community of interest therefore, in an *initial* application for certification (an application for certification for an employer where no collective bargaining relationship is in place) is determined on the following four factors:

1. Similarity in skills, interests, duties, and working conditions;
2. The physical and administrative structure of the employer;
3. Functional Integration; and
4. Geography.

In reviewing the above factors the following points are important to note. First, the issues of similarity in skills, interests, duties and working conditions are fairly self-evident with regard to any measure of community of interest. Those who perform similar work under similar terms and conditions of employment will have a community of interest which can be neatly set within the framework of a single collective agreement. However, we note this factor may not have the same weight as it has had in the past jurisprudence.

During the 1940's, 1950's and 1960's, with unionization being primarily in the private sector, historical divisions took place which reflected a more

traditional view of community of interest; i.e. the separation of white collar from blue collar workers. This distinction was often based upon gender, skills, or sometimes an unstated division based upon class. A plant would be separated from office; indeed, if the office was organized it may often have been to an entirely different union. However, in the late sixties, seventies and eighties, with the growth of public sector unions and the policy of a single, all-employee bargaining unit, these distinctions were no longer observed in the public sector. Indeed, today in British Columbia, an all-employee bargaining unit will include within one collective agreement widely different skills and terms and conditions of employment. In the public service, a master collective agreement combined with subsidiary component agreements will include groups as diverse as prison guards, conservation officers, senior financial officers, and social workers. Within the health care industry, there are different professional groups with their own self-governing bodies (some national in scope and some established by statute), all included in the same bargaining unit. Traditional boundaries have been deliberately erased in favour of large bargaining units, which have proved viable in collective bargaining terms. So although similarities in skills, interests, duties and working conditions remain at a common sense level a factor in community of interest, it may be of less help in drawing a rational and defensible line; its inherent flexibility may prove useful but provide only limited conceptual guidance.

The remaining criteria essentially concern the nature of the employer's organization. And it is really the nature of the employer's place of business that is the crucial factor in determining appropriateness. Once again, labour relations experience and common sense dictate that the structure of the employer physically, administratively, and operationally is really the evidentiary basis upon which the appropriateness of the bargaining unit is determined.

The second factor of the physical and administrative structure of the employer involves a complete picture of the employer, including everything from the physical layout to the organizational chart. Most of this evidence is

familiar to parties and in our view is not contentious and should be admitted by agreement in certification hearings.

The third factor is functional integration. This was first identified by Chair Munroe in *Canadian Kenworth, supra*. A distinction was made between functional *relationships* between *departments* and functional *integration* of *employees* (p. 68; italics in original). Any employer concerned with productivity and efficiency will, of course, try to achieve as much functional integration, coherence, or relationship as possible. In that sense these terms tend to overlap, but for the purposes of defining community of interest Chair Munroe's distinction is helpful. A functional relationship between departments is to be expected in any business and would in itself not prevent a community of interest being found in any single department. (And of course it goes without saying that it would not prevent a finding of a larger community of interest). However, the functional integration of employees in several departments - employee interchange, shared duties, etc. - would require all such departments within one unit. This functional integration - employee interchange, job duties integrated - must be on a day to day basis, reflecting a consistent managerial policy of functional integration, and not simply amount to holiday relief or the replacement of sick employees. There are also the integrated work processes that go beyond a functional relationship between departments. A continuous work process (e.g. assembly line), overlapping and shared duties, team processes, all require a single bargaining unit. The focus of this criterion is therefore upon how the employer has organized itself operationally.

Geography is the final significant criterion in determining community of interest. This was recognized in *ICBC, supra*:

As a general matter, the geographic factor seems neutral in this case. In principle, this can often be a material factor in creating a community of interest.
(p. 411)

Geography as a factor is also a straightforward issue. Employees who are

physically separated, whether at different branches or outlets, often develop and have a separate community of interest simply because of their physical separation. Their everyday work life is only with those employees at that one location. This does not, however, justify multiple bargaining units with separate collective agreements at each location - either with the same union or different unions. In addition, where there is a consistent managerial policy of interchange of employees (not simply holiday relief) between geographical sites, then the community of interest may well be the several geographic sites taken as a whole.

However, two important caveats must be maintained with regard to the employer's operation. First, employers in a non-union setting will not have organized their administrative structure for labour relations purposes. Second, management is able to and does change its physical, administrative and operational structure. These two caveats must be kept in mind. However, in the end, the union must take the employer as it finds it.

Once again, these four criteria operate in regard to an *initial* application for certification outside of the construction industry. And by *initial* we mean an application for certification for an employer which has no collective bargaining relationship whatsoever.

A criticism which has arisen from both sides of the labour relations community, and which the *Whistler* decision indirectly touched upon, has been that either side may "cherry pick" from a wide number of decisions, a particular fact pattern or result that is on "all fours" with their own facts.

