Date: 20001211

Files: 140-33-15
140-33-16

Citation: 2000 PSSRB 109

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

PARKS CANADA AGENCY

Employer

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA, PUBLIC SERVICE ALLIANCE OF CANADA AND ASSOCIATION OF PUBLIC SERVICE FINANCIAL ADMINISTRATORS

Bargaining Agents

RE: Applications Pursuant to Section 48.1 of the Public Service Staff Relations Act

Before: Yvon Tarte, Chairperson;
Marguerite-Marie Galipeau and Joseph W. Potter, Deputy Chairpersons

For the Employer: Stephen Bird

For the Professional Institute of the Public Service of Canada: Michel Gingras

For the Public Service Alliance of Canada: Alain Piché

For the Association of Public Service Financial Administrators: Katherine Cotton

Heard at Ottawa, Ontario,
January 12; April 5 and 6, 18 to 20 and 26 to 28; May 10 and 11;
August 29 to 31; September 19 to 21; October 10, 12 and 13, 2000.

DECISION

Introduction

[1] This decision follows two applications made pursuant to section 48.1 of the *Public Service Staff Relations Act* (*PSSRA*). Section 48.1 deals with successor rights when a portion of the Public Service for which Her Majesty as represented by the Treasury Board is the employer becomes a separate employer under Part II of Schedule I of the *PSSRA*.

[2] When an application is made under section 48.1 of the *PSSRA*, the Board must determine:

(1) whether employees of the separate employer who are bound by collective agreement or arbitral award constitute one or more units appropriate for collective bargaining;

(2) which employee organization shall be the bargaining agent for the employees in such unit; and

(3) whether an existing collective agreement is to remain in force and if it is, the date on which it is to expire.

[3] Parks Canada Agency (PCA) became a separate employer under Part II of Schedule I of the *PSSRA* on December 21, 1998.

[4] Applications to determine successor rights must, pursuant to subsection 48.1(3), be made during the period beginning on the 120th day and ending on the 150th day after the date on which the separate employer was created.

[5] With respect to the PCA, two applications under section 48.1 were made to the Board. The first was filed with the Board on August 4, 1999 by the Professional Institute of the Public Service of Canada (PIPSC). The PIPSC application (Board file 140-33-15) dealt only with employees of the PCA which the PIPSC had previously represented when the new agency was part of the central administration. The PIPSC proposed in its application that all bargaining units for which it was the bargaining agent at the time of transfer be lumped into one single bargaining unit for which it would continue to be the bargaining agent.

[6] The PCA filed its application (Board file 140-33-16) under section 48.1 on August 27, 1999. The PCA application proposed that the various bargaining units in existence at the time the new agency was created be reconfigured to establish two new bargaining units.

[7] The first unit would be involved in program delivery and would include positions whose primary duties relate to operations and service delivery functions at the agency's various sites.

[8] The second unit would be involved in program development and would include those positions whose primary duties relate to program/policy development and/or support functions.

[9] Pursuant to Board policy, all bargaining agents who represent employees of a new employer prior to its creation are notified of applications under section 48.1 and are asked to respond in due course. In these matters, in addition to the PIPSC, the Public Service Alliance of Canada (PSAC), the Social Science Employees Association (SSEA), the Association of Public Service Financial Administrators (APSFA) and the International Brotherhood of Electrical Workers, Local 2228 (IBEW) were contacted in keeping with the Board's policy.

[10] Prior to these hearings, both the SSEA and the IBEW indicated that they would not intervene or participate in the applications.

[11] On September 14, 1999, the Board authorized Norm Bernstein, one of its officers, to meet with the parties and to report to the Board.

[12] Pursuant to Board rules and regulations, the PCA was directed on October 22, 1999, to post in all of its workplaces a "Notice to Employees of Applications to Determine Successor Rights". The Notices were to be posted immediately and remain posted until November 12, 1999. A second posting was ordered by the Board following the PIPSC's amendment to its application to cover employees of the PCA who had previously been represented by the SSEA.

[13] On November 12, 1999, an individual wrote to the Board wishing to make representations on behalf of the National Park Warden Association (NPWA). According to the individual, the NPWA was looking at the possibility of a separate bargaining unit for park wardens within the PCA.

[14] On January 7, 2000, the PCA raised in writing certain preliminary matters. Included in those matters, were the order of proceedings and the status to be afforded to the PSAC, the APSFA and the NPWA.

Preliminary Matters

[15] The hearing on January 12, 2000 was reserved for preliminary matters. At the hearing, the PIPSC asked the Board to allow it to modify its proposal to include all employees represented by the SSEA. The PSAC then stated its desire to represent all the members of the SSEA who are SIs.

[16] Following discussion, the applications made by the PIPSC and the PCA were consolidated and the lead given to the PCA since its proposal is broader and covers all employees who, at the time the new agency was created, were bound by collective agreement.

[17] The Board decided that evidence would be adduced in the following order: PCA, PIPSC, PSAC and APSFA. The NPWA, which has not satisfied the Board that it is an employee organization, was not given status as an intervener.

[18] The issue which gave rise to the most debate dealt with the status to be given to the PSAC and the APSFA.

[19] The PCA argued that the PSAC and the APSFA could only be granted the status of interested objectors since they had made no formal application under section 48.1. The PCA further argued that the Board is limited under section 48.1 to selecting the most appropriate bargaining unit structure found in the applications and that it is only when the bargaining unit proposals contained in the applications are found to be inappropriate that the Board can then fashion its own restructuring.

[20] The Board believes that the PCA's interpretation of section 48.1 is overly restrictive. Section 48.1 gives the Board very broad powers of determination which are in no way fettered as the PCA suggests. The process contemplated by the section is triggered by an application "by the employer of the employees or any bargaining agent affected by the change in employment".

[21] Subsection 48.1(3) cannot be read to require a formal application by all interested parties who wish to fully participate in hearings affecting its employees or members. The Board believes that any employer or employee organization that will be directly affected by a determination under section 48.1 must be given an opportunity to fully participate in the proceedings.

[22] The Board is of the view that both the PSAC and the APSFA have serious statutory interests in these matters and we therefore, at the first hearing, granted them full party status. We are supported in our decision by the clear text of section 7 of the *P.S.S.R.B. Regulations and Rules of Procedure*, SOR/93-348 as am. SOR/96-457, which specifically empowers the Board to direct that any person (which by definition includes an employee organization) be added as a party to a proceeding.

[23] Furthermore, subsection 48.1(4) in no way purports to restrict the jurisdiction of the Board once an application has been made under subsection 48.1(3). We feel that the Board is not restricted as the PCA suggests in the determinations it must make as to whether the employees of a new separate employer, who are bound by a collective agreement, constitute one or more units appropriate for collective bargaining and which employee organization will be the bargaining agent for each such unit. The PCA contends that the Board must limit its decision to one of the two proposals made as long as those proposals are acceptable.

[24] The Board is of the view that the provisions of subsections 48.1(3) and (4) must be interpreted in a broad and purposive way. We are of the view that we have the right and obligation to hear all evidence and arguments that are relevant in these proceedings and in the end determine what we believe to be the most appropriate bargaining unit structure on the basis of the evidence presented. Nothing less is required by the provisions of section 48.1. In the end, should more than one

bargaining unit structure appear to be appropriate, the Board will choose which it considers to be the most appropriate.

Summary of Evidence

Evidence Produced by the PCA

[25] The PCA proceeded first with its evidence, which can be summarized as follows.

[26] Its first two witnesses provided an overview of the PCA organization and produced the relevant documents (Exhibits A-1 to A-6) to support their description of the PCA organization.

[27] Mr. Alan Latourelle, Director General of Strategies and Plans, highlighted two basic aspects according to which the activities of the PCA can be characterized: the delivery aspect and the development aspect.

[28] Ms. Amy Campbell, a consultant hired by the PCA, testified at length as to the options which were considered in arriving at a configuration of two bargaining units as proposed by the employer.

[29] Mr. Latourelle described the PCA mandate (to protect and present natural examples of Canada's heritage) as well as its programs (National Historic Sites; National Historic Goals Program; National Marine Conservation Area; Federal Heritage Building Review Office; Heritage Railway Stations; Heritage Rivers System; Federal Archaeology Program; Program for Grave Sites for Prime Ministers). His description is supported by the relevant documents (Exhibits A-1 to A-6).

[30] Mr. Latourelle also described the PCA organizational structure, which he defined as "decentralized".

[31] The Chief Executive Officer of the PCA reports to the Minister of Canadian Heritage. There are two levels of management: the national office in Hull, Quebec, and the 32 field units and four service centres. Mr. Latourelle underlined that at the field unit level, the PCA mandate is carried out with a public face and a non-public face. The field units receive professional and technical services from the service centres.

[32] Mr. Latourelle reviewed PCA values and explained that those values were considered when, in the end, the PCA opted to seek two bargaining units.

[33] Ms. Campbell related the various options which the PCA considered before arriving at its decision to seek two bargaining units within the agency. These options are extensively documented (Exhibits A-6 and A-7) as well as the reasoning applied by Ms. Campbell in fashioning these options. In establishing the community of interest, between groups of employees, the following criteria were considered: working conditions; conditions and terms of employment; skill sets; functional coherence; geographic considerations; administrative structures; negotiation history and employee preference.

[34] Ms. Campbell, two focus groups, the Collective Bargaining Steering Committee, as well as the Chief Executive Officer, all turned their minds to the various options which existed in defining the new bargaining units.

[35] Ms. Campbell stated the status quo was not appropriate, as it continued a proliferation of bargaining units. While she felt a reduction in numbers was appropriate, she recognized that the wishes of the employees and bargaining agents were not sought in deciding what the appropriate number of bargaining units should be. She did however state that she met with all the bargaining agents prior to the filing of the PCA application to advise them in general terms of the direction the employer was taking.

[36] Ms. Campbell stated that the focus group met in July and looked at each job in the PCA and what their community of interest was. Based on this, the PCA put forward an application based on two separate bargaining units. No consideration was given to the history of labour relations for any group when the employer decided on the bargaining unit structure.

[37] Ms. Christina Cameron is the Director General, National Historic Sites, and has both policy and operational responsibility for historical and archaeological research. Ms. Cameron also serves as Secretary to the Historic Sites and Monuments Board of Canada. Exhibit A-8 contains Ms. Cameron's organizational areas of responsibility,

which she elaborated on in testimony. She explained the duties of positions in her area of responsibility.

[38] Ms. Cameron was a member of the executive group that ultimately decided on the recommendation of the focus group. She felt the current application accurately described the different nature of the work at the PCA and personally evaluated the positions in her directorate. There were no FI positions there.

[39] Mr. Charles Zinkan is currently the Acting Director of Mountain Parks and formerly the Superintendent of Banff National Park. He described, in detail, the organization of Banff National Park, as identified in Exhibit A-9. He also explained the duties of positions in his area of responsibility.

[40] Mr. Zinkan was part of the focus group, which met in July to review the various options for bargaining unit configuration. He explained the group wanted to simplify things using community of interest to arrive at a proposal. The current application reflects the focus group's belief that the work in the PCA can properly be split into two groupings. Collective bargaining can then address the needs of these two groups.

[41] Mr. Laurent Tremblay, who testified in French, is the Executive Director for the Province of Quebec. As such, he is responsible for all PCA operations in Quebec which include National Parks, Historic Sites and Canals. Mr. Tremblay is also responsible for the Quebec Service Centre. He described in detail the organization and the positions of the Quebec Service Centre which are reflected in Exhibit A-10.

[42] Mr. Tremblay participated in a few meetings of the PCA Executive Board where the agency's application for bargaining unit restructuring was discussed. The witness believes that the PCA's proposed application fully meets all his expectations as the manager of a service centre and several field units.

[43] Ms. Carol Whitfied is the Field Unit Superintendent for Cape Breton Island and is responsible for the overall management of the PCA program in Cape Breton Island and northern Nova Scotia, which includes one National Park, one Canal and several Historic Sites.

[44] Ms. Whitfied discussed in detail her areas of responsibility. She identified the relevant organizational charts and job descriptions contained in Exhibit A-11. The witness was not involved in the focus group exercise nor in the final PCA decision on bargaining unit restructuring. She did, however, verify all positions within her areas of responsibility to ensure they were properly included in one or the other of the proposed bargaining units.

[45] Ms. Whitfied believes that the PCA application proposes a bargaining unit structure which is simpler than what exists presently and which allows for the better representation of all PCA employees. The PCA application reflects its mandate and vision. Ms. Whitfied expressed the view that there can be community of interest between a scientist and a clerk when discussing terms and conditions of employment.

[46] Mr. Terry Perkins is the Chief Financial Officer for the PCA, which he joined in 1999. Mr. Perkins discussed the organizational chart for the PCA Finance Group (Exhibit A-12). He also introduced several job descriptions contained in Exhibit A-13, which had been requested by Ms. Cotton on behalf of the APSFA. These job descriptions were analysed by his group, without the benefit of discussion with the various incumbents or bench audits, to produce the limited analysis found at Exhibit A-12, tab 3.

[47] Mr. Perkins was not part of the focus group nor was he involved in the final decisions concerning the PCA application since he only joined the agency in the summer of 1999. Mr. Perkins believes that the PCA proposed bargaining unit structure provides the agency with an opportunity to create its own culture and better address the needs of its employees. The witness also expressed the view that there is not a sufficient number of financial officers at the PCA to justify a separate FI bargaining unit.

[48] Mr. Doug Stewart is the Field Unit Superintendent for eastern Ontario, which includes the Rideau Canada, several historic sites and a national park. Mr. Stewart described the organization that he manages and identified several of the job descriptions for positions in his area of responsibility (Exhibit A-14).

[49] Mr. Stewart was not part of the focus group or the Executive Board of the PCA. He did, however, verify all positions within his areas of responsibility to ascertain their proper attribution to one or the other of the bargaining units proposed by the PCA. The witness recognized that a small number of positions were difficult to assign, given an apportionment of community of interests to both groups.

[50] Mr. Stewart holds the view that the PCA application provides a sensible bargaining unit structure in relation to its mandate. This proposed structure will allow the PCA to better accommodate the distinctions, commonalities and interests of its various employees. The PCA proposed structure reflects the basic concentration of the dual roles of the agency. It also provides the PCA with a better tool for succession planning.

[51] Before closing its case, counsel for the PCA produced two documents (Exhibit A-1, tabs 13 and 14) through the witness Amy Campbell. Ms. Campbell testified that the report, at tab 13, dealt with employees whereas the organizational charts dealt with positions, including vacant positions. She acknowledged the discrepancies between the two documents and could not say which of the two documents was the most reliable.

Evidence Produced by the PIPSC

[52] Following this, the PIPSC proceeded with its case and its evidence can be summarized as follows.

[53] Ms. Shelly Isabel occupies the position (SI-02) of Archaeological Collections Registrar at the Federal Archaeology Office within the Ontario Service Centre for the PCA.

[54] Ms. Isabel testified on different aspects of her duties (Exhibit P-3). They include: maintaining and monitoring archaeological artefacts; implementing registration functions; monitoring the movement of collections; monitoring and packing archaeological specimens for storage or shipment; monitoring threatened archaeological resources; monitoring the security and environmental conditions of the archaeological laboratory; developing and implementing electronic information management systems; providing professional advice and guidance on the care and

handling of archaeological collections; providing specialized training on the care and handling of archaeological specimens and representing her unit at various departmental and interdepartmental meetings.

[55] According to her testimony, Ms. Isabel gained her experience and knowledge by occupying her present position since 1979. Today, she would not be selected for her present position unless she had a university degree (which she does not have). She is of the view that her position would rightly belong in a bargaining unit of professionals because her regular interaction with professionals is evidence of an affinity which does not exist to the same degree in her interaction with clerks or secretaries. She is of the opinion that education is not a conclusive criteria in defining what is a "professional".

[56] Ms. Isabel is also of the view that the criteria of "public" and "non-public" interaction overly simplify any attempt to identify the commonality of interests between positions. She estimates that she spends 95 percent of her time dealing with professionals. She interacts with archaeologists, historians, members of the PM and GT groups but not much with clerks (CR's). Ms. Isabel does not work shifts or weekends; neither does she produce academic papers or research.

[57] The PIPSC then produced three of its employees as witnesses: Ms. Judith King, Mr. Blair Stannard and Mr. Andy Zajchowski. They testified as to the history and relationship that existed between the parties prior to these applications. The Board has taken note of their comments and opinions on the reconfiguration of bargaining units.

[58] Mr. Harry Beach is the Regional Conservation Biologist, Atlantic Region, and is classified as a Biologist (BI) level 3. Tab 2 of Exhibit P-5, which was introduced on consent, details Mr. Beach's educational qualifications, as well as his job duties. Since January 1999, Mr. Beach has been involved in union activity. At the time of the hearing, he was the Chairperson of the Parks Canada Group of Professionals for the PIPSC.