If community of interest is capable of spanning, at a single workplace, several different appropriate bargaining units, as well as such concepts as more appropriate, or most appropriate, then there is an obvious inherent "flexibility" or "elasticity" to this concept; and equally obvious, there is a wide discretion. Chair Weiler captures this in *Woodward Stores, supra*:

One can conceive of a wide range of possible

bargaining units for the employees of Woodward's, ranging from an "all employee" unit, right down to a single classification in a single store. (p. 116)

The experience at *Woodward Stores* had been at "the latter end of the scale".

We make the following observations. First, the discretion which clearly derives from the statute is both necessary and desirable, allowing for labour relations judgments that more accurately fit both the employer's operations and the employees' occupations.

Second, community of interest as a factor in determining an appropriate unit has flourished in every jurisdiction in Canada and in the United States for approximately 50 years, setting the basic structure for collective bargaining.

Third, for whatever reason, community of interest was never expressly defined in this jurisdiction. We have now done this, borrowing heavily from our past jurisprudence and the jurisprudence of other jurisdictions.

Fourth, it must be noted that most applications for certification are not for large employers (such as *ICBC* and *Woodward Stores*) where there is a greater potential for a number of different bargaining units. The Board, in taking notice of its own records (specifically reports published by the Board) directs the community's attention to the fact that approximately 65% - 70% of all certifications granted are for fewer than 20 employees; further, 90% of all certifications granted are for fewer than 50 employees. These certifications would also include all-employee units. A fewer number of employees results in fewer potential communities of interest, and this in turn reduces the element of discretion.

Further, in defining community of interest more explicitly, we have identified those factors that will constrain the Board's discretion in deciding what is "an appropriate unit". Moreover, we note the following restrictions

which have additionally constrained the Board's discretion in deciding what is "an appropriate unit":

1. The wishes of employees is not determinative of the extent of the bargaining unit. The desire of employees to have additional groups included or excluded will not be determinative of bargaining unit appropriateness;
2. The extent of the union's organizing drive. The desire of the union to have certain groups included or excluded is not determinative of appropriateness; nor is the extent of organizing a factor in determining appropriateness; and
3. The Board will not cut across classification lines, nor certify a single classification. An obvious exception to the single classification is of course if it happens to be the majority of bargaining unit members at a certain geographical location, or the employees fall within the *Woodward Stores* doctrine of the traditionally difficult to organize.

Finally, in dealing with the Board's discretion it is important that all these factors not be applied as simply a checklist but that the Board identify the weight it has applied to each of these factors in making its determination. In this way, the Board's exercise of its discretion is clearly identified in its determination.

C. Community of Interest: The Statute

For whatever reason the definition of "unit" has not played a factor in the determination of appropriateness. This is not true in other jurisdictions.

In Ontario for instance, Section 1(1) of the *Ontario Labour Relations Act*, R.S.O. 1990, ch. 2, defines bargaining unit as "a unit of employees appropriate for collective bargaining whether it is an employer unit or a plant unit or sub-division of either of them". This definition closely models the American

definition of appropriateness of a unit contained in Section 9(b) of the *National Labour Relations Act*, 29, U.S.C. 160(b), (1964): "...the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or sub-division thereof" (exceptions are made for units of professionals, crafts and guards). Needless to say, our jurisprudence has evolved from both the United States and Ontario. The definition contained in the current Code which has remained unchanged since the original *Labour Code* in 1973, defines a "unit" as follows:

...a unit determined by the board to be appropriate for collective bargaining whether it is an employer unit, craft unit, technical unit, plant unit or another unit... .

The definition of unit in British Columbia, therefore, is much wider than that in either Ontario or the United States. The words "another unit" give the Board a wide discretion in defining "an appropriate unit". The jurisprudence concerning community of interest which has developed in other jurisdictions and has been adopted in this province has evolved from a much narrower definition of "unit" than that contained in the B.C. statute. Therefore, community of interest as we have defined it, comes well within the current statutory definition of unit which has remained unchanged for the last 20 years.

D. Community of Interest: Woodward Stores

The same community of interest factors that we have outlined as applying in initial applications for certification are to be applied in determining an application for certification in traditionally difficult to organize situations. However, they are to be applied in a more "relaxed" fashion. For instance, if a group of employees seeking certification have a fairly coherent community of interest, the fact that there may be others outside the group who may share other similar skills or interests or duties, would not be sufficient to defeat a favourable community of interest determination. This is best seen through the facts of the *Woodward Stores* decision, where Chair Weiler concluded

that there were others within the display department who exercised the same skills as those seeking certification and these other employees would normally have been included within an appropriate unit. These other employees were not included because to do so would have defeated the application for certification. It is a case of a single classification having been certified in a traditionally difficult to organize situation. We adopt that test.

In order to come under that test, however, there is a requirement for evidence to show a traditionally difficult to organize circumstance. This evidence can include the following:

1. The Board will take note of its own records in regard to any determination under the *Woodward Stores* doctrine - i.e., certification and collective agreements. These records will be made available to the parties when requested.
2. The evidence of persons (union, management and employees) who are knowledgeable about the particular industry or sector.
3. Expert evidence concerning the sector.

The evidence should establish a low-union density either in the particular industry or among a group of employees which reflects structural or systemic aspects of the workforce which have made it difficult to organize.

This completes our review of community of interest on *initial* applications for certification. In doing so, it is helpful to keep in mind the comments of Chair Weiler in *Reconcilable Differences, supra*:

I was in the business of defining appropriate units for nearly five years. I had to read closely the decisions on that subject by labour boards across North America. I do not think that labour boards deliberately gerrymander the unit definition simply in order to give the trade union a certification. But there is a wide spectrum of plausible units in any employment setting,

units for which a defensible case can be made, and for which a precedent can be found. Notwithstanding the long, intricate reasoning often found in these judgments, I am satisfied in my own mind that any labour board will select that alternative - that is, it will find a sufficient "community of interest" to constitute an "appropriate bargaining unit" - among that group of employees for which there is a realistic expectation that a majority would choose to engage in collective bargaining. I am also persuaded that that attitude is perfectly defensible. After all, what would be the result of the alternative attitude, sticking rigidly to the most rational structure for negotiations in the hypothetical long run? Almost inevitably that would abort the law's effort to give collective bargaining a real-life footing right now...
. (p. 155)

E. Industrial Stability

In determining an appropriate bargaining unit the Board must always balance two objectives. The first is the issue of access to collective bargaining that arises from the freedom of association of the employees. The scope of the bargaining unit is key to access the securing of trade union representation and collective bargaining rights. This is a fundamental purpose of the Code and the Board's policies must facilitate the organization of employees. This specific statutory purpose, combined with the evolution of the Board's policies in regard to community of interest, and the legislative history of collective bargaining across Canada since the Second World War, all point to the fundamental public policy of facilitating the organization of employees.

However, the second purpose in establishing an appropriate bargaining unit is to foster industrial peace and stability through collective bargaining. The bargaining unit sets the framework for actual bargaining between the parties. That structure has to be conducive to the orderly resolution of collective bargaining disputes by the parties. If the bargaining unit fails to relate to the specific organization and structure of the employer, efficient

and stable collective bargaining will be undermined.

We believe that the concept of community of interest as employed by all labour relations boards in North America adequately addresses both goals on initial applications for certification. The facilitation and encouragement of collective bargaining and the issue of industrial stability are not policy matters completely divorced from one another either at the initial stage of certification or at the second or additional stage of the expansion of collective bargaining. For example, at the initial stage of certification, the design of the bargaining unit must ensure the viability of collective bargaining. The Board would not put into a single bargaining unit employees whose communities of interest directly conflict; further, no bargaining unit would be created that cuts across a particular classification, where all members are in the same physical location, resulting in half of the employees in that classification in the bargaining unit and the other half out of the bargaining unit. Both these situations would not be conducive to the settlement of collective bargaining disputes.

Industrial stability, however, has different facets, depending upon whether one is at the *initial* stage of certification or at the *second or additional* stage of certification. At the initial stage of certification, the concern with industrial stability is with the design of the bargaining unit. The focus is on a single unit - one union, one employer. However, at the second or additional stage of certification the concern is threefold: first, the design of the bargaining unit; second, the proliferation of bargaining units; and third, the relationship not just between the second or additional units and the employer but between the units themselves. As the number of units increases, so does the potential for industrial instability.

At the second or additional stage of certification, among the four criteria cited in *ICBC* - administrative efficiency and convenience, lateral mobility, common framework of employment conditions and industrial stability - we see industrial stability as the most crucial factor. The factors of administrative efficiency and convenience, lateral mobility, and a common

framework of employment conditions really go to only one factor: the simplification of the administration and negotiation of collective agreements (and thus contribute to industrial stability). It is axiomatic in labour relations that a proliferation of bargaining units increases the potential for industrial instability. Multiple bargaining units *per se*, raise a serious concern about industrial stability. Instead of one strike, there may be several strikes. Each union may potentially whipsaw the employer by trying to leapfrog the last set of negotiations. Therefore, in regard to applications for certification in relation to employers who have existing collective bargaining regimes, the *ICBC* factor of industrial stability must be given the greatest weight in the determination of what constitutes an appropriate bargaining unit.

What this means as a matter of practice and policy is that when an application for certification is received where there are existing units in place a choice will be made either to grant certification to the new additional unit or to require the enlargement, variation or merger of the existing units. If the latter decision is made, any new union seeking to represent the employees of that employer must either apply for the existing unit(s) or apply for a larger unit. In furtherance of industrial stability there will be a presumption against multiple bargaining units. The presumption markedly increases with the number of units.

In addition to the four factors we have already outlined in determining community of interest - similarity in skills, interests, duties, and working conditions, the physical and administrative structure of the employer, functional integration, and geography - on initial applications for certification, we now add these two additional factors that are to be examined in determining community of interest at the second or additional stage of certification:

(e) The practice and history of the current collective bargaining scheme.

(f) The practice and history of collective bargaining in the industry or

sector.

Included within these six community of interest factors are the size of the employer, the number of existing units, and whether the employer is in the private or public sector (where access is often of much less of a concern). As well, the reason why an incumbent union does not represent the employees may be relevant. Therefore, depending upon the outcome of these community of interest factors, the presumption against multiple bargaining units will or will not be rebutted.