[59] His discussions with other PCA professionals have indicated they wish to remain affiliated with the PIPSC. They are concerned that if they become part of the program development unit proposed by the employer, their interests would be subsumed by those of the majority, which are PSAC members. Furthermore, Mr. Beach believes the interests of these two groups are not similar, as evidenced by the differences in the Purpose and Scope provisions of the various professional and non-professional collective agreements. Mr. Beach also stated that the SSEA members he has spoken to are professionals.

[60] In cross-examination, Mr. Beach agreed that there could be similar communities of interest between professionals and certain higher level members of the PSAC. However, he stated community of interest was not an overriding factor in any analysis he did. He also agreed that the interests of the FI group would likely be overlooked if they were subsumed by a larger group.

[61] Mr. Earl Luffman is the Assistant Archaeologist (SI-02), Atlantic Region. He identified tab 3 of Exhibit P-5 as his work history, statement of qualifications and job description. Mr. Luffman described his work and its integration with other professionals, such as biologists, historians and engineers. He does not have a community of interest with blue-collar employees. In cross-examination, Mr. Luffman stated he also interacts with curators, but was unaware of their classification.

[62] This concluded the presentation by the PIPSC, following which the PSAC presented its case.

Evidence Produced by the PSAC

[63] Exhibit C-1 was introduced, on consent of the parties. It details the work experience of the first four witnesses who were called to testify by the PSAC and whose evidence can be summarized as follows.

[64] Mr. Doug Martin is a Park Warden, Law Enforcement Specialist (GT-04), at Banff National Park. He is also the Assistant Regional Vice-president, Alberta and NWT, for the National Component of the PSAC. Mr. Martin described his duties as essentially those of a detective in special operations. Mr. Martin participated on a committee during the transition discussions and testified that there was never any mention of

splitting the PSAC groups into two separate bargaining units. The witness testified that he regularly works with other professionals and non-professionals. In Mr. Martin's opinion, if the employer were successful in its application, it would have the effect of "divide and conquer". The most effective basis to negotiate with the PCA would be to have all employees in one bargaining group.

[65] In cross-examination, Mr. Martin recognized that, currently, park wardens are in different bargaining units, but felt the best solution is to have all wardens, and indeed all PCA employees, represented at one table. He acknowledged that this is contrary to the PSAC application, but felt that there was a community of interest with all employees which was an interest in the mission and mandate of the PCA. He also stated that there could be different communities of interest among the professionals at PCA, and also that the FI's were never given much consideration.

[66] Ms. Elizabeth Crook, an SI-03, is the Regional Registrar, Halifax. She was called to testify to support the PSAC's position to include the SI group in its bargaining unit. Ms. Crook is also the Local President for the PSAC, paying dues to both the SSEA and the PSAC. Ms. Crook is responsible for establishing and maintaining the Atlantic regional registration system for historic objects and artefacts.

[67] Contained in Exhibit C-1 is a document titled "Work Journal 2000" and represents individuals Ms. Crook interacted with in the course of performing her duties from January to August 2000. She stated that she had little interaction with professionals, but a great deal of interaction with non-professionals. Ms. Crook testified that her collective bargaining objectives would best be met by being at one bargaining table with the PSAC.

[68] In cross-examination, Ms. Crook agreed that there was no community of interests between the SI 's and the FI's. She also stated that it was not necessary to have a university degree for entry in the SI group.

[69] Mr. Derek Cooke is the Head of Curatorial Services at the Ontario Service Centre. He is a GT-05, and is also the Local PSAC President. Mr. Cooke described his duties, as well as those employees he interacts with. He testified that he deals regularly with people identified as being in both the proposed Program Delivery and

Program Development groupings. He deals with professional and non-professional employees. Mr. Cooke stated that one voice for all PSAC members at the bargaining table would best serve his interests.

[70] In cross-examination, Mr. Cooke stated that he sits on the joint union/management consultation committee. The PIPSC and the PSAC share common interests at these meetings. The witness also indicated that the minimum educational requirement for curators is community college. Mr. Cooke testified that he was aware of the PIPSC proposal to represent all professionals and he had no problem with it.

[71] Mr. Michael Bagnell is a carpenter's assistant at the Fortress of Louisbourg. He is classified as a GL-MAN-05. His work experience is detailed in Exhibit C-1. Mr. Bagnell is also the Regional Vice-president, Atlantic Region, for the National Component of the PSAC. Mr. Bagnell is a seasonal employee but has been continuously extended since 1989-90. He testified that the seasonal employees have common concerns, such as the length of the work season and its start and end dates. The witness also testified that he was involved with a transition team on recourse procedures. His work on the transition team gave him hope that the employer and the various bargaining agents all aspired as a common goal to have the best PCA possible.

[72] Mr. Bagnell was aware of the employer's application to have two bargaining units and did not agree with it. He thought there should be one PCA employees unit, and feels the best approach is to have everyone in one bargaining unit. He recognized his views did not correspond to the PSAC proposal.

[73] In cross-examination, Mr. Bagnell stated he did not know many PIPSC members, and assumed all PIPSC positions were full-time. He also stated that he had never discussed the idea of one bargaining unit while on the transition team, and felt the concept of each bargaining agent retaining its own members could also work.

[74] Mr. Robert Van Rumpt is District Technical Officer of the Yukon Field Unit (EG-ESS-04). His resumé is found at Exhibit C-4, tab 1. Mr. Van Rumpt manages the asset maintenance and visitor services program. Mr. Van Rumpt is also the PSAC Assistant Regional Vice-president for B.C. and the Yukon. His tasks involve the photography of sites, surveys for the field unit, designs, extant recording, design

specifications, boundary surveys, working with maintenance crews and providing advice. Mr. Van Rumpt's work requires interaction with the trades and maintenance supervisors and the field staff. It involves providing technical advice and guidance concerning maintenance planning, the execution of work, the application of methods and the conformance of standards. He describes his work as being "very physical". He is also one of the persons on the Site Call-Out Sheet who can be called during emergencies after hours. Sixty-percent (60%) of his work is done at the Klondike National Historic Sites. He sometimes answers questions from the public. He attends public meetings during which he represents the PCA. Within the Klondike National Historic Sites, his tasks involve interacting with the Heritage Communication Section as well as the Curatorial Section (pages 6/7, tab: Yukon, Exhibit A-4). Multi-tasking and the buying and sharing of equipment as well as the sharing of personnel between the various parks in the Yukon is a common occurrence. The witness defines this as inter-dependence. He is familiar with the employer's application and the proposed division of bargaining units. He finds that the division proposed by the employer (program delivery and program development) does not accurately reflect reality. He finds the proposal divisive and without much sense.

[75] In the summer, Mr. Van Rumpt spends on average one and one-half hours in the office while in the winter that amount increases to approximately five hours in the office. He works 7.5-hour days. Mr. Van Rumpt described the seasonal dimension of the PCA. According to Mr. Van Rumpt, Parks Canada (Yukon) is busiest in April and May. The same seasonal employees who live in the community come in to work year after year.

[76] Mr. Van Rumpt, in his capacity as union representative, is of the view that the most recurrent issues are concerned with harassment, housing, and isolated post allowances. The employees in the employer's two proposed bargaining units share these concerns as well as health and safety concerns. He is convinced that, by splitting the employees into two units, the employer is proposing a bargaining unit structure which can create divisions. According to him, there is more potential for problems when one creates artificial divisions between people.

[77] In cross-examination, he explained in further detail the functioning of multi-disciplinary tasking as well as multi-disciplinary teams. He emphasized that cross-training is encouraged by the PCA and increasingly people are trained to do a lot of different things mostly due to a shortage of staffing.

[78] In his view, one bargaining unit for all employees would be the ideal. At the present time, he also gives advice upon request to PIPSC members. In giving his opinion of what the employees' interests are, he reiterated that job security is one of the main interests. He explained that the two-year job guarantee given by the new agency contributes to the insecurity felt by employees now that this guarantee is reaching its expiry date.

[79] Although he has limited knowledge of operations in service centres, he is of the view that their community of interest does not appear substantially different than that of the Field Unit.

[80] Mr. Mike McNamarra has been a Staff Officer for the PSAC for the past 10 years. He has negotiated collective agreements between PSAC members and the Canadian Food Inspection Agency (CFIA) as well as the National Energy Board (NEB). At the CFIA, there are approximately 3500 employees represented by the PSAC. The majority originates from the technical table, but there are also 600 employees from the administrative services group. The interests of each group of employees were accommodated within a single collective agreement and the language used meets the needs of the various technical groups. As an example, he pointed out the existence of Appendix B to the collective agreement, which concerns job security and is intended to protect the integrity of the workforce.

[81] At the present time, he is the PSAC negotiator representing the employees at PCA. He is of the opinion that there is no sound collective bargaining reason for splitting employees presently represented by the PSAC in a structure of two bargaining units. He is also of the view that having employees with the same classification in different bargaining units would make life difficult inasmuch as they could end up with different working conditions. This could create friction within the membership. He does not foresee any problems if ever the PSAC also represents FI's or former PIPSC

members. He is of the view that either the PSAC or the PIPSC could, without any difficulty, represent all of the employees in one bargaining unit.

[82] The PSAC also produced as a witness Mr. John Watt, Lockmaster, Davies Lock, Rideau Canal. Mr. Watt is a local union shop steward. He has been involved with the Union/Management Committee that is in the process of re-evaluating classifications within the PCA. This exercise is not completed. Mr. Watt produced various documents relating to the re-evaluation of classifications within the PCA. His own personal view of the bargaining unit structure is that he does not see the need for the PSAC members to be split into two groups if their positions eventually all come under the same classification system.

Evidence Produced by the APSFA

[83] The APSFA then proceeded with its case, which can be summarized as follows.

[84] Mrs. Sylvie Larouche occupies a position in the Financial Administration group (FI-01). Before becoming a member of the APSFA, she was a member of the PSAC. Because she was perceived as a manager, she was once refused entrance to a PSAC meeting. She is of the view that the APSFA is more sensitive to the FI's working conditions. The educational qualifications required to occupy a position in the FI group are higher than those in the CR group.

[85] A Financial Systems Analyst gives advice to managers but does not perform the duties of other professional groups such as archaeologists. In a multi-disciplinary team, a Financial Systems Analyst acts as a counsellor but is not integrated in the program delivery task of the team. Mrs. Larouche is of the view that the APSFA can best represent the financial officers at the PCA. The APSFA's understanding of the financial officers' work is deeper than that of other bargaining agents. Mrs. Larouche is afraid that if the financial officers were included in a larger bargaining unit, their strength would be diluted since there are only approximately 35 financial officers at the PCA.

[86] She is of the view that one bargaining unit for all employees at the PCA would be advantageous from the employer's point of view but not from the employees', especially not from the perspective of the Financial Systems Analysts. She is of the

view that, as a group, the financial officers do not want to go on strike. Her work does not involve any contacts with the public. It is to FI's advantage to be represented by the same bargaining agent that represents other FI's in various government departments. One of their main pre-occupations is their own mobility from the PCA to the central administration.

[87] As its second witness, the APSFA produced its President, Merdon Hosking. Mr. Hosking testified that key developments in accounting systems have convinced him that FI's play a very special role in the Public Service. FI's conduct independent reviews in matters of comptrollership and have a key role in the financial management of the Public Service.

[88] A new selection standard compressing the FI community into four levels contributed to the birth of the FI professional community which, according to Mr. Hosking, has a great deal of professional pride. Mr Hosking underlined that FI's constitute a national community. They are in every department and given their particular expertise, are mobile from one department to another. One of the main concerns of the APSFA is to ensure that this flow of FI's from one department to another not be impeded.

[89] The formation of APSFA in 1988 was a natural progression resulting from the professionalization of the FI group. The FI group wishes to liaise with the three major accounting associations (CA, CGA and CMA). Mr. Hosking described the APSFA's general approach to its own unique labour relations as one of commitment to alternative dispute resolution, to arbitration and finally to professional development. Other than its day-to-day operations, the main areas of activity of the APSFA are concerned with (1) the occupational group structure; (2) the universal classification standard; (3) classification issues; and (4) exclusions.

[90] In 1987, FI's were represented by the PSAC. The FI's were in the process of developing a sense of community and wanted an avenue for their particular concerns which they felt the PSAC did not represent. After the 1988 PSAC convention, the FI's decided to leave the PSAC and held the founding meeting of the APFSA in November 1988. With the support of the three main professional accounting associations, the APSFA lobbied then Prime Minister Mulroney to express the concern of its members,

who felt they needed a separate occupational group and also a certain amount of independence.

[91] The APSFA has been very active on behalf of its members with regard to the universal classification standard. It has endeavoured to protect the work of its members by monitoring closely all classification issues and challenging all exclusions.

[92] Mr. Hosking stated that the APSFA's decision not to dispute the absorption of FI's in a larger unit at the CFIA was a bad decision. Since then, the bargaining agent has received a clear mandate from its members to fight in order to keep the community of FI's together. Mr. Hosking also testified that at NAV CAN, the APSFA represents a unit of approximately 25 employees. Collective bargaining at NAV CAN has been a very good experience for both sides of the bargaining table. It was non-confrontational and brief.

[93] Mr. Hosking testified that FI's view themselves as the financial police of an organization. Mr. Hosking's main purpose in testifying is to attempt to convince the Board that FI's must maintain their voice at the PCA by being granted a separate bargaining unit.

[94] In cross-examination, Mr. Hosking acknowledged that he did not have any direct knowledge of the duties of other employees at the PCA. He cannot properly testify as to the existence of a functional split between the positions of FI's and the duties of other positions, and he does not have knowledge of the day-to-day working conditions of FI's at the PCA.

[95] He is of the view that a separate unit would give FI's the appearance of independence and allow the APSFA to maintain a higher selection standard for the FI group. He cannot testify as to the situation of FI's at Canada Post nor as to the consequences of their inclusion into other bargaining units nor can he comment on the situation of FI's at the Museum of Science and Technology, the Museum of Nature and the Museum of Civilization.

[96] He described his mandate as one of ensuring that the membership of the APSFA not be reduced and that the community of FI's be kept together regardless of the different models of organization set up by the government. The APSFA does not wish to represent employees other than FI's.

[97] He testified that what makes the FI group a unique group is that its members need a certain independence and are concerned with their professional integrity.

[98] Finally, Mr. Roger Craig Murphie testified on behalf of the APSFA. In 1997-98, he occupied the position of controller at NAV CAN. He had occasion to observe the representation given by the APSFA for its 30 members. He perceived this bargaining agent as being very "business-like" and sensitive to the direction NAV CAN wished to take. The APSFA was especially interested in the professional development of its members. At the bargaining table, a consensus was quickly achieved. The fact that the FI's constituted a small bargaining unit did not impede NAV CAN's ability to conduct its business. Mr. Murphie did not participate in negotiations with the PIPSC.

Arguments

[99] The parties were asked to submit written arguments. They were then given an opportunity to respond orally to each others' written submissions. The complete text of the written submissions is appended to this decision and forms part of it. What follows is the summary of the oral arguments made by the parties.

For the PCA

[100] Although there are still ties to the Public Service through its present classification system, one should not forget that the PCA, in becoming a separate employer, is no longer part of the Public Service. The organization structure of the ex-employer was different and bargaining units cut across departmental lines. The new bargaining unit or units has/have to work for all three parties; that is, the employer, the employees and the bargaining agent(s). The agency is nation-wide. In the instant case, geography is a factor to be considered by the Board in its determination. The agency's proposal is the most appropriate because it groups together employees with similar terms and conditions of employment. The employer's

proposal may not be perfect but nothing usually is. There may be exceptions as far as certain jobs and the usefulness of indicators are concerned.

[101] The basic position taken by the bargaining agents is that they represent certain employees now and therefore there cannot be any difficulty in their representing the same employees later.

[102] The Board should not choose to rely on old classifications that existed at a time when the PCA was part of a department. The Board should be mindful of ensuring the integrity of the new structure so that it withstands the test of time. The Board should also take into consideration the new classification system which is on the horizon.

[103] The employer is of the view that, although one unit might be appropriate, it is not the most appropriate. The PCA believes that its proposal provides the most appropriate bargaining unit structure.

[104] The fact that the present bargaining agents have agreed not to raid each other is not a matter which should be of concern to the Board. The three bargaining agents have focused on themselves and their existing self-interests instead of the bargaining unit itself.

[105] If the agency's application is not appropriate, then the Board is invariably led to choose one bargaining unit. History in a different setting should not be given undue weight. The Board should consider what is best for the organization.

[106] The agency's proposal is a global consolidation and not a fragmentation. It should be noted that the PSAC does not say why one unit is not appropriate except to say that historically it did not exist.

[107] The APSFA is not looking at the community of interest of its members within the PCA, but rather at the community of interest of FI's both within and outside the PCA. In effect, it is requesting the Board to consider the community of interest of all FI'S, both across the Public Service and inside the PCA. If the unit they are seeking is certified, it would be so small as to prevent effective bargaining.