In applying this policy the Board adopts the "building block" approach set out by Chair Kinzie in *Crest Motor Hotel Ltd., supra*. In that case the employees in the hotel lounge were certified to the Hotel & Restaurant Employees' and Bartenders' Union, Local No. 626. There were six employees working in the lounge. The remaining employees, approximately 40 to 45, remained unorganized. The BCGEU applied to be certified for these remaining employees. Its application for certification was dismissed and that dismissal was upheld on appeal. The BCGEU then applied for an all-employee unit. The employer argued that this amounted to a raid, which was not timely and further, that the BCGEU enjoyed no support among the currently certified employees. This, therefore, violated the principle in *Olivetti*, BCLRB No. 113/74, [1975] 1 CLRBR 60, "sweeping in" employees without majority support.

The Board found in favour of the BCGEU's application, and applied the decision in *White Spot Limited*, BCLRB No. 84/75, [1976] 1 CLRBR 241, which stated that where a proposed unit is larger than and inclusive of an existing unit, then that application is not a raid because there is no collective agreement in force for the unit proposed by the applicant. (This had previously received judicial support in the B.C. Court of Appeal decision: *Retail Clerks' Union, Local 1518 v. Beverage Dispensers & Culinary Workers' Union, Local 835, et al*, 72 CLLC 14,140). The result of certifying this wider unit is the cancellation of the current collective agreement for the smaller unit. This, however, is consistent with the Board's policy that when a unit is found to be no longer appropriate for collective bargaining, and the employees

are subsequently included in another unit, the collective agreement covering that former unit is cancelled: *B.C. Ice & Cold Storage Limited*, BCLRB No. 45/78, [1978] 2 CLRBR 545. This is also the case where a variance has significantly altered the nature of a bargaining unit: *Standard Bus Contracting Ltd., et al*, BCLRB No. 72/75, [1976] 1 CLRBR 30.

Finally, the Board in *Crest Motor Hotel* stated that the *Olivetti* principle does not apply to an application for certification that is larger and inclusive of a smaller unit. An application for certification by a trade union that is not currently certified or has no existing collective agreement with an employer, is unlike the situation of an incumbent union seeking to vary its certification and "sweep in" employees without a vote. The union, when applying for a larger unit, is simply required to obtain an overall majority among all employees within the proposed unit. This is consistent with the majoritarian principle because any other rule would in effect give a smaller existing unit a minority veto over the establishment of any larger bargaining units.

F. Appropriateness: Existing Multiple Bargaining Units

The final issue of appropriateness that we address is the situation where there are multiple bargaining units already in existence at a particular employer.

It is this Board's view that we will more readily look at collective bargaining relationships where there are currently in existence multiple bargaining units which create adverse labour relations consequences. The Board's decision in *Alpulp, supra*, set out an extremely high test before it would look at varying or consolidating certifications. Indeed, it is hard to find a similar labour relations test with regard to any part of the existing labour relations scheme. In the *Alpulp* decision the Board stated that it would not consider exercising its discretion to vary or cancel a certification unless "extraordinary" (italics in original) relief was required.

This Board has the jurisdiction and the authority to vary or cancel certifications pursuant to Section 142 (formerly Section 36 of the Code): *MacMillan Bloedel Limited (Alberni Pulp and Paper Division)*, BCLRB No. 16/82, [1982] 2 CLRBR 114; *MacMillan Bloedel Limited (Alberni Pulp and Paper Division)*, BCLRB No. 30/82, [1982] 2 CLRBR 489; and *B.C. Ice & Cold Storage, supra*.

Second, as stated in *Alpulp*, there is nothing "sacrosanct" about the bargaining units founded by the Labour Relations Board many years ago. Much more important is the collective bargaining experience of the parties since the determination of that bargaining unit. If that bargaining unit is no longer appropriate then the Board should not hesitate to establish and indeed, is obliged to establish, an appropriate bargaining unit to deal with industrial strife.

Third, there is nothing in the wording of Section 142 that compels such a restrictive gloss as the word "extraordinary" denotes. Although the *Alpulp* series of decisions seemed to ascribe to the *Woodward Stores* policy, that a certification does not confer a "property right", it proceeded to set out a test under Section 142 that was akin to expropriation.

Therefore, in rejecting the very restrictive test set out in *Alpulp, supra*, we have decided that the following three factors must be examined by the Board in making a determination that bargaining units should be varied, consolidated or merged:

- (a) A determination that one or more bargaining units is no longer appropriate.
- (b) A determination of what would constitute "an appropriate" bargaining unit, employing all six community of interest factors.
- (c) Evidence of potential or actual industrial instability.

In regard to the above three factors, the first two concern community of

interest and appropriateness, which we have discussed in detail. However, in relation to the third factor we note the following: first, evidence of "potential" industrial unrest or instability must amount to more than mere speculation; it must be unrest or instability that is both immediate and likely. Second, "actual" unrest or instability need not be as described in *Alpulp* - of a "profoundly serious nature" - but can amount to documentation of multiple strikes, illegal work stoppages, jurisdictional disputes which are a result (direct or indirect) of the existence of multiple bargaining units. Should it appear from the evidence that the collective bargaining relationship is not likely to improve in the future, the Board will exercise its discretion under Section 142 to vary, consolidate or merge the existing bargaining units.

Once a determination has been made to vary, consolidate, or merge the existing bargaining units the options of the Board are varied. It may cancel one or more of the certifications; it may vary the employees into another existing bargaining unit; it may conduct run-off ballots to determine which remaining unit(s) the employees wish to be represented by; or it may, pursuant to a direction from the Minister or on application by the parties, establish a joint council of unions, pursuant to Sections 20 and 41 of the Code. The willingness of unions to participate in a joint council may mitigate the need to take the more significant steps of variation or cancellation.

The twin policies of the *Crest Motor Hotel* doctrine, which may be referred to as the "building block" approach, and the variation or cancellation of certification under Section 142 are consistent with the Board's original approach of balancing access at the initial application stage and the achievement of industrial stability within existing collective bargaining regimes.

As Chair Weiler noted in the *Woodward Stores* decision, subsequent to the initial acquisition of collective bargaining rights, the Board's policy in regard to appropriateness will not allow for the proliferation of bargaining units. In addition, certification will not be treated as a property right:

...rather than creating new bargaining units we will consider that the existing units must be enlarged or merged and all of those employees represented by one trade union (which could be a council of unions voluntarily agreed to or imposed by the Board under Section 57 of the Code). We do not interpret the Labour Code as giving trade unions 'property rights' in the continued existence of certifications or collective agreements where the unit upon which they depend no longer appears appropriate. (p. 120)

G. Summary: Law and Policy

We will now summarize our conclusions regarding appropriateness.

1. There are two fundamental principles in the Code regarding the determination of appropriate bargaining units, access to collective bargaining and industrial stability. These principles are always present in any determination of appropriateness.
2. Community of interest is the test for determining an appropriate unit. An appropriate unit must have a rational and defensible boundary.
3. On an *initial* application for certification, community of interest is determined by the following factors:
 - (a) similarity in skills, interests, duties and working conditions.
 - (b) the physical and administrative structure of the employer.
 - (c) functional integration.
 - (d) geography.

Access to collective bargaining is the most important principle in determining appropriateness on an initial application.

4. In a traditionally difficult sector to organize, the community of interest factor on an initial application for certification is "relaxed".
5. To establish that a sector or industry or group of employees is traditionally difficult to organize, the evidence can include the following:
 - (a) the Board's own records - i.e., collective agreements and certifications.
 - (b) evidence of individuals with experience in the sector or industry.
 - (c) expert evidence concerning the sector or industry.

The evidence should establish a low-union density either in the particular industry or among the group of employees which reflects structural or systemic aspects of the workforce which have made it difficult to organize.

6. At the *second or additional stage* of certification (i.e., where there is already at least one collective bargaining regime in place), the community of interest factors are expanded to include the following two (for a total of six factors):
 - (a) the practice and history of the current collective bargaining scheme.
 - (b) the practice and history of collective bargaining in the industry or sector.

Industrial stability is the most important principle in determining appropriateness at the second or additional stage of certification. There is a presumption against multiple bargaining units. This presumption markedly increases with the number of units.

7. When an application for certification is received, and there are existing units in place, a choice will be made either to grant certification to the new additional unit or to require the enlargement, variation or merger of the existing units. If the latter decision is made, any new union seeking to represent the employees of that employer must either apply for the existing unit(s) or apply for a larger unit in accordance with *Crest Motor Hotel, supra*.

8. In relation to multiple bargaining units already in existence, the Board will exercise its jurisdiction under Section 142 to vary, merge, or consolidate bargaining units after a determination of the following three factors:
 - (a) a determination that one or more bargaining units is no longer appropriate.

 - (b) a determination of what would constitute a new or appropriate bargaining unit (employing all six community of interest factors).

 - (c) evidence of potential or actual industrial instability.

With these rules of appropriateness we hope to accomplish several things: first, to bring the Board's policy in line with its practice; second, to integrate the policy approach to appropriateness beginning with the statutory emphasis on the facilitation of collective bargaining on initial applications for certification, and "build" towards the establishment of all-employee units in furtherance of the statutory purpose of achieving industrial stability in

collective bargaining; third, to set out more clearly the evidentiary requirements and the principles to be applied in making determinations of appropriateness.

From *ICBC, supra*, and *Woodward Stores, supra*, we affirm the two crucial principles of access to collective bargaining and industrial stability, as well as community of interest as the standard test. The factors of lateral mobility, common framework of employment conditions, and administrative efficiency and convenience, are all expressly included within the concept of community of interest. Finally, from *ICBC* and *Woodward Stores*, and the subsequent jurisprudence of the Board - *Canadian Kenworth, supra*, and *B.C. Coal, supra* - community of interest (a rational and defensible boundary) has clearly emerged as the basis for the determination of what constitutes an appropriate unit.