[108] Bargaining agents change at the whim of employees. It is therefore the labour relations setting which is primordial.

[109] The employer does not take a position as to who should be certified but it does take a position as to what is best for the agency and asks the Board not to hold a vote for the program delivery unit if its proposal is accepted. A vote should however be held for the program development unit. Finally, if the Board certifies one global unit, the PCA believes that a representation vote should be held even though the PSAC would at the time of the vote represent most of the employees in the single bargaining unit.

For the PISPC

[110] It is a change in the status of the employer that has triggered the present application. There are three bargaining agents present in this application and the history of their bargaining relationships with the PCA should be given due weight. The players are known. Although it is true that this application does not concern Public Service employees, there is still an advantage in ensuring stability amongst bargaining agents and, in this instance, the no-raid agreement between the bargaining agents is relevant.

[111] The PIPSC is not seeking the status quo, i.e. to continue to represent 10 existing bargaining units. It is seeking to represent a unit consolidating all existing professional units and in which professionals would not be drowned in a greater majority. Its proposal is compatible with the agency's efficiency. Professionals have a different community of interest than the other groups of employees. Multi-tasking is not a criteria which should offset the scale in favour of a unit different than that proposed by the PIPSC. Job security and pay zones are not the major interests for professionals. One singular bargaining unit would not help industrial peace regardless of the tendency of the different labour relations boards to reduce bargaining units. On the other hand, the employer's proposal is geared towards ensuring, when necessary, the presence of strike breakers. The Board is not bound by the existing classification system but it should take it into account.

[112] In the end, whether the employer's proposal is acceded to or whether the Board certifies one unit, a vote should be held.

Public Service Staff Relations Board

For the PSAC

[113] The Board is building on the foundation of what already exists. The employees are sitting in the same place doing the same jobs. The mandate of the PCA has not changed significantly. Bargaining, exclusions, designations will continue under the *PSSRA*. All of these factors are highly relevant. The Board has an obligation to weigh heavily the existing relationships. In the present case, there is no evidence of real demonstrable adverse labour relations consequences if the history between these parties is prolonged.

[114] The focus group, that made its recommendations to the PCA, concentrated on the employer's interest. At the present time, there is nothing indicating dissatisfaction by the employees concerning the bargaining unit proposal of the various bargaining agents. The bargaining agent's proposal avoids division within the same existing classifications.

[115] The PCA obviously took into account strike issues when it fashioned its proposal.

[116] Although certain patterns (outdoor vs. indoor, public vs. non-public) were observed, these patterns are not communities of interests. The distinctions are not even recognized unanimously within the PCA.

[117] Although one single bargaining unit has not been the position of any of the bargaining agents, it is clear that the PSAC is capable of representing all employees of the PCA. Having said this, the PSAC is not seeking to expand its membership; it simply wants to represent its existing membership.

[118] Finally, the PSAC is of the view that both the history between the parties, the need for satisfactory representation as well as administrative efficiency all point to the conclusion that the bargaining agents' proposals are the most appropriate.

For the APSFA

[119] It flows from the CCRA decision (Board files 140-34-17 to 19) that pre-existing relationships are relevant and that history has a bearing. When considering an application under section 48.1, the Board should not start with a clear slate. The

nature of the application dictates the factors which the Board will consider and the relevant weight to be given to each factor. The approach adopted by the PCA cannot be a correct approach since its starting point is a clear slate. This view ignores the decision of the Board in the CCRA decision (*supra*).

[120] Labour relations is more than just collective bargaining. One should also consider the day-to-day relationship with employees. The PCA's proposal alters a bargaining unit structure that has worked well. The PCA's mandate is the same now that it has become an agency. The field units and service centres are the same. The PCA is still subject to Treasury Board for its bargaining mandate. The devolution to agency status does not necessarily imply that FI's will be better represented in a larger unit. In fact, the evidence to the contrary is overwhelming. It is therefore suggested that the Board retain the FI unit. Within the FI unit, there is sufficient community of interest to ensure viability. An FI unit does not cause serious labour relations to the employer. Mr Murphie's evidence demonstrates that a small unit such as the one proposed for the FI's is not disruptive, ineffective or inefficient.

[121] In assessing community of interest, the nature of the FI's work sets them apart. The integrity of the FI bargaining unit is an important consideration. Over the years, selection standards and training were increased for FI's. There continues to exist the need for independent thought and action within the FI group. The PCA is not a private company; it is still subject to Treasury Board controls.

[122] The proposal of the PCA does not address the issues and concerns of the FI's. The employer needs the FI profile to be elevated. The test proposed by the PCA is too narrow and is not a meaningful measure of the FI function or their community of interest having regard to their history. The status quo of the FI unit is viable and would be most appropriate given the unique interest of FI's.

Decision

[123] Pursuant to section 48.1 of the *PSSRA*, when a portion of the Public Service is moved from Part I of Schedule I to Part II of Schedule I of the Act, the Board must on application of the new employer or existing bargaining agents make certain determinations.

[124] Specifically the *PSSRA* provides as follows:

> ***48.1*** *(1) Where the name of any portion of the Public Service specified from time to time in Part I of Schedule I is deleted therefrom and added to Part II of that Schedule, or where a portion of the Public Service included in a portion of the Public Service so specified in Part I of Schedule I is severed from the portion in which it was included and established as or becomes a part of a portion of the Public Service specified in Part II of that Schedule, a collective agreement or arbitral award that applies to any employees in that portion of the Public Service and that is in force at the time the portion of the Public Service is established as or becomes a part of such a separate employer continues in force, subject to this section, until its term expires.*
>
> *Application for certification*
>
> *(2) An employee organization may apply to the Board for certification as the bargaining agent for the employees affected by a collective agreement or arbitral award referred to in subsection (1), but may so apply only during a period in which an application for certification of an employee organization is authorized to be made under section 31.*
>
> *Application for order*
>
> *(3) Where the employees in a portion of the Public Service that is established as or becomes a part of a separate employer are bound by a collective agreement or arbitral award, the employer of the employees, or any bargaining agent affected by the change in employment, may, during the period beginning on the one hundred and twentieth day and ending on the one hundred and fiftieth day after the date on which the portion of the Public Service is established as or becomes a part of the separate employer, apply to the Board for an order determining the matters referred to in subsection (4).*
>
> *Determination of Board*
>
> *(4) Where an application is made under subsection (3) by an employer or bargaining agent, the Board, by order, shall*
>
> *(a) determine whether the employees of the separate employer who are bound by any collective agreement or arbitral award constitute one or more units appropriate for collective bargaining;*

(b) determine which employee organization shall be the bargaining agent for the employees in each such unit; and

(c) in respect of each collective agreement or arbitral award that applies to employees of the separate employer,

(i) determine whether the collective agreement or arbitral award shall remain in force, and

(ii) if the collective agreement or arbitral award is to remain in force, determine whether it shall remain in force until the expiration of its term or expire on such earlier date as the Board may fix.

Application for leave to give a notice to bargain collectively

(5) Where the Board determines, pursuant to paragraph (4)(c)*, that a collective agreement or arbitral award shall remain in force, either party to the collective agreement or arbitral award may, not later than ninety days after the date the Board makes its determination, apply to the Board for an order granting leave to give to the other party a notice to bargain collectively.*

Application to bargain collectively

(6) Where no application for an order is made pursuant to subsection (3) within the period specified in that subsection after the date a portion of the Public Service is established as or becomes a part of a separate employer, the separate employer or any bargaining agent bound by a collective agreement or arbitral award that, by subsection (1), is continued in force, may, during the period commencing on the one hundred and fifty-first day and ending on the two hundred and fortieth day after the date the portion of the Public Service is established as or becomes a part of the separate employer, apply to the Board for an order granting leave to give to the other party a notice to bargain collectively.

Where notice to bargain collectively given prior to deletion

(7) Where, before the deletion or severance referred to in subsection (1), notice to bargain collectively has been given in respect of a collective agreement or arbitral award binding on employees in what is now established as or has become a part of a portion of the Public Service specified in Part II of Schedule I, who, immediately before the deletion or

> *severance were part of the Public Service specified in Part I of that Schedule,*
>
> > *(a) the terms and conditions of employment contained in a collective agreement or arbitral award that, by virtue of section 52, are continued in force immediately before the date of the deletion or severance or that were last continued in force before that date, in respect of those employees shall continue or resume in force on and after that date and shall be observed by the separate employer, the bargaining agent for those employees and those employees until the requirements of sections 102 to 104 have been met, unless the employer and the bargaining agent agree otherwise;*
> >
> > *(b) on application by the separate employer or bargaining agent for those employees, made during the period beginning on the one hundred and twentieth day and ending on the one hundred and fiftieth day after the date of the deletion or severance, the Board shall make an order determining*
> >
> > > *(i) whether the employees of the separate employer who are represented by the bargaining agent constitute one or more units appropriate for collective bargaining, and*
> > >
> > > *(ii) which employee organization shall be the bargaining agent for the employees in each such unit; and*
> >
> > *(c) where the Board makes the determinations under paragraph (b), the separate employer, or the bargaining agent may, by notice, require the other to commence or recommence collective bargaining for the purpose of entering into a collective agreement.*
>
> *Inquiry and votes*
>
> *(8) Before making a determination under subsection (4) or paragraph 7(*b*), the Board may make such inquiry or direct that such representation votes be taken among the employees to be affected by the determination as the Board considers necessary, and in relation to the taking of any such vote the provisions of subsection 36(3) apply.*

[125] In this matter, subsections 48.1(1) to (5) and (8) are applicable.

[126] We have already stated that the provisions of subsections 48.1(3) and (4) give the Board broad discretionary powers in its mandate to restructure the bargaining unit configuration of a new separate employer. That discretion will be exercised on the basis of the evidence presented at the hearing.

[127] The Board has always indicated and continues to believe that there should not be a fragmentation or multiplicity of bargaining units in the work place.

[128] Very early on, the Board clearly set out its views in *Heating, Power and Stationary Plan Operations N^o^ 2* (1970) PSSR Reports K607, tab 23, volume 2, Joint Book of Authorities:

> *It should be borne in mind that, in some respects, the employer in the Public Service is unlike other employers. There are probably some employers that may be under obligation to bargain for employees in a greater number of bargaining units than the number that has already been established in the Public Service of Canada. Nevertheless, lack of uniformity in conditions of employment among various sections of the Public Service is more difficult to justify than it is in the private sector. It is our considered opinion that the inclination of the Board should be towards service-wide units.*

[129] A bargaining unit that is too small in size will often have no real influence on the outcome of service wide issues and on the determination of the parameters for pay and benefits.

[130] The bargaining agents in these matters seek to continue to represent the members who belonged to their organizations prior to the creation of the PCA. In our view, such a structure composed of three bargaining units delineated along existing membership lines does not provide the best environment for productive and effective collective bargaining, nor does for that matter the proposal put forth by the PCA. Regardless of which application or proposal is looked at, the bargaining units proposed, in all cases except for the FIs, regroup a broad diversity of work and functions.

[131] Although it could be argued that the proposed units are appropriate within certain limits, the Board is of the view that in considering several appropriate units, it should seek the most appropriate unit and if necessary, in the interest of all parties, it should fashion the most appropriate one.

[132] In making our determination, we considered the employer's organizational structure and the need in such a small organization for all parties to deal effectively with labour relations issues.

[133] Our decision, we believe, looks to the future, not the past, and sets the tone for short and long term useful labour/management relations.

[134] The evidence convinces us that existing classifications and bargaining unit structures no longer reflect the often specialized nature of the work performed at the PCA.

[135] In addition, mobility and multi-tasking combined with team work, expressions we heard continuously throughout the proceedings, dictate that a more responsive and appropriate bargaining unit structure be developed. Furthermore, the evidence shows that there exists a significant overlap of duties presently assigned to many different existing classifications. By way of example, one need only look at GTs and SIs.

[136] Given the specialized nature of the mandate and mission of the PCA, we believe that all of its employees share a common bond and a broad community of interests. For example, the evidence has shown that, whether in administrative support or scientific fields, all employees value training, development and adequate compensation.

[137] Although a secondary consideration, we have also heard evidence of several instances where, for various reasons, the members of one bargaining agent have sought the advice and counsel of the representatives of another bargaining agent. At least one witness expressed the view that such situations highlight the fact that existing bargaining unit lines constitute no more than artificial barriers and divisions.

[138] Finally, in reaching our decision we have taken into account the evidence that the PCA is well on its way to finalizing and adopting its own universal classification standard. This is in keeping with the *Canadian Human Rights Act* requirement to have in any work establishment, a classification system that is non-discriminatory and applies across all occupational lines.

[139] In short, the weight of the evidence tendered by the parties has led us inexorably to the conclusion that in the instant case all employees of the PCA should be included in a single bargaining unit.

[140] Accordingly, the Board intends to proceed with a representation vote to be conducted by mail ballot.

[141] Given the ambivalence that we perceived in many of the witnesses' sense of affiliation and given the view expressed by some witnesses that either the PIPSC or the PSAC could organize and properly represent a single bargaining unit and, finally, given the testimony of the APSFA's president, Mr. Hosking, that it is not interested in representing employees who are not FI's, the ballot shall include the names of both the PIPSC and the PSAC but not the APSFA. We are of the view that given the size of the FI bargaining unit in this workplace, its very specialized vocation and the lack of interest in representing employees other than FI's, there is no labour relations rational to conclude that the APSFA should be on the ballot. Accordingly, voters will be asked to indicate whether they wish the PIPSC or the PSAC to represent them as their bargaining agent.

[142] In preparation for the vote, the PCA is directed to provide the Board, on or before January 12, 2001, with a list of the names of the employees in the bargaining unit as of the date of this decision, together with an address by which each such employee may be contacted by mail.

[143] In addition, the employer is also directed to provide a second list that is to contain the names of the employees in the bargaining unit, as of the date of this decision, but not the mailing address of those employees. This second list is to be provided to the Board, the PIPSC and the PSAC on or before January 12, 2001. The PIPSC and the PSAC are to provide any comment they wish to make with respect to the

second list to the Board and the PCA on or before January 26, 2001. The Board will then issue further directions for the vote and the Secretary of the Board will contact the parties concerned to make the necessary arrangements.

[144] Lastly, all collective agreements applicable to the employees of the PCA shall continue in force and shall expire, insofar as those employees are concerned, on a date that is 60 days following the day on which the Board issues a decision certifying either the PIPSC or the PSAC as the bargaining agent for all of the employees of the PCA.

Yvon Tarte,
Chairperson

Marguerite-Marie Galipeau,
Deputy Chairperson

Joseph W. Potter,
Deputy Chairperson

OTTAWA, December 11, 2000.

APPENDIX

Written Submissions

For the PCA

PART I - BACKGROUND

The Parks Canada Agency is a departmental corporation under Schedule II of the Financial Administration Act which was established by an Act of Parliament on December 21, 1998. In creating the Agency, it was not the intention of the Government to privatize or commercialize Parks Canada. Rather, its intentions were to confirm its commitment to establish a separate legal entity.

The Agency reports directly to the Minister of Canadian Heritage and retains the mandate to deliver programs in accordance with the National Parks Act and other mandate legislation . The enabling legislation also established an accountability and reporting regime, provided authorities in finance and administration and gave the Chief Executive Officer the full authority to hire and terminate the employment of employees, and to set their terms and conditions of employment.

Accountability and Organizational Structures

The Agency is headed by a Chief Executive Officer who reports directly to the Minister and is accountable for the implementation of government policy, for day-to-day administration, for management of human resources and the Agency's operations.

- *The Agency is required to report to Parliament annually on the operation of the Agency and to provide bi-annually, a State of Canadian Heritage Areas and Heritage Protection Programs report;*

- *An independent evaluation of the Human Resource regime against its values and principles must be tabled in Parliament every 5 years;*

- *The Agency's mandate for collective bargaining is subject to the approval of the President of the Treasury Board.*

Why An Agency?

The prime considerations for the creation of an Agency were:

- *To ensure organizational stability and simplicity by establishing a self contained governance structure which features local level decision making. In the past, Parks Canada was part of the larger departmental portfolios of Indian Affairs and Northern Development, Environment and most recently, Canadian Heritage.*

- *To have access to authorities that are not generally available to government departments, but which provide new flexibility and enhance opportunities to provide quality service such as :*

    - *full retention and re-investment authority for all revenues;*
    - *a two-year rolling budget, eliminating the issue of year-end spending and carry-overs and allowing for fund advances;*
    - *a dedicated, non-lapsing account for new parks and historic sites funded by Parliament, augmented by the ability to retain revenues from the sale of surplus assets and general donations.*

- *To acquire the flexibility to maintain policies and practices that meet the organization's and employees' requirements, as well as the capacity to develop a human resources regime that is more responsive to the Agency's operational environment and employee needs than the "one size fits all" policy regime of the core Public Service.*

Organization of the Agency

The Agency is a highly decentralized organization with approximately 5,000 employees located in mainly rural sites across Canada. There are two levels of management; the National Office and the Field Units / Service Centres. The organization is managed through an Executive Board, comprised of the Chief Executive Officer, the Directors General of National Parks, National Historic Sites, Strategy and Plans, Eastern Canada and Western Canada, the Chief Human Resources Officer, and the Director of Communications.