VII. DECISION

1. Island Medical Laboratories Ltd.

HSA filed an application for certification under Section 39(1) of the Industrial Relations Act for a bargaining unit consisting of "medical laboratory technologists employed (by IML) at Lower Vancouver Island sites, including Yates Street, Sooke, Royal Oak, Duncan". We will not review all the facts or issues which arose in the original decision. We will relate only those facts and issues which are determinative of the issues on reconsideration.

Briefly, the facts are as follows. HSA currently represents 7,500 to 8,500 employees in approximately 130 certified bargaining units in British Columbia. The standard HSA certified bargaining unit described as:

Para-medical professional groups including dietitians, physiotherapists, occupational therapists, medical record librarians (now known as health record

administrators), medical technologists, X-ray technologists (now known as medical radiology technologists), pharmacists, medical social workers and remedial Gymnasts (now blended into physiotherapists).

HSA certifications also include registered psychiatric nurses.

HSA is certified predominantly in the acute care hospitals in this province. Also typically found in the acute care hospitals are the following unions: the British Columbia Nurses' Union ("BCNU"), representing nurses; the Hospital Employees' Union ("HEU"), representing support staff; the International Union of Operating Engineers ("IUOE"), representing operating engineers; and the Professional Association of Residents and Interns of British Columbia ("PARI"), representing the interns and residents.

It was agreed at the original hearing that within an acute care facility the HSA bargaining unit includes medical technologists (the registered technologists) while the HEU would represent the departmental assistants and other support staff.

Following our description of the community of interest criteria - the similarity of skills, interest, duties and working conditions, physical and administrative structure of the employer, functional integration and geography - we are satisfied that the original panel reached correct conclusions with regard to three of the four criteria.

As found by the original panel, the Registered Technologists are a certified occupation which requires two years' post-secondary education plus a one year clinical practicum. The Registered Technologists write national examinations and are eligible for registration and membership in the Canadian Society of Laboratory Technologists ("CSLT"). The Society governs the professional conduct and ethics of its members and is also the disciplinary body. IML is only able to maintain its accreditation as a private medical laboratory so long as its Registered Technologists obtain and remain certified

by CSLT. IML has 12 departments, six of which perform clinical and analytical services: haematology, chemistry and microbiology, endocrinology, microscopy, immunology and accessioning/communications and distribution.

As the original panel found, Registered Technologists require a level of education, skill, and training which is considerably different than that possessed by either the departmental assistants or the technical assistants who perform some of the same duties. What distinguishes the Registered Technologists from the Departmental Assistants and Technical Assistants are the following:

1. education and training;
2. the technical knowledge of laboratory equipment;
3. the ultimate responsibility for the analytical and interpretative functions - test results and quality control.

We therefore agree with the original panel that the Registered Technologists, much like any professional group, meets the first criteria - they share a similarity of skills, interests, duties, and working conditions.

In regard to the remaining community of interest factors, the two most significant for the purposes of this appeal are geography and functional integration. We are in agreement with the original panel in its conclusions in regard to geography. When an employer, as in this case, has different laboratory settings in different locations on Vancouver Island, the employees will not be required to organize all physical locations of the employer in order to acquire collective bargaining rights. Separate locations are, *prima facie*, a rational and defensible boundary.

The obvious exception to that is, of course, a regular interchange of employees between locations. The Board found in this case that there was no regular interchange of employees. We therefore affirm the original panel's conclusion that an appropriate bargaining unit can consist of only some

geographical locations.

However, given our analysis of the law and policy concerning community of interest, the final factor of functional integration poses difficulties in the circumstances of this Employer.

The evidence found by the original panel in regard to the "overlap" of job functions between the registered technologists (RT's), the departmental assistants (DA's) and the technical assistants (TA's) is as follows:

As mentioned earlier, in accessioning, RTs spend the majority of their time performing DA-type duties. However, a portion of each shift is taken up with the reference services which only RTs are qualified to perform. In Duncan, there is no DA in the analytical laboratory; thus, the RTs perform the DA-type functions there.

...The percentage of RTs time spent doing DA-type functions ranges from 5% to 10% on some benches and 25% to 30% on other benches. ...

At the Nanaimo haematology laboratory, there are five RTs and no DA's; accordingly, DA-type functions are performed partly by RTs and partly by the receptionist. Eleven RTs and two DAs work at the Yates Street haematology laboratory in Victoria. Here, one of the DA's performs office functions, and the other D.A. does the accessioning. RTs replace DA's who are off work on vacation or sick leave. On Saturdays, this laboratory is open for four hours and is staffed with one RT only. This RT performs all the DA-type duties on Saturday.

In the Microbiology Laboratory at Royal Oak there are eighteen RTs, eight DAs and two cleaning assistants. From 4 p.m. to 8:30 p.m., RTs and DA's share the DA-type duties, although from 4 p.m. to 5 p.m. one of the two RTs on duty performs analytical tests which only RTs can perform...During the late afternoon shift, RT's and DA's work closely in the laboratory. There is very little interaction between DA's and RT's on the early shift. Additionally, a

number of test results generated in this department can only be reported by RT's. The parasitology room is separate from a main microbiology laboratory. Here, DAs and RTs work in the same room together. The DA prepares specimens for "reading" by the RT. (pp. 12-13)

...