Operations are carried out in every geographic area in Canada, running seven days a week, 24 hours a day, and are highly seasonal in nature. Operations are managed through a network of:

- *Thirty two Field Unit superintendents accountable to the Executive Board for the management and operation of one or more National Parks and National Historic Sites;*

- *Four Service Centre Directors accountable for the provision of specialized technical and professional services and support to Field Units.*

Human Resource Management

As a separate employer under PSSRA, the Agency has been granted the authority to hire and terminate employment, establish terms and conditions of employment and a classification and staffing regime, and has full responsibility for collective bargaining and the development of its own human resources policies and systems.

Present Bargaining Unit Structure

The Public Service Staff Relations Act provided that successor rights flowed from Treasury Board as the employer to the Agency. For this reason, on April 1, 1999, the Agency inherited the collective bargaining regime in place at the Treasury Board on that date, including the collective agreements in effect, as well as the bargaining unit structure recently amended and gazetted on March 27, 1999.

NEW GROUP	*Occupational Groups*	*Approx. pop.*	*Bargaining Agent*
Program and Admin. Services	*AS,CR,DA,IS,PM, ST*	*975*	*PSAC*
Operational Services	*FR,GL,GS,HP,SC*	*2,154*	*PSAC*
Technical Services	*DD,EG,GT,PY*	*1,156*	*PSAC*
Education and Library Services	*ED,LS*	*6*	*PSAC*
Applied Science and Engineering	*AR,BI,EN,FO,PC*	*154*	*PIPSC*
Audit, Commerce, Law and Purchasing	*CO, PG*	*43*	*PIPSC*
Computer Systems	*CS*	*45*	*PIPSC*
Research	*HR*	*92*	*PIPSC*
Economics and Social Sciences	*ES, SI*	*67*	*SSEA*
Electrical	*EL*	*1*	*IBEW*
Financial Services	*FI*	*36*	*APFSA*

(data drawn from Exhibit A-1, Tab 13)

PART II – CONSIDERATIONS FOR THE BOARD:

A. The Key Elements

This Panel of the Board has been tasked with determining the most appropriate bargaining unit structure for the Agency and its employees. The Board has experience in dealing with such issues in its quest to provide for sound and efficient labour relations, while ensuring satisfactory representation of the affected employees. While certain principles are applicable to all such cases, Canadian Labour Boards have historically recognized that there are certain facets of the employment relationship which make every workplace unique. Parks Canada Agency is no exception to this rule.

The Agency requires a bargaining unit structure which recognizes its organizational structure, the diversity of its role, functions and mandate, enabling it to meet its human resources goals, while ensuring that the representational concerns of its employees are satisfactorily addressed.

In this regard, the key elements which a bargaining unit structure must address emerge:

1. *addressing the communities of interest of the workforce to permit satisfactory representation for the purposes of collective bargaining;*
2. *promoting and maintaining sound and efficient labour relations, both for the employer, the bargaining agent and the employees.*

Additionally, a third important element in the context of a Public Service/separate employer application is the ultimate description of the bargaining unit, which must maintain its integrity currently and for the future.

1. Addressing the Communities of Interest of the Workforce to Permit Satisfactory Representation for the Purposes of Collective Bargaining:

A. The Community of Interest Jurisprudence

The starting point for the Board's analysis must be found in the words of section 48.1(3)(a), which directs the Board to determine "whether the employees of the separate employer who are bound by any collective agreement or arbitral award constitute one or more units appropriate for collective bargaining." Accordingly, while the Board has determined that it will seek the most appropriate unit (rather than "an" appropriate unit), the jurisprudence on what makes a unit appropriate remains relevant.

In Canada Post Corporation[1], the Canada Board stated, at page 154;

> *… What we established as our principal objective is to ensure that the configuration of bargaining units that we determine allows and provides for employees the greatest benefit while employed with the Corporation, to alleviate to the extent possible their considerable fears with regard to job security, and to permit the greatest amount of flexibility to employees in furthering their careers within the organization without being artificially restricted.*
>
> *With regard to the criterion of community of interest, we would like to make the point that, in an ideal situation, the Board might be able to configure bargaining units on the basis of community of interest only. Unfortunately, that is not always possible…In our view, the larger the employer, the less important that particular criterion becomes. Thus, whereas it is an important criterion that cannot be ignored and must be examined, the traditional concept of community of interest must be looked at in the context of the other criteria and they together must be examined in the light of the objectives the Board has set out for the instant case.*

In the cases involving the National Energy Board, the Canada Communication Group, and the National Capital Commission[2], this Board adopted with approval the tests developed by the Ontario Labour Relations Board in Usarco[3]. Commonly referred to as the "community of interest test", the Ontario Board articulated four main factors which should be considered to determine the appropriateness of a bargaining unit:

---

1 *Canada Post Corporation,* [1988] 19 CLRBR (NS) 129 (Canada) (**Tab 4**).

2 *Public Service Alliance of Canada and National Energy Board*, (1993) 24 PSSRB Decisions 3 (Digest) (**Tab 1**); *Council of Graphic Arts Unions and Canada Communication Group*, (1994) 25 PSSRB Decisions 3 (Digest) (**Tab 2**); *Public Service Alliance of Canada and National Capital Commission*, (1994) 26 PSSRB Decisions 2 (Digest) (**Tab 3**).

3 *United Steelworkers of America v. Usarco,* (1967) O.L.R.B. Rep. 526 (O.L.R.B.) (**Tab 5**).

- *Community of interest - which includes:*

(a) nature of work performed;
(b) conditions of employment;
(c) skills of employees;
(d) administration;
(e) geographic circumstances;
(f) functional coherence and interdependence.

- *Centralization of managerial authority;*

- *Economic factors; and*

- *Source of work.*

Later cases, which have been endorsed directly or indirectly by this Board, have reaffirmed the application of this test with several modifications. As was stated by the Ontario Board in Hospital for Sick Children[4]*, at page 271 et. seq:*

> *"It is, as we have noted, a matter of balancing competing consideration, including such factors as: whether the employees have a community of interests having regard to the nature of the work performed, the conditions of employment, and their skills; the employer's administrative structures; the geographic circumstances; the employees' functional coherence, or interdependence or interchange with other employees; the centralization of management authority; the economic advantages to the employer of one unit versus another; the source of work; the right of employees to a measure of self-determination; the degree of employee organization and whether a proposed unit would impede such organization; any likely adverse effects to the parties and the public that might flow from a proposed unit, or from fragmentation of employees into several units and so on."*

B. The Agency's Workforce

Surveying the type of work performed among the occupational classifications at the Agency, two important considerations become immediately evident. First, employees performing similar functions are not necessarily in the same occupational classifications. Such blurring of function poses a challenge to any bargaining unit configuration which seeks community of interest based upon old classification groups.

Secondly, many employees in the same occupational classification perform a wide range of functions within that group, such that a community of interest within the group itself cannot be taken for granted. As an illustration, the chart below is demonstrative of the wide range of duties within a single classification, based solely on a survey of job titles gleaned from the Organizational Charts (Exhibit A-4):

---

[4] *Hospital for Sick Children***,** (1985), O.L.R.B. Rep. February 266 (O.L.R.B.) (**Tab 6**).

GS:Cleaning , Maintenance, Janitorial

Warehouse, Storesman
Cashier
Interpretive Assistant, Interpreter, Park Communicator, Tour Guide
Animator
Tour Guide
Attendant (Gate, Campground, park information)
Period Clothing Fabricator, Furnishings collections asst. (Louisbourg)
Lifeguard
Patrol Person
Park warden trainee
Dispatcher
Watchman/fireman

The sheer range in job title within the GS classification illustrates that one may not necessarily assume a community of interest in the Agency context based solely on old Treasury Board bargaining units or current Treasury Board bargaining unit structures. With such diversity of work being performed, it highlights that when surveying various bargaining unit configuration options, it is likely that differing communities of interest can be viewed as existing within a single current occupational group.

The problem will be further compounded with the introduction of the Parks Canada Classification System standard (which the Board has heard is currently in the process of development). This system will not maintain the present classification system.

In addition to the above challenges, there is some work that is unique to the Agency and was historically force-fit in to the overall Public Service group structure.

In seeking to reconfigure the Agency's bargaining units, it is important to highlight these special functions and responsibilities in order to strike a bargaining unit structure which can accommodate them in the manner most appropriate to the Agency.

Warden Service:

The Warden Service is unique to the Agency. It is a service that incorporates elements of law enforcement, public safety, and ecological integrity. The service has a unique culture within the Agency, with its own employee association that lobbies internally for its interests. The employees have peace officer status, and are subject to personal risks that few others within the Agency are. The Warden Service has its own training program, its own uniform, and its own culture within the organization.

Yet, within the Warden Service are a small group of employees with a different occupational focus. Within the Service Centres and at the Field Units, there are certain specialists performing environmental assessment and ecosystem management duties that are highly specialized. Although classified as GT Wardens, they often have a higher degree of functional coherence with biologists, rather than with law enforcement wardens, or interpreters.

GT employees in Artifact Conservation:

Within the Service Centres are certain specialists performing conservation work that is highly specialized, such as ceramics experts or textiles preservation experts. These individuals are currently classed as GT's, though they have a high degree of functional coherence with historians and archaeologists found in Service Centres.

Small Site Supervisors:

Due to the size of the site and the smaller number of employees, Small Site Supervisors are generally very much "hands on" in their functions. However, these supervisors have a significant role to play in external and stakeholder relationships. As well, given the autonomy of field units, geographic factors (such as isolation resulting in official management being far away), and the delegation of authorities, this group has a greater role in policy and program development.

Information Technology:

The Agency has a CS informatics group to deal with its computer systems and operations. However, as the use of computers and their applications becomes more widespread in the delivery of the Agency's programs, a greater number of employees of different classifications are involved in the use of technology. For instance, employees in the GT classification are increasingly being utilized on computer based applications and functions. The degree of the community of interests of these groups of employees is a matter for consideration.

AS and PMs in Policy/Planning vs. Operations:

Many AS and PM employees perform traditional administrative and policy functions. However, as has been demonstrated by the evidence before the Board, AS and PM s in operational functions have significant interactions with their operational sub-ordinates (in the GL or GS classifications), and thus may have a different community of interest from others in their occupational classification.

C. Fostering Collective Bargaining

In addition to community of interest considerations, it is trite to say that the bargaining unit structure to be chosen must foster sound collective bargaining ability, as this is perhaps the strongest raison d'être for choosing to be represented by a trade union. In this regard, certain elements are of crucial importance;

- ***numbers:*** *because of the size of the Agency, the unit should have sufficient numbers to be in a position to bargain effectively;*

- ***internal cohesion:*** *while there will always be certain issues that are of greater importance to one group of employees than another, there should be a general community of interest within the group in respect of bargaining issues.*

2. Maintaining and Promoting Sound and Efficient Labour Relations

Under this element, the Board should strive to achieve a balance for the concerns of both the Agency and the employees. From the Agency's viewpoint, the following needs and concerns arise:

- *administrative efficiency: the fewest possible collective agreements to administer, interpret and bargain collectively to achieve;*
- *effective consultation at the local level with the minimum of impact on operations;*
- *effective consultation at the National level, and the ability to deal with common issues in the most expedient and effective manner.*

In Canada Post Corporation[5]*, the Canada Board was adjudicating a bargaining unit re-determination request under a similar provision to section 27 of the P.S.S.R.A. After recognizing that it was not their obligation to establish the most appropriate bargaining units, the Board stated, at page 154;*

> *…. Nonetheless it was our intention at the commencement of these proceedings, …to establish bargaining units that most closely meet the needs of the employees and the employer today and in the future.*

These sentiments were echoed by the Ontario Board in Humber/Northwestern/York-Finch Hospital [6]*, where the Board stated, at page 19;*

> *… we have set as our last objective one which is to configure bargaining units in such a way as to provide the employer, to the greatest extent possible, with the flexibility to manage its operations more efficiently and effectively.*

Provided that the bargaining unit structure selected will allow for satisfactory representation of the Agency's employees, it is respectfully submitted that meeting the above principles should be the ultimate goal of this Panel in these proceedings.

From the employees' viewpoint, the following must be addressed:

- *a bargaining unit structure that permits adequate representation in all of the Agency's operational locations;*
- *to the greatest extent possible, the ability to deal with common issues with a single, strong voice.*

---

5 *Supra*, fn. 1, (**Tab 4**).

6 *Humber/Northwestern/York-Finch Hospital,* [1997] O.L.R.D. No. 3437 (O.L.R.B.) (**Tab 7)**.

3. Describing a Bargaining Unit Which Maintains its Integrity

After determining what the bargaining unit structure will be, there remains the task of describing it such that there will be simplicity in determining which employees fall into which unit. This task is more complicated at the Agency, as a result of the occupational category classifications which the Agency has inherited. As discussed above, defining a bargaining unit with reference only to occupational groups may be problematic, due to the inherent problems associated with the description of duties performed and occupational group, but also as a result of the new classification plan when it is implemented.

B. ISSUES BEFORE THE BOARD FOR DETERMINATION

A. Issues not in Dispute

While the parties take issue with which employees (or current occupational groups) should be placed in which bargaining unit (and to a lesser extent whether employees from certain current occupational groups should be placed in different bargaining units), there appears from the Applications, Responses and Interventions to be no disagreement between the parties on the following issues:

1. *The ability of those employees from current occupational groups now represented by PIPSC (AR, BI, EN, FO, PC, CO, PG, CS, HR, SE) generally to be satisfactorily represented by one bargaining unit and to be able to bargain together:*

    - *Applied Science & Engineering)*
    - *Audit, Commerce, Law & Purchasing) 334 employees*
    - *Computer Science)*
    - *Research)*

2. *The ability of those employees from the below current occupational groups now represented by PSAC generally to be satisfactorily grouped and to be able to bargain together within the grouping described below:*

    - *AS, CR, DA, IS, PM, ST (Program &Administrative Services) 975 employees*
    - *GL, GS, HP, FR, SC (Operational Services) 2138 employees*
    - *EG, DD, PY, GT (Technical Services) 918 employees*
    - *ED, LS (Education & Library Services) 6 employees*

3. *Regardless of any jurisdictional issue, no party has challenged the Agency's position regarding the exclusion of those employees from current PE and MM occupational groups from being included in any bargaining unit through this process.*

B. Issues To be Resolved

Indeed, the issues for this Panel can be summarized as follows:

1. *Should those employees who are currently from occupational groups designated as "Program and Administrative Services (Table I)" by Treasury Board be added to the unit sought by PIPSC as proposed by the Agency, or grouped as proposed by PSAC?*

2. *Should certain employees who are currently from the AS, PM, GS, CR, EG occupational groups be represented in different bargaining units as proposed by the Agency, or remain together as proposed by PSAC?*

3. *Should certain employees who are currently from the GT occupational group be placed in different bargaining units as proposed by the Agency, or remain together as proposed by PSAC?*

4. *Should employees who are described as "Financial Officers", currently from the FI occupational group, be represented by separate bargaining unit, or be grouped as proposed by the Agency?*

5. *Should the current EL occupational category be grouped as per the Agency's application, or in some other fashion?*

6. *Should the current ES and SI occupational categories be grouped as per the PSAC, PIPSC or Agency's applications, or in some other fashion?*

The Board has also requested that the parties address the issue of whether a single bargaining unit comprised of all of the employees of the Agency is the most appropriate configuration.

PART III -- HOW THE AGENCY'S PROPOSAL WAS DEVELOPED

The Agency's proposal was the product of lengthy consideration and refinement, and was an attempt to provide the best possible structure for both the Agency and its employees.

As stated in the evidence of Amy Campbell, the Executive Board struck a focus group of senior managers, mandating it to explore bargaining unit configuration options. This group discussed the elements of community of interest criteria and tests and surveyed the Agency's workplace, with a view to identifying those communities of interest most relevant in the Agency's context.

After high level discussions on possible bargaining unit configurations, the focus group reported back to the Executive Board on the range of possible options. The Executive Board then tasked the focus group with recommending the best bargaining unit structure for the Agency, not necessarily on a consent application.

The focus group looked at the jobs performed at the Agency. In examining varying terms and conditions of employment, the focus group identified two very distinct communities of interest as follows:

Group 1	*Group 2*
Significant Seasonal Component	*Year round employment*
Physical / Outdoor work	*Analytical / indoor work*
Overtime / Weekends / Holiday	*Monday to Friday*
Shifts	*Generally 9 a.m. to 5 p.m. work*
40 hours/week	*37 ½ hours/week*
Hourly pay rates	*Annual rates*

At the same time, it was observed that these same communities of interest mirrored two distinct business lines of the Agency; the development of programs/policies and delivery of these services to the public. In this respect, other groupings of factors related to the nature of the work performed became apparent: the focus group identified that while there is a variety of work at the Agency, almost all work can be seen as falling into one of two main groups:

Group 1	*Group 2*
Outdoor /operational setting	*Indoor/office or lab setting*
Significant interaction with visitors	*No significant interaction with "visitors"*
Front line, Mandate communication, Uniforms	*"Issue" communication, not uniformed*
Outdoor/Operational health and safety concerns	*"Indoor" health & safety concerns*

The focus group applied the well established community of interest criteria and identified several large groupings of employees who were easily identified as belonging to one group or the other:

Group 1	*Group 2*
Labourers	*Clerical and admin support*
Wardens	*Financial, Commerce / Marketing staff*
Interpreters	*Scientists/Specialists/Conservators*
Lock Operators	*Research/Policy*
Animators	*Computer and Information management staff*

As can be seen on the organizational charts (Exhibit A-4), these groupings represent the vast majority of the employees at the Agency, and while there was discussion on the "one offs", the majority of the Agency's workforce was easily identified as belonging in one community or another.

The focus group then tested its proposed configuration by applying the community of interest criteria to every job in the Agency through an examination of organizational charts and a discussion based upon their experience and knowledge of the Agency's workplace. The exercise lead to an initial identification of each position's place in the proposed structure.

In order to test the validity of the communities of interest, a pay file for the period April 1999 to September 1999 was used to assign each employee, based on his or her position, to a new bargaining unit as proposed by the focus group. An analysis was then run with the following profiles produced based on the community of interest criteria (Exhibit A-6, Tab 8):

PROGRAM DELIVERY	*PROGRAM DEVELOPMENT*
42% of the employees are seasonal	*5% of the employees are seasonal*
30% of the employees are regular full time	*86% of the employees are regular full time*
38 % of the employees have received OT on a regular work day at least once	*11 % of the employees have received OT on a regular work day at least once*
23% of employees received a payment for OT on a first day of rest at least once	*7% of employees received a payment for OT on a first day of rest at least once*
19% of employees received a payment for OT on a 2nd day of rest at least once	*6% of employees received a payment for OT on a 2nd day of rest at least once*
46% of the employees have received OT on a holiday at least once in the period	*3% of the employees have received OT on a holiday at least once*
48% of the employees have received weekend premium at least once	*2% of the employees have received weekend premium at least once*
23% of the employees received Evening Shift premium at least once	*1% of the employees received Evening Shift premium at least once*
11% of the employees have received call-back pay at least once during the period	*2% of the employees have received call-back pay at least once during the period*
Shared skills sets and functional coherence: Acting patterns reveal employees do not normally act outside of this grouping	*Shared skills sets and functional coherence: Acting patterns reveal employees do not normally act outside of this grouping*

The focus group, the Executive Board, and ultimately the Chief Executive Officer of the Agency determined that the configuration proposed in the application was the most appropriate for the Agency.

Part IV -- The Agency's Application

The Agency's application can best be described as a request for a "made in Parks" bargaining unit configuration. As per the historical Treasury Board occupational category classification system, there is a specific focus on duties and responsibilities of the positions. However, the bargaining units described in the application take specific cognizance of the unique delivery/development business lines found within the Agency. The application reflects the working relationships and communities of interests amongst the bargained employees, and provides a structure which will not only permit and foster developmental opportunities for employees, but also ensures satisfactory representation of all bargained employees.

The Agency's proposed structure divides employees into two groups:

*The **"Delivery Unit"** is comprised of those positions primarily located in National Parks, National Historic Sites and Canals, and National Marine Conservation Areas, whose primary duties and responsibilities relate to operations and service delivery functions, including:*

- *The maintenance of buildings, grounds, structures, roads, stationary plants, or other installations;*
- *the provision of housekeeping and cleaning services;*
- *the operation, maintenance, and use of heavy equipment, or marine craft;*
- *the maintenance and operation of locks and canal systems;*
- *The provision of Park Warden services or related functions (excluding those positions primarily involving scientific specialty duties in resource management);*
- *the performance of fire protection, prevention, public safety, or protective services or related duties;*
- *The provision of visitor services, historical interpretative/guide services, heritage presentation, and re-enactments.*
- *The supervision or direction of any of the above positions.*

and would encompass employees in the present occupational classifications, as follows:

AS	*39*	*GS*	*861*
CR	*5*	*GT*	*880*
EG	*24*	*HP*	*4*
FR	*5*	*PM*	*61*
GL	*1263*	*SC*	*5*

Total = 3147

*The "**Development Unit**" is comprised of those positions primarily located in Service Centres and at National Office, whose primary duties and responsibilities relate to program/policy development and support functions, and scientific and technical work, including;*

- *The administration and co-ordination of a National Park, National Historic Site, or other Protected Heritage Areas or the planning and development of Corporate programs, policies, or standards;*
- *The provision of computer systems or information management services;*
- *The provision of curatorial services or the conservation and identification of artifacts;*
- *The provision of purchasing, supply secretarial, clerical, administrative or library services.*
- *The provision of financial advice and financial management services;*
- *Marketing, revenue generation, tourism, management, business and revenue planning;*

- *The conduct of research or management duties in engineering or the applied sciences or the conduct of environmental impact assessments;*
- *The supervision or direction of any of the above positions.*

and would encompass employees in the present occupational classifications, as follows:

AR	*32*	*FO*	*3*
AS	*258*	*GS*	*16*
BI	*83*	*GT*	*213*
CO	*23*	*HR*	*92*
CR	*361*	*IS*	*15*
CS	*45*	*LS*	*5*
DD	*6*	*PC*	*26*
ED	*1*	*PG*	*20*
EG	*31*	*PM*	*207*
EL	*1*	*PY*	*2*
EN	*10*	*SI*	*52*
ES	*15*	*ST*	*29*
FI	*36*		

Total = 1582

PART V -- WHY THE AGENCY'S PROPOSAL IS THE MOST APPROPRIATE

1. Addressing Community of Interest and Satisfactory Representation for the Purposes of Collective Bargaining:

A. Terms and Conditions of Employment

As supported by the evidence of all of the witnesses for the Agency (and indeed, the witnesses for the Unions as well), there are two very distinct communities of interest apparent when one focuses on conditions of employment and the nature of the work performed.

*In the **Program Delivery Unit**, the primary focus of the employees is providing direct service to the visiting public. They are the operational arm of the program, delivering the day to day services which the public can directly see, and in that regard, truly are the "public face" of the Agency. In general, the nature of their work and functional interdependency is that of the operational focus.*

*The **Program Development Unit** is comprised of three major groupings of employees; the administration and support group, the policy/program development group, and the research/technical/service centre component. Yet, these employees all share common working conditions and work environments. More specifically, they stand in stark contrast to the Delivery group in terms of the working conditions and work environment, which they do not share with those employees.*

However, conditions of employment and similarities in the nature of the work performed are but two factors in a broader community of interest test. Of key significance is the functional integration and coherence of the employees in their working groups.

B. Community of Interest and Functional Integration

Functional integration or coherence is a measure of the degree of inter-relatedness of the tasks performed by different classifications of employees. Labour Boards have long recognized that employees with different skill sets who work closely with each other in project or task oriented assignments can nonetheless share sufficient communities of interest to permit satisfactory representation and collective bargaining as a single unit.

*In the **Delivery Unit**, these functional integrations were well demonstrated in the following examples:*

1. *At Louisbourg, GS animators work with GL artisan groundskeepers and GT interpreters in presenting a glimpse of life in the 1740's (evidence of Carol Whitfield).*

2. *In Banff, GT wardens working with GS dispatchers, EG Avalanche Control Officers or GL Facilities Officers (evidence of Charlie Zinkan).*

The evidence of Charlie Zinkan, Carol Whitfield and Douglas Stewart focused the Board's attention on the functional coherence of the supervisory levels to the staff that they supervise. In general, these supervisors regularly have either hands on responsibilities, or such significant daily interactions with their staff as to establish strong communities of interest. Evidence was led regarding the fact that the career path of these individuals is often "from the ranks", either on an acting basis or via promotion.

The only exception to this is in respect of the "small site supervisors". Because they are the most senior Agency officials in their respective areas, their policy and program development and stakeholder interaction roles are significantly greater. Accordingly, although not divorced from the community of interest shared with their subordinates, a greater community of interest was considered to exist with employees in a policy/program development and stakeholder liaison role (found in the Development Unit).

On a day to day basis, the work, the skill sets and working conditions of employees in the Delivery Unit are quite distinct from employees dealing with the research/policy development/administration and support roles of the Agency.

*In the **Development Unit**, these functional integrations were well demonstrated in the following areas:*

> ***Tourism and marketing** (evidence of Christina Cameron, Charlie Zinkan, Doug Stewart, Laurent Tremblay and Carol Whitfield) – there is a significant degree of interaction and interdependency amongst employees in the AS, CR, ST, CO, and PM functions in this area.*
>
> ***Policy development** (evidence of Christina Cameron, Laurent Tremblay and Shelley Isabelle) – there is a significant degree of interaction and interdependency amongst employees in the AS, HR, and PM functions in this area.*
>
> ***Finance and administration** (evidence of Terry Perkins, Charlie Zinkan, Doug Stewart, Laurent Tremblay, Sylvie Larouche, and Carol Whitfield) – there is a significant degree of interaction and interdependency amongst employees in the AS, CR, ST, FI, and PM functions in this area.*
>
> *Charlie Zinkan testified that FI staff have moved into AS positions. Carol Whitfield, in describing the re-classification of Pauline (Middleton) Kelly, Finance Officer, Cape Breton Field Unit, stated that it was uncertain whether the position would come out as an FI or an AS, based on the same duties. Douglas Stewart testified that the FI in his area occupies a position on his management team, and is thus involved in decision-making processes which encompass areas outside of the traditional financial fields.*
>
> *These integrations involve employees whose primary duties may, at first blush, appear unrelated. But at the Agency, it is precisely the diversity of the skill sets that permits the team to function. Further, the evidence before the Board is that the trend is more toward the "generalist" employee. This is perhaps best illustrated in the evidence of Terry Perkins and Sylvie Larouche, in respect of the diversity in the occupational categories of those employees performing financial functions. Although the amount of time and level of responsibility varies, financial functions are performed by the FI, AS, CO, PG, and CR classifications. Under the existing bargaining unit structure inherited from the Treasury Board, these employees fall into 3 separate bargaining units, represented by 3 different bargaining agents.*

> ***Research, curatorial services and conservation of artifacts*** *(evidence of Christina Cameron, Laurent Tremblay, Derek Cooke and Shelley Isabelle) – there is a significant degree of interaction and interdependency amongst employees in the GT, HR, and SI functions in this area.*
>
> *The evidence of Carol Whitfield is also instructive regarding the artificial boundaries created by reliance upon old Treasury Board classification standards as a determinator for bargaining unit structure. Consider the position of A. J. B. Johnson, Researcher/Writer/Editor in the Cultural Resources Group at the Fortress of Louisbourg, Nova Scotia. Ms. Whitfield's uncontradicted evidence was that Mr. Johnson's position was reclassified from a GT-04 to HR-04 position, not as a result of a change in duties, but as a result of a change in the proportion of time spent performing those same duties. In this case, there is not only a functional coherence in the duties of a GT and an HR, there is evidence here of identical duties in two distinct occupational categories. The union's proposal would have these identical duties in two distinct bargaining units.*

Functionally, the Board has heard numerous examples of such multi-disciplinary teams and tasking:

- *GT curators working with SI collections registrars, and HR historians and archaeologists;*
- *EG technical officers working with AR planners, EN engineers and GT ecosystems officers;*
- *FI financial analysts working with AS policy officers, CO commerce officers and CR financial clerks.*

The consistent evidence was that not only was this the best method of achieving the Agency's objectives, it is also expected that such teaming will increase in the future.

The Splitting of Certain Occupational Classifications:

What makes the Agency's application "unique" is that it deals with these concerns by designating certain employees within the same occupational classification into different bargaining units. The specific rationales for the Agency's proposal in these areas are as follows:

1. GS:

> *While the majority of the GS category would be placed in the "Delivery Unit", the Agency's proposal would see a small number of employees in GS-STS "Storesman" positions placed into the "Development Unit". The rationale for the distinction is the lack of community of interest and terms and conditions of employment that these employees share with GS employees generally. Employees in the GS classification are generally labourers, janitors or campground attendants, performing cleaning and maintenance functions. They work pre-dominantly outdoors, are shift workers, seasonals, with varying degrees of public contact and interaction. In contrast, the storesmen work regular hours in an office environment, with limited weekends or overtime work, and limited public contact and interaction. Their functional integration is more with the administrative and clerical workers at their work locations than with other GS operational employees.*

2. GT

The GT group is possibly the most diverse occupational group at the Agency, perhaps owing to the original Treasury Board occupational category description;

> *"The performance of technical functions not included in other groups in the Technical Category"*
>
> *[Exhibit A-6, Tab 11, page 927]*

It is thus not surprising that a "catch all" type classification is the most problematic. Having said this, Agency employees in the GT occupational category also fall easily into the aforementioned "delivery/development" unit distinction, and within those divisions, exhibit strong community of interests as between those positions, and a marked lack of community of interest with GT employees involved in the other unit. From a functional prospective, the Board has heard evidence of GT ecosystems personnel working closely with PC and BI classifications on projects. In contrast, a GT in visitor services would have little or no functional interaction with these classifications.

Certain employees clearly fall into the seasonal/outdoor work/public interaction subset. These employees (predominantly wardens and interpreters found in the Field Units) stand in marked contrast with the communities of interest of the curatorial, conservator, and technical employees, found predominantly in service centres.

A distinction in communities of interest and functional integration can also be drawn for certain employees in the warden function. Here there are two main functions; law enforcement and scientific/environmental assessment. Those employees in the latter group have a functional integration closer to the scientific community, as are their terms and conditions of employment.

3. EG

The EG occupational category is similar in many respects to the GT occupational category, insofar as these employees perform a range of technical services for the Agency. As is the case for the GT occupational category above, some of these technical services have closer affinity to either the Delivery or the Development Unit, depending on the nature of the duties involved.

Falling into the Delivery Unit are positions such as the following:

Chief, Avalanche Control (EG-07)	*D. Skjonsberg*	*Exhibit A-7, Tab 36*
Water Management Operations Officer (EG-05)	*K. McConegal*	*Exhibit A-14, Tab 10*

The evidence of Amy Campbell, Charlie Zinkan and Douglas Stewart was consistent and unchallenged that these and similar positions exhibit communities of interest with other employees in the Delivery Unit. Their working conditions and degree of public interaction are consistent with those other employees in the Unit, and stand in contrast to those employees in the Development Unit.

Falling into the Development Unit are positions such as the following:

Data Management Specialist (EG-04)	*D. Zell*	*Exhibit A-9, Tab 28*
Technical Officer (EG-04)	*R. Van Rumpt*	*Exhibit C-4, Tab 2 (first)*

The evidence of Charlie Zinkan, Douglas Stewart, and Robert Van Rumpt was consistent that these and similar positions exhibit communities of interest with other employees in the Development Unit. Their terms and conditions of employment, hours of work, working conditions and degree of public interaction are generally consistent with those other employees in the Development Unit, and stand in marked contrast to those employees in the Delivery Unit.

4. AS and PM

The AS and PM occupational categories are pre-dominantly allocated to the Development Unit, on the basis of their community of interest with others within this business line. However, a small number of employees supervise large groups of employees allocated to the Delivery Unit, and in many respects, share community of interests which are materially similar to those employees sub-ordinate to them. Analysis of acting and promotional trends has demonstrated that the career path to these supervisory positions is primarily from the positions below.

However, in a limited number of cases of what has been referred to in evidence as a "small site supervisor", these employees in the AS or PM occupational category are the most senior representative of the Agency at that site. Notwithstanding the general trends in their community of interest to be similar, the policy development and stakeholder liaison roles of these individuals takes on such greater significance as to warrant their inclusion in the Development Unit.

5. CR

The CR occupational category is predominantly allocated to the Development Unit, on the basis of their community of interest with others within this business line. However, a small number of employees classified as CR perform "gatekeeper" duties, which are materially similar to the GS employees working in a similar capacity. For these CR employees, their community of interests are more closely aligned with those found in the Delivery Unit; for instance, hours of work, working environment and conditions and public interaction.

The proposals of the Unions take no cognizance of any of these distinctions.