...Similarly, at IML, many RTs spend portions of their work day performing duties which are also performed by DAs. In departments such as asscessioning and microbiology, RTs spend a significant portion of their work day performing DA-type functions. The RT in Sooke and the RTs in the analytical laboratory in Duncan also spend a notable portion of the work day performing DA-type functions. (p.22)

The original panel relied on *United Used Auto and Truck Parts*, IRC No. C130/89 for the proposition that the overlap of work between registered technologists, the departmental assistants and technical assistants had to do with unskilled and semi-skilled preparatory and clerical functions as opposed to the core group of skills of which the registered technologists possess.

Although there is some similarity, on a closer examination, the facts in this case do not correspond to the facts in *United Used Auto* nor its resulting conclusion. The sales people in *United Used Auto* had two basic tools - a screwdriver and a wrench (p. 3). The dismantling work which they performed amounted to simply removing a "small part", rather than having to call (and thus wait) for a yardman. The Council found as follows:

Similarly, while the yardmen receive assistance on occasion from others in the work place and while yardmen reciprocate with advice, lending a hand to load a truck or answering the telephone this type of assistance does not blur in any significant way the essential distinction between yardmen and other employees. Salesmen and inventory personnel do not regularly perform Yardmens' work, and vice versa, because people have their own jobs to do, and the fact of the matter is that most would be incapable of performing work in another job category, in any event. (p. 11)

The overlap of duties found in *United Used Auto* had to do with helping out or the assisting of another employee or simply doing some small aspect of another person's work, in order to make things operate more efficiently. As is evident from the above passage, no other employee was capable of performing the great majority of duties performed by yardmen - the dismantling of entire engines and bodies of cars for the purpose of salvage.

The degree of functional integration between Registered Technologists and Departmental Assistants exceeds most employment situations. The two classifications can and do, as a regular part of their job description, perform precisely the same duties. Whether it be in the accessioning department where Registered Technologists spend the "majority" of their time performing Departmental Assistant duties, or in the Nanaimo haematology laboratory where Departmental Assistant functions are performed by Registered Technologists, or in the microbiology laboratory at Royal Oak where on the 4:00 p.m. - 8:30 p.m. shift the Departmental Assistants and Registered Technologists perform the same duties, it is clear that the actual overlap of duties requires a bargaining unit that is inclusive of both occupations (leaving aside the issue of Technical Assistants).

However, before proceeding to the issue of the application of the *Woodward Stores* doctrine, a comment should be made about the Council's prior decision in *Island Medical Laboratories Ltd.*, IRC No. C265/89 ("IML (No. 1)").

Before both the original panel and this appeal panel, the Employer relied on the decision of the Council in IML (No. 1), where HSA applied for the following bargaining unit at Island Medical Laboratories:

employees of Island Medical Laboratories except clerical employees, supervisors and persons above the rank of supervisors.

In this prior application for certification, the Union applied for the

Registered Technologists, the Technical and Departmental Assistants, as well as employees in the Maintenance Department, two employees in the Storage Department, and one employee who was a driver responsible for bringing specimens from collection locations to the analytical sites.

The Council dismissed this application for certification on the basis that there was a substantial lateral movement of employees from the clerical positions (which had been excluded) to the Technical and Departmental Assistant positions (which had been included in the application). The certification, if issued in the terms requested, would have created a barrier to this lateral mobility. As well, the Council found an increased potential for industrial instability if a different union other than HSA sought certification for the excluded employees. Indeed, as found by the original panel of this Board, there was an agreement between the parties that if the RT's were within the HSA unit, the TA's and DA's and others would likely fall within the traditional HEU unit.

It is understandable that HSA applied for the Registered Technologists only after having been told by the Council that the lateral mobility which exists between the clerical classifications and the Departmental and Technical Assistants made exclusion of the clerical employees an inappropriate unit. Secondly, there is a strong "professional community of interest" existing within the Registered Technologists.

As is evident from the two bargaining unit descriptions applied for (both before the original panel of the Board and before the Council), HSA has not applied for its standard bargaining unit description. That is understandable because this is a private medical laboratory, not a public health care facility. However, this Board will not create new technical units representing a single para-medical group in the health care industry. It has been the policy of the Board to include, as the HSA standard description reveals, all para-medical professions within one bargaining unit.

Thus no union representing a single para-medical profession could raid or

partially decertify the existing HSA units. Chair Munroe stated the following in *Canadian Kenworth, supra*, in dealing with the distinctive features of data processing employees and whether or not they qualified as a craft under Section 41 of the *Labour Code*:

Section 41 amounts to a legislative recognition of certain historical facts of industrial relations life which might reasonably be preserved; it was never intended that in 1978 it should be used as a vehicle for "discovering" new "crafts" and creating exotic new bargaining unit descriptions. (p. 70)

It should be remembered that crafts are a historical anomaly. They preceded the development of the concept of appropriateness. They are therefore to be restricted, not expanded. This is equally true of the creation of new technical units.

It is this Board's view, therefore, that the private sector health care facilities will not necessarily simply repeat the bargaining unit patterns of the public health care facilities. The Seaton Commission noted, for instance, that there should be fewer bargaining units in the public health care facilities (see: *Closer to Home: Summary of the Report of the British Columbia Royal Commission on Health Care and Costs*, 1991, Vol. 2, p. D-27). We will approach applications for additional units in the private healthcare sector consistent with the principles in this decision. One exception may be where several trade unions apply for a joint council (s. 20 or reference by Minister under s. 41), and a single collective agreement is brought into existence.

The functional integration of Registered Technologists and Departmental Assistants makes it appropriate under the standard community of interest test that they be included in the same unit.

However, that does not end the matter. What must be addressed is the Union's application for certification under the *Woodward Stores* doctrine - the "relaxed" community of interest test.

Therefore, the final matter in IML is the issue of the appropriateness of the Registered Technologists' unit under the *Woodward Stores* doctrine. The original panel had before it evidence and argument related to the issue of the difficulty to organize but in view of its findings on appropriateness, did not deal with these arguments and evidence.

As stated in the facts of *Woodward Stores*, (and recited above), the employees in the display department of Woodwards, whose functions were basically in-store advertising, exhibited "much the same skills" and "talents" as the layout artists in the Advertising Department. As Chair Weiler stated:

A good case could be made for the conclusion that the employees in the two departments should be grouped together for the purposes of collective bargaining.
(p. 121)

However, they were not included in the bargaining unit because:

The only result of merging the two Departments into one bargaining unit would be to deny collective bargaining to the Advertising Department employees who do want it.
(p. 122)

The Registered Technologists are a self-governing profession. The licensing of the Employer is dependent upon their accreditation. They are ultimately responsible for the interpretation and analysis of complex medical laboratory tests. Their self-governing society pursues their professional goals and is responsible for entry into the profession and the discipline of its members. It would seem evident that if employees in a display department (a single classification in retail stores) have a community of interest, then a self-governing profession such as these Registered Technologists have a sufficient community of interest to meet the *Woodward Stores* test.

As noted the original panel is seized of this matter. We therefore remit the matter back to the original panel to determine if IML (a private medical

facility) falls within the traditionally difficult to organize sector.

2. Dueck Chevrolet Oldsmobile Cadillac Limited

The original panel concluded that there was a community of interest between mechanics and mechanic helpers "sufficiently distinct" to make this unit appropriate for collective bargaining.

On this appeal the Employer relies upon *Jim Pattison Industries Ltd.*, *supra*; *Lega Fabricating Ltd.*, *supra*; and *Chimo Structures Ltd.*, *supra*, for the principle that a craft certification in the industrial sector is inappropriate.

Vice-Chair Germaine, in *Jim Pattison Industries Ltd.*, dismissed an application for certification which had excluded from the Service Department employees who worked in the parts department and body shop. In that case, the three departments were housed in separate buildings. However, the employees in these different departments had continual contact with one another and shared common facilities.

The facts as found by the original panel show that the mechanics and bodymen operate out of the same building. They interact with both the parts department and the body shop. The same benefit package is in effect and the method of payment is based upon a flat rate incentive.

The Employer argues, and it is a fair reading of the decision, that the single most important factor with regard to the original panel's finding of a community of interest amongst the mechanics and mechanics' helpers is that they practice a particular craft.

However, it has clearly been the policy of the Board and the Council that it will not certify a craft in the industrial sector. The Board stated in *Chimo Structures Ltd.*, *supra*, the following:

The situation here is not unique. In the forest industry and in the mining industry the Board has certified bargaining units which include tradesmen of all kinds. The Board's firm policy is to include those tradesmen in one large plant or industrial unit and it is not to create tradesmens' units that will give rise to competitive collective bargaining between units of the same employer with the dangers of strikes by each separate unit closing down the plant. (p. 379)

As Vice-Chair Baigent stated in *Lega Fabricating Ltd., supra*:

In many instances skilled tradesmen, who might in other circumstances be certified in a craft unit, will be included in the unit which transcends traditional craft boundaries and is designed to respond to the exigencies of a permanent localized employer-employee relationship. (p. 393)

The effect of the certification issued for Dueck is to certify a craft within an industrial unit. As a matter of policy we affirm *Lega Fabricating Ltd.* and *Chimo Structures Ltd.* and therefore consider the unit inappropriate on that basis. We are further supported in this view with regard to this specific industry given the decision in *Jim Pattison Industries Ltd., supra*.

Although not necessary to our determination in this case, we also note, that on the facts, we would have concluded that the application did not meet the standard community of interest test on an initial application for certification. Specifically, the Board will not select out a minority of classifications in a physically integrated plant as an appropriate unit in other than traditionally difficult to organize sectors.

No issue arises with regard to the *Woodward Stores* doctrine.

We therefore find that the unit is inappropriate for collective bargaining and set aside the original panel's decision to grant certification.

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