C. Collective Bargaining

From a collective bargaining perspective, the Board must be aware of the impact on the labour relations framework and resources. Multiple units, as an example, result in multiple rounds of bargaining and require more resources spread over multiple bargaining tables. Multiple units also mean multi-party consultation, and multiple administration issues. This is especially problematic where small numbers of employees are concerned.

In Hospital for Sick Children [7]*, the same Board observed that an unduly fragmented bargaining structure could subsequently contribute to labour relations unrest, tension between units and potential labour-management problems. Thus, fragmentation should be avoided considering all the other factors in assessing an "appropriate" unit. The Board stated, at 272:*

> *The Board must also strive to create a viable structure for ongoing collective bargaining and, to this end, undue fragmentation must be avoided. Consolidated bargaining offers several advantages over a fragmented structure. A proliferation of small units may result in unnecessary work stoppages. In addition, broader-based structures may lower the cost and thereby increase the availability of insurance schemes and benefit plans. A multiplicity of bargaining units also inevitably spawns jurisdictional disputes over the assignment of work and entails the cost of negotiating and applying several collective agreements. Finally, the existence of a single bargaining unit facilitates equitable treatment of employees doing similar jobs. A patchwork quilt of bargaining units is a recipe for industrial unrest—if only because in an integrated enterprise it takes only one collective bargaining breakdown to start the whole system unraveling.*

A proliferation of bargaining units makes the standardization of terms and conditions of employment more difficult to achieve. Traditionally, it also leads a "leap-frog" approach, after one unit achieves a specific gain as a result of a specific compromise. The Agency's proposal of two units minimizes this, but more importantly, it more appropriately groups employees who presently have terms and conditions of employment distinct from the majority of other employees.

Program Delivery	*Program Development*
Significant Seasonal Component	*Year round employment*
Significant Regional Pay rates	*National pay rates*
Overtime / Weekends / Holiday	*Monday to Friday*
Shifts	*Generally 9 a.m. to 5 p.m. work*
40 hours/week	*37 ½ hours/week*
Hourly pay rates	*Annual rates*

Employee mobility and career progression are also factors upon which a bargaining unit configuration can impact. The more bargaining units and collective agreements, the more possibility for restricted or disparate rules regarding employee mobility.

The Agency's proposal pays consideration to the historical acting patterns. As demonstrated by the evidence of Amy Campbell, the following patterns are observed:

---

[7] ***Supra,*** fn. 4**,** (**Tab 6**).

Program Development classifications:

- *CR: ⇒ AS, CS, FI, LS, PM, PG, IS, GS(STS)*
- *AS: ⇒ FI, PM*
- *HR: ⇒ PM, AS*
- *PM: ⇒ AS, CO, BI*

Program Delivery classifications:

- *GS: ⇒ FR,GL,PG, PM, AS, CR*
- *GL: ⇒ AS,GS, GT,PM, EG*

Under the Agency's proposal, the acting patterns permit an employee to remain in the same bargaining unit. The proposals of the Unions result in bargaining unit changes during many acting assignments, which as the evidence has demonstrated, often involves acting in place of one's supervisor.

In the GT classification, acting patterns are observed which appear not to follow this trend.

- *GT: ⇒ BI, CS, PC, PM, AS, AR, GS*

However, if it is recalled that the GT employees are split between the two units, this is less problematic.

- *GT (Delivery): ⇒ PM, AS, GS*

- *GT(Development): ⇒ BI, CS, PC, PM, AS, AR*

The Board has also received evidence on the "evolution" of jobs which change from one classification to another as a result of changes in the percentage of time an employee spends on certain duties.

A. Johnson (Cape Breton) GT ⇒ HR
Pauline Middleton Kelly (Cape Breton) FI ⇒ AS ⇒ FI

These changes do not affect representation under the Agency's proposal. The proposals of the Unions, which are tied to occupational classification, are inflexible in this regard.

2. Sound and Efficient Labour Relations:

On the local level, the Agency's proposal groups employees with similar interests, and provides number sufficient to support meaningful local discussion of these issues. As the evidence before this Board has disclosed, the unions' proposals results in insufficient numbers in some locations for effective representation, or a swamping of issues by majority interests.

This Board has heard extensive evidence of the interests of the bargaining agents. It is understandable that they should try to preserve their membership, and they have made agreements between themselves with respect to the representation of their present members. But it is respectfully submitted that this Board should be less concerned with their interests in self-preservation, and more cognizant of the interests of employees.

The Agency's proposal strikes a balance between the interests of the employer and its employees, while permitting representation of groups of employees large enough to permit satisfactory representation at both the local and Agency-wide level. It does not address the issue of who should represent these groups, as this is a matter solely for the employees to decide. The greatest shortcoming of the proposals of the Unions is that they in effect deal only with representation issues, and not the greater interest of ensuring a sound and stable labour relations framework.

The Agency's operational structure is focused at the Field Unit level. The Agency's proposal creates bargaining units of sufficient size at both the local and national levels, whereas the unions' proposals do not provide for effective representation:

Field Unit	*Delivery*	*Development*	*PSAC*	*PIPSC*	*APSFA*
Mainland Nova Scotia	*70*	*18*	*86*	*2*	*0*
Mingan	*38*	*14*	*50*	*2*	*0*
Banff	*222*	*61*	*269*	*14*	*1*
Cape Breton Island	*283*	*51*	*331*	*13*	*0*
Central Ontario	*174*	*32*	*195*	*11*	*0*
Coastal B. C.	*78*	*34*	*108*	*4*	*0*
Eastern Nfld.	*56*	*18*	*72*	*2*	*0*
Gaspesie	*62*	*14*	*76*	*0*	*0*
Gwaii Haanas	*18*	*20*	*36*	*2*	*0*
Jasper	*217*	*50*	*257*	*9*	*1*
Kootenay/Yoho	*194*	*46*	*234*	*5*	*1*
La Mauricie	*66*	*18*	*84*	*0*	*0*
Manitoba	*40*	*18*	*58*	*0*	*0*
Montreal	*116*	*27*	*137*	*6*	*0*
Mt. Revelstoke	*53*	*21*	*69*	*5*	*0*
Northern N. B.	*111*	*15*	*125*	*1*	*0*
Northern Prairies	*135*	*30*	*158*	*7*	*0*
Nunavut	*11*	*5*	*15*	*1*	*0*
Ontario East	*133*	*34*	*163*	*3*	*1*
Ontario North	*42*	*12*	*52*	*2*	*0*
Prince Edward Island	*76*	*16*	*92*	*0*	*0*
Quebec City	*64*	*25*	*84*	*5*	*0*
Riding Mountain	*88*	*22*	*107*	*3*	*0*
Saguenay	*18*	*14*	*30*	*2*	*0*
Sask. South	*58*	*16*	*73*	*1*	*0*
Southwestern Ontario	*83*	*23*	*103*	*2*	*1*
Southern N. B.	*81*	*11*	*91*	*1*	*0*
Southwestern N.W.T.	*35*	*17*	*49*	*3*	*0*
Waterton	*58*	*16*	*72*	*2*	*0*
Western Arctic	*15*	*9*	*23*	*1*	*0*
Western Nfld.	*87*	*26*	*110*	*3*	*0*
Yukon	*86*	*28*	*111*	*3*	*0*

(Exhibit A-1, Tab 14 – data for SI/ES classifications excluded)

In the Agency's organizational structure, much emphasis was placed on decentralization. The intent was to streamline the management structure. Field Unit Superintendents have considerable human resource responsibilities, including grievance responses and local consultation. In determining an appropriate bargaining unit structure, consideration needs to be given to reflecting this reality, while permitting adequate representation of employees. Taking the Jasper Field Unit as an example, the Agency's proposal would provide for representation of 217 employees in the Delivery Unit and 50 in the Development Unit. Under the proposals of the unions, the following representation is achieved:

PSAC	*257*	*PIPSC*	*9*	*APSFA*	*1*

(Exhibit A-1, Tab 14, page 7; the one SI employee is excluded from consideration)

However, of the 257 PSAC members, there are only 11 AS, 12 CR and 18 PM (16 % of the total), whereas the combined GS/GL group accounts for 134 employees (or 52 %). The Agency's proposal more closely mirrors the communities of interest of the employees, as demonstrated by the evidence before the Board.

Given that the Agency operates across Canada, but predominantly in rural locations, geography is an important consideration for the Agency. The Agency's proposal permits satisfactory representation both at each local unit, and when considering the Agency as a whole. The proposals of the unions, particularly those of PIPSC and APSFA, create regional disparities. APSFA's proposal would find 72% of its members in Ontario and Quebec, with only 14% (5 members) in the each of the eastern and western regions of Canada. Both the PIPSC and APSFA proposals find higher concentrations of employees in the service centres and at national office, than in the Field Units where they comprise a significant minority of the employees.

3. WHY THE AGENCY'S BARGAINING UNIT DESCRIPTION IS MOST APPROPRIATE

The Agency's bargaining unit descriptions contain detailed descriptions of the primary function of each position in the Agency. From a review of the employee's duties and function, it is possible to determine immediately into which bargaining unit the employee is to be placed. As indicated in the evidence of Amy Campbell, the Agency tested the accuracy of the bargaining unit description language on each position in the Agency.

As the determinative factor is function, employees will not change bargaining units as a result of changes in the proportion of time which they perform a specific duty, or as a result of educational requirements of a position. This not only adds an element of stability to the bargaining unit, it aids in avoiding potential barriers to employee mobility.

As the Agency's proposal dispenses with the rigid Treasury Board occupational classification titles, the integrity of the bargaining units will be maintained after the implementation of the Agency's new plan of classification.

PART VI - THE POSITIONS OF THE OTHER PARTIES

We have seen on the evidence that these communities of interest and functional integrations of work extend across a wide diversity of occupational groupings and categories under the historic Treasury Board classification system. To this extent, differentiation of employees based upon their occupational classification alone seems to be artificial in the context of the Agency. But this is not the basis for differentiation asserted by the other participants to these proceedings. No party states that belonging to one occupational grouping or category should be used as a basis for the determination of bargaining unit structure. Rather, there appear to be three main themes in the proposals of PSAC, PIPSC and APSFA; preservation of the status quo, historical representation and the "distinctiveness" of the employees in their proposed units.

1. The "Status Quo":

It should be clearly stated at the outset that while much of the evidence of PSAC and PIPSC has been focused on the preservation of a "status quo", neither of their proposals in fact contain such a request. Both parties seek to create a bargaining unit structure in which groups of employees who have never bargained together will come together for representational purposes.

Having said this, however, the preservation of the status quo is an issue that is meeting with less and less acceptance. The Ontario Board in Humber/Northwestern/York-Finch Hospital[8] *addressed this issue, at page 5:*

> *Against this background, it seems odd to suggest that the benchmark for bargaining structure should be the status quo, or that one should strive to maintain the checkerboard of bargaining units that prevailed historically.* ***When business and government organizations are changing – sometimes radically – it seems curious to suggest that collective bargaining structures should stay the same or that the Board should not take the opportunity to evaluate that history in light of current concerns****. It seems more appropriate to give serious consideration to consolidate (given the employee intermingling) and to cast a critical eye on bargaining unit patterns that may retard the ability of employers and employees to adapt to these changes. [emphasis added]*

There is no question that today's Labour Boards favour larger more comprehensive bargaining unit structures. In Humber/Northwestern/York-Finch Hospital [9]*, the Ontario Board observed, at page 6;*

> *…labour boards across the country have all recognized the utility of broader-based bargaining structures, because they are more likely to: promote stability, increase administrative efficiency, enhance employee mobility, and generate a common framework for employment conditions for all employees in an enterprise. Bigger bargaining units also have more critical mass, so that they are better able to facilitate and accommodate change….*

---

8 ***Supra,*** fn. 6, (**Tab 7**).
9 ***Supra****,* fn. 6, (**Tab 7**).

> *In the absence of statutory prescriptions, there is, today, a pronounced preference for broader-based bargaining units, unless that objective collides in a serious way with the employee's ability to organize themselves.*

In this same case, the Ontario Board considered fragmentation of a quasi-public service body. The Board stated, at 19, that it should attempt to guard against unit fragmentation, except in the most compelling cases;

> *…The thread running through each of these decisions in the last three years is a common policy pursued by this Labour Board whenever it is called upon to make a judgment about the future bargaining structure for an essential public service: the need to guard against fragmentation of the employees among more than one bargaining unit, with the latent potential which that would have for competitive bargaining and sequential shutdown of the essential service. We simply are not prepared to dilute that policy by allowing exceptions in any but the most compelling of cases…*

2. Historical Representation

From the standpoint of the community of interest tests as defined and refined in the jurisprudence of all Labour Boards, federal and provincial, this consideration as the sole criterion for determination is both artificial and irrelevant.

In Okanagan Telephone [10], the British Columbia Board stated, at 447:

> *There is no automatic rule regarding the effect that the historical pattern of collective bargaining will have on the Board's decision in respect of the appropriateness of a particular bargaining unit. As with each of the other factors which are relevant to our determination of that issue, the history of the bargaining relationship between the parties must be weighed against the various other competing legal policy considerations.*

In Canada Post Corporation[11], the Canada Board made specific mention of the criteria of employee wishes, stating, at 156-7:

> *With regard to wishes of employees, we concur with the view of our colleagues as expressed in previous Board decisions, that, whereas the wishes of employees are not unimportant, they are not determinative of appropriate bargaining units…*

Other occasions where Labour Boards have given greater regard to employee preference or historical bargaining relationships are where failure to do so would impede access to collective bargaining, or in small units which have been historically difficult to organize.

Indeed, historical representation may be seen to be a factor if the status quo is to be maintained. But once a decision that the status quo is no longer appropriate, historical representation considerations become an impediment to seeking the most appropriate bargaining unit.

---

10 *Okanagan Telephone,* [1977] 2 CLRBR 442 (British Columbia) (Tab 10).
11 *Supra,* fn. 1, (Tab 4).

In Cape Breton Development Corporation[12]*, the Canada Board cited from the Canadian Pacific case, stating at page 238:*

> *We have already said, using our standard assessment of appropriateness, that the radio technicians by themselves are no longer a unit appropriate for collective bargaining. Accordingly, since we only access majority views within appropriate bargaining units, what might be the majority views of the radio technicians is not determinative of anything for our purposes. Therefore, nothing would be served by our attempting to assess the wishes of the majority of radio technicians. The fact that radio technicians used to be separately represented and used to be an appropriate bargaining unit does not, it seems to us, make any difference. If circumstances change, bargaining unit structures are not immune.* ***If a group of employees is no longer an appropriate bargaining unit, the majority view of that group of employees is no longer of particular importance.*** *[emphasis added]*

3. "Distinctiveness" or "Professionalism"

Both the PIPSC and APSFA have alleged that their proposed bargaining unit structures are appropriate, as they would recognize the alleged "distinctiveness" of professionals at the Agency. Requests for the certification of "professionals only" bargaining units are not uncommon. However, absent specific legislation, no preference is granted to such units per se. In Jewish Vocational Service of Metropolitan Toronto [13]*, the Ontario Board stated, at page 757;*

> *While people in their respective groups may exercise different skills requiring different levels and kinds of training, the evidence supports the conclusion that members of each group work together as a team to rehabilitate the clients and that each member of the team performs a vital function in the rehabilitative process. In Essex Health Association, [1967] OLRB Rep. Nov. 716, the Board discussed the relationship between the two criteria of the skills of employees and their functional coherence and interdependence. At page 722 the Board said,*
>
> > *Academic attainment and the exercise of special skills are not sufficient in themselves to cause the Board to separate the persons who exercise special skills from bargaining units which include other employees. Of greater importance is the manner in which the skills are exercised in conjunction with persons in other classifications who exercise related skills or as part of a team, which includes other classifications, such as interdependence is of greater importance than the mere nature of the skills. (emphasis added in original text)*

In Bell Canada [14]*, the Canada Board was faced with a similar situation. Unlike the P.S.S.R.A., the Canada Labour Code gives a preference to the certification of professional bargaining units, unless they are not suitable for collective bargaining purposes. Analyzing the evidence before it, the Board stated, at 353:*

---

12 *Cape Breton Development Corp.*, (1987) 19 CLRBR (NS) 212 (Canada) (**Tab 11**).

13 *Jewish Vocational Service of Metropolitan Toronto*, [1977] O.L.R.B.R. 754 (Ontario) (**Tab 8**).

14 *Bell Canada*, [1976] 1 CLRBR 345 (Canada) (**Tab 9**).

> *The applicant appears to contend that professional engineers are nevertheless different because they can be trained more quickly to perform this work and can perform it better.*
>
> *In reviewing the evidence, the Board finds that many of the persons in the proposed bargaining unit perform functions and duties which are identical or very similar to those performed by non-professionals who are employed by the employer. There are few if any positions which could be shown to be reserved solely for professional engineers of architects. On the contrary, in the majority of cases, the employer appears to employ engineers (professionals) right next to "engineering associates" (non-professionals). Furthermore, this situation changes constantly because of transfers, promotions and hirings.*
>
> *Basically, the community of interest which might exist among the persons whom the applicant proposes to encompass in an appropriate bargaining unit, which might make them distinguishable from persons excluded from said bargaining unit would be based solely on personal qualifications and would have little or no basis in the organization of the enterprise.*
>
> *In view of this, the Board finds that the unit proposed by the applicant "**would not otherwise be appropriate for collective bargaining**"[emphasis in original text].*

In Hospital for Sick Children [15], the Ontario Board also considered the situation where several different groups had arguably distinct identities stemming from factors such as their differing specialized training, outside professional or quasi-professional associations, and particular departmental focus. The Board stated, at 273:

> *In this sense, each sub-group and each department could claim a distinct community of interest. However, the Board made it clear that this did not mean that each of these groupings would constitute a separate bargaining unit for collective bargaining purposes. Such balkanization of bargaining would create serious administrative problems for the Hospital. Nor, for the reasons set out at length, was the Board persuaded that technical, paramedical, para-professional and professional employees could, or should be distinguished for collective bargaining purposes, even though there were obviously important distinctions between the various sub-groupings based upon their level of education, responsibilities, degree of independence, and how far they had traveled on the "road to professionalism". The Board was of the view that for collective bargaining purposes, they could all comfortably co-exist within one paramedical bargaining unit.*

A.- THE APPLICATION OF THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA:

The Application:

For its part, the PIPSC application proposes the amalgamation of employees who are presently in the following occupational groupings:

---

15 *Supra,* fn. 4, (Tab 6).

- *Applied Science & Engineering*
- *Audit, Commerce, Law & Purchasing*
- *Computer Science*
- *Research*
- *Economics and Social Sciences (SSEA)*

In the PIPSC's Application, the Institute also seeks to include employees "whose overall functions are of a scientific nature" and "supervisory positions … whose specialty is of a professional nature" (Exhibit A-1, Tab 2B, ss. 6.1 and 6.2). As the evidence before this Panel has demonstrated, this would encompass some GT, AS, PM, and EG from PSAC bargaining units, as well as employees currently represented by the SSEA.

Why the Institute's Application is not the Most Appropriate:

1. ***Addressing Community of Interest and Satisfactory Representation for the Purposes of Collective Bargaining:***

In regard to the issue of "distinctiveness" or "professionalism", the Institute's proposal is difficult to reconcile. It points to a community of interest amongst those who are referred to as "professionals", but without a satisfactory definition of such. This is evident when one considers that the Institute wishes to exclude the FI employees, but include the SI and ES classifications. It further excludes a variety of employees performing similar or complementary duties in the Program and Administrative Services group, but with no explanation other than that these employees are currently represented by another bargaining agent, and "we do not raid".

Yet, paradoxically, the Institute's Application suggests communities of interest with the Wardens performing scientific functions, as well as supervisory personnel with like responsibilities. Evidence has demonstrated that this would have the effect of sweeping in employees from other classifications which do not meet the Institute's apparent definition of a "professional".

The Panel will also recall the evidence of Harry Beach. Mr. Beach admitted that the PIPSC application was predicated on maintaining current representational rights. Accordingly, it was decided not to include the FI group for consideration. Had APSFA not intervened, Mr. Beach speculated that the Institute could represent them, as they had a close community of interest with other "professionals" represented by the Institute. Further, in answer to a question from APSFA counsel, he stated that the PIPSC had experience in representing finance employees through its representation of the audit group at the Canadian Customs and Revenue Agency.

Mr. Beach also stated that he did not make a distinction between the work of the CO group in marketing and the HR-BI groups in research, as each had a role to play in having the Agency attain its conservation mandate.

In speaking of the SI fit with the professionals, Mr. Beach saw the common thread to be that of dealing with complex scientific issues, in a field in which one has been trained in (usually at the university level). Professional knowledge was to be gained by training, education and experience (arguably the same criteria and concerns applicable to all in the Agency's proposed Development Unit).

The Institute has offered no legitimate basis for the establishment of a "professional" bargaining unit. No compelling evidence has been tendered which would support a position that the group of employees which the Institute seeks to certify could not have their interests represented in a larger or more diversified unit. Indeed, the Institute's desire to include the SI and ES classifications in their proposal (and to exclude the FI classification) runs counter to their arguments for a "professional only" unit. Additionally, while the Institute has led evidence as to why it believes that the SI classification should be included, it has offered no explanation of why the ES employees have a community of interest with others in the unit.

Regarding the impact on collective bargaining, the Institute's proposal is inferior in two material aspects. First, the number of employees in the unit would be approximately 400. This is a relatively small unit within the Agency as a whole. Further, most if not all of their membership are performing activities outside of the operational sphere, and are in professional and technical functions which are not directly related to service delivery functions. Therefore (and while it has not been considered by the Agency), it is more likely that the Agency could withstand industrial action by this group for a longer period of time than in the configuration proposed by the Agency.

It is submitted that the Institute's application artificially separates groups of employees with similar or identical issues of concern for collective bargaining. It would result in fragmentation of bargaining issues between the separate bargaining units. The raises the probability of multiple bargaining on similar issues, and the prospect of "whip-saw" proposals from the separate units.

2. Sound and Efficient Labour Relations:

At the local level, there are many locations where the proposed unit's numbers are very small. This is illustrated in the chart in the previous section. The Board has also heard evidence that PIPSC members either chose not to attend local consultation, or relied on other bargaining agents to protect their interests. This is not surprising given the few numbers of employees at some locations. It is not, however, demonstrative of sound and efficient labour relations.

3. Description of the Bargaining Unit:

If the Institute's Application is successful, it raises several difficulties in respect of establishing a workable bargaining unit description. If the Application is interpreted as only seeking (with the exception of the SI and ES categories) to continue to represent only those employees classified in the categories which it currently represents, this is problematic both for the reasons outlined above, but also in respect of the evolution of job functions and career progression. As the evidence has disclosed, employees would move in or out of the proposed unit solely on the basis of a change in the percentage of time performing the same duties, or as a result of a promotion to a supervisory position related to the same work functions, but to an occupational category outside of their ambit.

It has also been shown that there is significant overlap in duties between occupational groups. Thus, neither a bargaining unit description premised on occupational classification or a "professional" definition is workable.

If the Institute's Application is considered to include "whose overall functions are of a scientific nature" and "supervisory positions … whose specialty is of a professional nature", this description will encompass some GT, AS, PM, SI, and EG employees, raising the potential of conflict with the PSAC bargaining unit description.

B. THE PROPOSAL OF THE PUBLIC SERVICE ALLIANCE OF CANADA:

The Proposal:

The Alliance proposes a bargaining unit configuration which amalgamates employees who are presently in the following occupational groupings:

- *Program & Administrative Services*
- *Operational Services*
- *Technical Services*
- *Education & Library Services*
- *The SI classification from the Economic and Social Science Group (SSEA)*

Why the Alliance's Proposal is not the Most Appropriate:

In many ways, much of what has been stated above with respect to the Institute's application is equally applicable to the Alliance's proposal. In that regard, it is respectfully submitted that the Alliance's proposal is deficient in many respects, and thus does not represent the most appropriate bargaining unit configuration for the following reasons:

1. Addressing Community of Interest and Satisfactory Representation for the Purposes of Collective Bargaining:

The Alliance has proposed a bargaining unit configuration which is also primarily based upon historical representation. There is no question that this factor has been considered by Labour Boards in determining appropriate bargaining units. However, once a determination has been made that the status quo is not appropriate, this factor generally takes on far less significance. It is to be observed at the outset that the Alliance does not propose a continuation of the status quo.

The Alliance has led little if any evidence that would support its proposed structure, other than historical representation and the wishes of a few of its representatives. In an organization as diverse as the Agency is, this surely cannot be a basis upon which to determine bargaining unit configuration.

Like the Institute's application, the Alliance's proposal is also difficult to reconcile. PSAC points to a community of interest amongst those who they currently represent, but really do not provide evidence to support this. At first glance, it is difficult to see the community of interest between an office clerk in Ottawa and a Water Treatment worker in Jasper, and equally difficult to think that their bargaining issues would be similar.

The proposal of PSAC would group GS campground attendants or GL canalsmen with AS Realty Project Officers, CR Revenue Assistants, and PM Commercial Tours officers. There is no evidence before the Board of any community of interest amongst such diverse occupations as to support their inclusion in the same bargaining unit.

While there is some evidence before the Board of interaction and occasionally the appearance of similar working conditions between the research/technical employees in the Service Centres and the operational employees, this occurs on a "project" basis, and is not representative of the greater portion of their responsibilities. When taken in total, the policy development and stakeholder liaison roles take on such greater significance as to outweigh the temporary similarities in working conditions.

As with the Institute's application, the Alliance has no satisfactory answer as why its members share a community of interest with the SI classification which they seek to include, but not with a variety of employees performing similar or complementary duties currently represented by the Institute who they do not seek to include. Again, the sole rationale for this apparent contradiction is that these employees are currently represented by another bargaining agent, and "we do not raid". The SI's are "fair game" apparently, as their bargaining agent is not participating in these proceedings.

The Alliance has offered no explanation of why their members share a community of interest with the SI employees, but not with the ES employees.

Regarding collective bargaining, although the Alliance proposes a unit of some 4100 employees who would have the necessary bargaining strength, it leaves a remaining employee complement of approximately 400 employees. For the reasons stated above, the remaining employees risk lacking sufficient bargaining strength to adequately achieve their desired goals and objectives.

Within the Alliance's proposed unit, there are distinct groups of employees with wide-ranging issues of concern for collective bargaining. While the total unit has sufficient strength, it is likely that internal representational issues will arise, due to the diverse communities of interest amongst the members of the unit. The Board has heard evidence from the "operational" employees called by the Alliance that their key bargaining issues are a reduction of hours of work from 40 to 37 ½ hours per week, and the elimination of regional rates of pay. While these issues affect a large number of employees in total, they are limited to only a few occupational classifications. This raises serious questions as to how the interests of the balance of occupational classifications within the Alliance's proposed structure would be adequately addressed.

2. Sound and Efficient Labour Relations:

Similar considerations are applicable at the local level. In the Field Units, the employees currently in the Operational Services group vastly out-number other employees. Evidence before the Board has shown that the issues of these employees is forefront in local consultation. Yet these issues (for example, relating to specific health and safety or seasonality concerns) often have little to do with the concerns of the Program and Administrative Services employees, who are predominantly concerned with other issues.

3. Description of the Bargaining Unit

The Alliance seeks (with the exception of the SI category) to continue to represent only those employees classified in the categories which it currently represents. As stated above, this is problematic for them, both for community of interest reasons, but also in respect of the evolution of job functions and career progression.

Their proposal is silent on how to deal with the issues of overlapping job duties between classifications, and how to deal with the forthcoming situation of the implementation of the new classification system, wherein those old group titles will disappear.

C. THE PROPOSAL OF THE ASSOCIATION OF PUBLIC SERVICE FINANCIAL ADMINISTRATORS:

The Proposal:

APSFA seeks to represent "a bargaining unit comprised of all employees performing duties classified in the current financial administration group (FI)".

Why APSFA's Proposal is not the Most Appropriate:

APSFA seeks to represent a single occupational category, the FI group. It has led evidence, both directly and in cross-examination of other witnesses to show that there are terms and conditions of employment that are unique to that function. In that regard, APSFA is correct that there are indeed certain considerations unique to the FI group. However, this ignores the greater reality of the financial function within the Agency as a whole. As a result, the proposal by APSFA cannot be said to constitute the most appropriate bargaining unit configuration for the Agency.

1. Addressing Community of Interest and Satisfactory Representation for the Purposes of Collective Bargaining:

APSFA's proposal appears at first glance to be a "status quo" request. However, APSFA states that members of this group "advise management on areas such as the acquisition and utilization of financial resources, accountability, control, design, and implementation of financial systems, cost recovery and revenue generation"(Exhibit A-1,Tab 5, page 2).

The evidence before this Panel has disclosed that these functions are also performed by employees classified as CR, AS, CO, & PM (i.e., from both current PSAC and PIPSC units), who are excluded from that unit solely on the basis that they have responsibilities in another area of internal management services.

With respect to community of interest, APSFA has attempted to show unique skill sets and educational requirements as a reason for differentiating the FI group. There is no question that a case can be made to show that the FI's are in some ways unique. At the same time, however, even within the FI group, some employees currently lack the professional educational qualifications required of the group, having been "grandfathered" into the category.

But assuming that "distinctiveness" is a legitimate criteria for the Panel to use in the determination, "distinctiveness" can be found in most if not all other work functions of the Agency. If this were the criteria for bargaining unit configuration, then this Panel might be tempted to certify even more than the present 32 occupational categories as bargaining units.

While APSFA can legitimately point to a community of interest within the FI group, it offers no sound basis for distinguishing these communities of interest from other Agency employees. Evidence before this Panel has demonstrated that a variety of occupational

categories perform similar or complementary functions to those of the FI. Further evidence has demonstrated that these employees are often members of the senior management team, and thus not only have shared interests with their management confrères, but also with the employees for whom they have shared managerial and policy development functions.

Simply put, APSFA has not demonstrated that the FI employees do not have such a unique community of interest to warrant their inclusion in a separate bargaining unit.

From a collective bargaining perspective, the APSFA proposal would result in an unnecessary proliferation of bargaining units, requiring additional time and resources from the Agency in collective bargaining and day to day labour relations. The Association has failed to demonstrate a legitimate labour relations reason for an "FI only" bargaining unit, nor that its proposed structure would permit satisfactory representation within the Agency as a whole.

APSFA proposes a unit of some 36 employees. Both in strength of numbers and in terms of the relatively narrow range of job responsibilities of the group, this unit lacks sufficient bargaining strength to adequately achieve its desired goals and objectives.

From the perspective of collective bargaining, the proposal of APSFA demonstrates little practicality, due to the small numbers in the proposed unit.

In Cape Breton Development Corp.[16]*, supra, the Canada Board considered whether a bargaining unit of 12 professional nurses would be appropriate. As previously stated, under the Canada Labour Code, the Board is required to certify a professional unit unless that unit is not appropriate for collective bargaining. With this in mind, the Board stated, at 232:*

> *Keeping in mind that the purpose of this whole exercise was to rationalize all of the bargaining unit structures at Devco's Coal Division, the Board asked itself the obvious questions. Even if these 12 nurses were found to be professional employees within the meaning of the Code, are they in circumstances before us appropriate for collective bargaining as a separate bargaining unit?*
>
> *Aside from the purported professional status, was there anything about this small group of employees that justified separate bargaining rights, separate right to strike, separate contract administration, and separate conditions of employment?*
>
> *No matter how the Board viewed the situation, the answer was that a 12-person bargaining unit, and particularly one where the 12 members were scattered across the employer's operations, is simply not appropriate for collective bargaining in an industrial milieu of 3,400 employees.*

The case before this Panel is not the first instance of APSFA requesting the right to continue to represent a small number of employees in a large unionized environment. A similar application was made after the establishment of the Canada Communication Group as a separate employer. In Canada Communication Group decision [17]*, this Board rejected APSFA's arguments to certify a stand-alone FI group, stating, at 28;*

---

16 *Supra,* fn. 12, (**Tab 11**).
17 *Supra,* fn. 2, (**Tab 2**).

> *The Board rejects applicant A.P.S.F.A.'s proposal that employees formerly classified in the FI group should be placed in a separate bargaining unit for the following reasons. Applicant A.P.S.F.A. argued that the employees formerly classified in the FI group wish to maintain the "professional recognition" they have vigorously fought to acquire. Mr. Seguin testified as to APSFA's efforts in this regard. He declared that the employees formerly classified in the FI group want to protect their right to be considered for FI positions under Part 1 of Schedule 1 of the Act and to do so they need to ensure that they will meet the basic qualifications for FI positions in the central administration. They are concerned that the experience at C.C.G. will no longer be relevant for their career progression and this will affect their careers and deployment back into the central administration. Mr. Seguin seemed to indicate that A.P.S.F.A. would be a better choice to represent these employees because it is already the bargaining agent for all public servants classified in the FI group in the central administration. However, labour relations boards have repeatedly decided that, while the wishes of employees in this regard are a factor the Board may take into account, they are not determinative of the appropriateness of the bargaining unit. This Board agrees with the submissions of Mr. Chaplin and Ms. Ballantyne to the effect that the concerns raised by applicant A.P.S.F.A. with respect to the application of the Public Service Employment Act and the selection standard for the employees formerly classified in the FI group apply and affect all C.C.G. employees.* ***Moreover, there is simply no evidence that employees formerly classified in the FI group would not be properly represented if they are included in the administrative, clerical, sales and technical unit (or white collar unit).*** *[emphasis added]*

In order to successfully argue that the FI's belong in a separate exclusive bargaining unit, it is respectfully submitted that there is a strong onus upon APSFA to establish that;

1. *the FI's do not share a community of interest with other employees;*
2. *there are compelling reasons for not including them in another bargaining unit configuration; or,*
3. *failure to provide for a separate bargaining unit would seriously impact upon the affected employees' ability to bargain collectively.*

In this regard, APSFA has failed to demonstrate any of the foregoing.

2. Sound and Efficient Labour Relations:

The unit as proposed is geographically dispersed. Some locations have a single employee. This raises consultation issues for the Agency, as it would be required to meet with a local union representing one employee. This also raises the probability that the representative would be focused on individual issues, rather than those of FI employees generally.

APSFA has proposed a bargaining unit configuration consisting solely of employees classified as FI under the Treasury Board classification standards. The unit would consist of approximately 36 employees, working at the following work locations:

Location	*Number of employees*
Atlantic Service Centre	*4*
Cape Breton Field Unit	*1*
Quebec Service Centre	*5*
Director General – Parks West	*1*
Director General - Parks East	*1*
National Office	*13*
Ontario Service Centre	*4*
Ontario East Field Unit	*1*
South West Ontario Field Unit	*1*
Western Service Centre	*2*
Banff Field Unit	*1*
Jasper Field Unit	*1*
Kootney/Yoho Field Unit	*1*

(data drawn from Exhibit A-1, Tab 14)

Thus, while FI's are located from Nova Scotia to British Columbia, there would be a single bargaining unit member in 6 of the 11 work locations. This raises the following labour relations concerns;

- *administrative cost and inefficiency, as the Agency will be required to meet with that representative as part of Union/management committees;*
- *possibility that the individual will not participate, resulting in no representation;*
- *if the individual does participate, the possibility of a focus on individual rather than Association issues.*

3. Description of the Bargaining Unit:

APSFA seeks to define its bargaining unit solely on the basis of the present FI occupational category standard. As stated above, this is problematic for them, both for community of interest reasons, but also in respect of the evolution of job functions and career progression. The Panel will recall the situation of Pauline Middleton Kelly, whose position was recently reclassified. Simply on the basis of the percentage of time performing the same duties, her position could as easily been classified as an AS, rather than an FI. The potential for alteration in bargaining unit representation on this basis is in the interests of neither the Association, the employees, nor the Agency.

However, if the Board attempts to define APSFA's proposed unit on the basis of job function (recalling that APSFA itself has stated that members of this group "advise management on areas such as the acquisition and utilization of financial resources, accountability, control, design, and implementation of financial systems, cost recovery and revenue generation"(Exhibit A-1,Tab 5, page 2)), then such description is sufficient to include other occupational classifications .

PART IX – SUMMARY:

The Board's Determination:

In making its determination under section 48.1, this Board has ruled that it should seek to determine the "most appropriate" bargaining unit configuration for both the employer and its employees. Although regard may be had to the jurisprudence established under section 27 and 28 applications (and their companion provisions under federal and provincial legislation), the Board should remain cognizant that section 48.1 is a unique provision.

The Board should strive to fashion bargaining units which promote sound and efficient labour relations both now and into the future, while ensuring that such configurations will permit satisfactory representation of the employees to be included in that unit. The community of interest considerations formulated in previous Board jurisprudence remain relevant in assisting the Board in making its determinations in this regard.

The Agency's Application:

The Agency's application identifies two broad communities of interest amongst employees in line with the Agency's two primary business lines.

In-depth analysis of these communities of interest was performed as a precursor to the application itself. The other parties to the proceeding have sought to demonstrate through cross-examination of the Agency's witnesses that this process was somehow flawed. Assuming for the moment that they have been successful in so convincing this Panel, that is not the end of the matter. The purpose for the introduction of this evidence was to demonstrate to the Panel that this application was not put together in haste, and that all aspects of the decided jurisprudence were considered and factored into the bargaining unit structures. The Agency believes that it considered all material factors in coming to the configuration selected; the same factors that this Panel is now called upon to consider in making its determination. However, at the end of the day, it is the appropriateness of the application that is relevant, not the methodology of how it was arrived at that is of critic importance.

Evidence has established that the proposed units have functional cohesion and integrity. An analysis of the leave utilization and acting patterns demonstrates that career progression and mobility are enhanced in this configuration. Oral testimony also demonstrated that these trends are preserved and enhanced within the Agency's proposed structure.

The bargaining unit configurations proposed have sufficient strength to adequately support effective collective bargaining, with approximately 3000 and 1500 employees respectively. No evidence has been adduced which would lead the Panel to consider that such bargaining units would not allow for the satisfactory representation of employees by the bargaining agent of their choosing.

The Agency's proposal is also superior in the manner in which it defines who is to be included in which unit. Unlike the other application and the responses, it is specific to job functions found within the Agency, and is not dependent upon outdated or irrelevant classification criteria from pre-separate employer days.

The Panel has requested that the parties address the issue of the appropriateness of a single bargaining unit. The issue of how the Agency's application is more appropriate will be addressed in oral argument.

Conclusion:

The Agency believes that its proposal represents the most appropriate bargaining unit configuration for both the Agency itself and its employees, and requests that its application be granted.

Final Considerations:

In addition to empowering the Board to determine the appropriate bargaining unit, and which bargaining agent will represent that unit, section 48.1 (4)(c) permits the Board to determine the duration of a collective agreement presently in effect. ***The Agency requests that the Board direct that all collective agreement affected by the certificate shall expire 30 days after the date of certification of the bargaining agent for each unit that the Board may certify.*** *This will provide the Agency sufficient time to prepare to deal with the agent who it will be bargaining with, as well to prepare for the issues of importance to that bargaining agent and its membership.*

For the PIPSC

General

In December 1998, Parks Canada became a separate employer under the Public Service Staff Relations Act, under the name "Parks Canada Agency". Previously, persons employed were employees of the Treasury Board (Heritage Canada - Parks) a federal government ministry.

Employees of Heritage began moving to the Parks Canada Agency (PCA) as of April 1, 1999, triggering the time frames set out at section 48 of the Act.

On August 3, 1999 the Professional Institute of the Public Service of Canada (PIPS) filed a request under section 48.1 of the Public Service Staff Relations Act (PSSRA) seeking to regroup its current membership at PCA, somewhere between 350 and 450 employees in one bargaining unit continue to be represented by PIPS. These members are professionals in the following classifications: BI, CH, CO, HR, SE, PG, CS, AR, FO and ELS. The Institute did not seek the inclusion into its realm of other employees represented by other bargaining agents.

In December 1999, the Institute modified its proposal to include employees represented by SSEA, as this later trade union did not seek to continue its representation of employees classified as ES and SI. In so doing, the Institute wishes to ensure that rights under the public service collective bargaining regime continue to apply to these quasi-professional employees (approximately 67 in number), as their classifications are compatible with the Institute's philosophy of representing professional and near-professionals.

On August 27, 1999, the employer, also filed under 48.1 of the Act, proposing two bargaining units:

- *A "program delivery" bargaining unit, also known as Unit 1, essentially made up of current Public Service Alliance of Canada membership (approximately 3,500 employees), and*

- *A "policy development" bargaining unit, also known as unit 2, to be made up of approximately 1500 employees, including those currently represented by the PIPS, APSFA, SSEA and the PSAC. The Institute's proposal concerns Unit 2, and thus, this presentation is principally directed at it.*

It should be noted at onset the Board indicated, that in arriving in determination under section 48.1 it would apply the "most appropriate unit" as the test.

The Stakes

The PSSRA is intended to ensure sound labour relations, industrial peace and stability between the various parties, be they between a bargaining agent and a specific employer, or between bargaining agents and employers in the Public Service arena. The PSSRA speaks only of an appropriate unit to be determined by the Board. The Board's first issue is defining the bargaining unit or units, or as it indicated in this instance: the "most appropriate unit"; later in the process it will determine which bargaining agent holds the certificate for each established unit.

In this instance however, the identification of bargaining units is intertwined with the presence of three bargaining agents. It is our view the Board must consider the history leading to the creation of the PCA, in particular its industrial relations aspect. The Board may not, indeed cannot, make its decision in a vacuum, as it must foster stability and peace in labour relations, otherwise it could undermine its very foundation by stimulating a bout of trade union strife throughout its jurisdiction, unsettling patterns and destabilizing employers, while injuring the bystander known as the employee.

The Institute believes that the Parks Hearings will have considerable influence in similar applications involving separate employers in the future, as well as to public service industrial relations as a whole.

PIPS, PSAC, APSFA are signatories to a non-raiding protocol involving NJC unions in the federal public service, as testified by several witnesses. Why? Ensuring labour peace between themselves. While the Board is obviously not a party to this protocol between unions, however it is reflective of union interest as to the stability of labour relations in the public service.

! ***Preliminary***

These hearings have gone on for nearly twenty days, not counting preliminary discussions between the parties; many witnesses have been heard and 30 inches of stacked documentary evidence filed. To move this case forward, counsel prepared submissions in writing. The Institute asks the Board to take into account that, at the time of drafting of this text, APSFA has two witnesses yet to be heard; as such, the Institute reserves the right to modify its presentation after the fact, in light of the testimony which may be given by these last witnesses.

Institute View

The Institute seeks to merge all of its current bargaining certificates into one professional unit at the Parks Canada Agency.

Without a doubt, the fragmentation of bargaining units imported into PCA should not continue. The Institute believes that its members put together form an appropriate bargaining unit and relative to its proposal which does not attempt to displace other bargaining agents, PIPS's approach is the most appropriate as it ensures succession and continuity of a true community of interest: that of professionals; it permits the employer to have streamlined labour relations for employees sharing a community of interest; community of interest not limited to the content of collective agreements which may be similar to other agreements, but must also consider the Institute's approach to labour relations, peerage, philosophy, which have deep meaning to its members: the professionals.

On the other hand, the employer's proposal would drown our members into a general bargaining unit, where the concerns and interests of professionals would be lost in the multitude. Accepting the employer proposal ignores public service history and well established communities of interest, exposing the employer to labour as it negates an accepted community of interest.

Let us turn to the various elements of this hearing.

The Employer's Case

We encapsulate the employer's evidence by concentrating on a few employer witnesses.

! ***Testimony of Alan Latourelle***

Mr. Alan Latourelle is the Chief Administrative Officer of the PCA. Under examination this witness painted the PCA in large strokes, describing business lines which cross-over. Distilled, Mr. Latourelle indicated the following:

- *Separate employer status, "he thinks", was for reasons of administrative efficiency and simplicity, It is noteworthy that M. Latourelle dos not affirm as to the reasons.*

- *In the Treasury Board universe, Parks issues were not addressed; these issues appeared very limited as the witness could only point out to "pay zones", which speaks to an issue also introduced by the PSAC through Mr. Bagnell. In fact this was the only direct labour relations issue Mr. Latourelle brought forward!*

- *Mr. Latourelle mentioned that for "staffing" purposes the Agency required flexibility. It was seeking to address mobility issues in collective agreements. He recognized, however, that PCA has full discretion; obviously, as the Public Service Commission is no longer an intervener , and that staffing is not part of any collective agreement.*

"Staffing" at this time is not a negotiated item, as we all know and collective agreements contain no language on the matter. The PIPS fails to see the impediment, au contraire! Parks no longer has to live with the checks and balances of the Public Service Employment Act.

Under cross examination by Institute counsel, Mr. Latourelle explained that "professionals" distinguished themselves from other employees as: as their function is to assess evidence and reach conclusions with several cross overs to other disciplines; further, he expressed that their knowledge is both professional by training, as well as contextual in its application.

- *As to the Institute's proposal before this Board, the Chief Administrative Officer could not explain in what way the union's proposal was incompatible with Parks objectives; the CAO admitted to not even having seen the document outlining the Institute's position. However, it was his view that Park's position before this Board was the most advantageous for the employer; certainly it is, it speaks to whipsawing and potential strike breaking!*

! ***Amy Campbell***

Ms. Amy Campbell is a consultant retained by the employer to develop the technical approach leading to the employer's proposal now before this Board.

Ms. Campbell states that she began working for PCA in September 1999. This is incorrect as she was at briefing sessions given to individual trade unions in July, 1999. At the time of testimony, the witness admitted that 80% of her income flowed from Parks, yet considered herself an independent consultant.

The witness produced considerable amount of documentation, laying the foundation of the employer's section 48 proposal. The key exhibit is"A6". Ms. Campbell sought commonalities, and in the end divided the Parks employment universe into two hemispheres:

- *Unit 1, program delivery, blue collars (skilled and semi-skilled), full-time, part-time, seasonal staff, employees in Field Units, white collar, employees having public-interaction, OSH concerns, a forty hour work week, outside environment, not Monday to Friday, etc. CR, ST, AS, PM, EL, GLT, GS, GT... and*

- *Unit 2, policy development, regroups all current PIPSC professionals, the FI, ES and SI, and assorted GT, GS, CR, ST, AS, PM, etc, as represented by the PSAC. It is important to note that similar PSAC classifications are also to be found in the other proposed unit.*

  Unit two is also described as a non-public face, indeterminate, 37.5 hour work week, full-time Monday to Friday, office environment with few occupational health and safety concerns, full time etc.

- *Under cross-examination, Ms. Campbell recognized the following common elements to PIPS members: most had university education, even for some classifications not requiring a university degree, such as CO and CS; she could not say as to PG. She recognized that members that PIPS members earn salaries which are as a general rule greater than for other employees. We put to the*

> *Board that the situation of PIPS members as a whole, is at the top end of the labour hierarchy, a reflection of their knowledge, and expertise suggest a community of interest.*
>
> *Under cross-examination, she defined professionals in the following manner: individuals who are university trained and working in their field of specialty; this leitmotiv will be heard by several other witnesses.*

The witness (Campbell p.5) examined some of the historic factors affecting the presence of different trade unions; it would appear however that this examination had little influence in her analysis, as supported by the employer's section 48.1 which sticks out like a sore thumb in the face of other bargaining unit configurations to be found some large employers.

In developing her analysis, Ms. Campbell admits speaking to numerous individuals but not the unions! She was unaware of discussions at the most senior levels between PIPS and the Chief Executive Officer, Mr. Tom Lee.

Attempting to explain why GS and GT's were to be found in both units, she explained that these individuals are very diverse in what they do (Campbell p.9). Speaking again to community of interest (A6.4 p.14, slide 1), this exhibit describes a non professional unit; again the witness recognized that a number of employees would have different "interests".

Finally, speaking of "seasonal" workers, Ms. Campbell recognized that such employees were blue collars and that she wanted the seasonal issue addressed in collective bargaining (Cam p.19). However, GS and GLT are to be found in the both units proposed by the employer; where is there community of interest, in relation to a division of blue-collars?

At Exhibit "A6.5 p.18" (Campbell p.5) speaks to the strike of 1999; the witness recognized that this strike by GL and GS employees had impact; but immediately contradicts herself, denying that it was a significant factor. We will explore the strike issue latter in this presentation.

! ***Christina Cameron***

Ms. Christina Cameron is Director-General, National Historic Sites Directorate responsible for the cultural, heritage and communications aspects of Parks. She is a member of the PCA Executive Board.

In testimony, Ms. Cameron admitted that no employees or unions were canvassed (Cam p 13). In other terms the Parks Executive Board made its decision of July 1999 strictly based on the paper exercise developed through the previous witness, Ms. Campbell. More surprising is her statement that she never saw the key document "Strategic Option for Bargaining Unit Configuration" (exh. A6.5), that Ms. Campbell declared was prepared in June 1999, and further admits that potential Bargaining Agent concerns were never discussed at Executive Board; the Institute questions on what basis the employer's Executive Board discussed the configuration of the bargaining units, as it appears through Ms Cameron that the Executive Board never saw the exhibit.

Ms. Cameron mentioned that the size of units was important as they would require "critical mass"; further, she recognized that the possibility of a strike had been a concern, but that now she could have employees in both employer proposed units!

Ms. Cameron is ignorant of the Institute's position before this Board, as to the continued existence of smaller unions in the PCA, she declared as having no opinions on the matter, in contradiction of the employer's section 48.1 application. This is rather strange coming from a member of the Executive Board, the same body which approved the "Parks Values and Principles" (Exh. A5.4, p.6) which speak of "… equitable treatment of our employees, both individually and collectively while respecting our diversity." In our opinion the PCA has failed to apply its own moral template.

Under cross by Institute counsel, Ms. Cameron indicated that her organization could well live with the presence of different bargaining agents within her administrative area.

Speaking to the issue of multi-disciplinary teams, that Ms. Cameron also called matrix teams, it was explained that the role of the professionals in such a configuration was in bringing in their specialized body of knowledge. The Institute underlines again the issue of Community of Interest based on the university background of most professionals.

Institute Witnesses

Several Institute witnesses dealt with the industrial relations aspects of its proposal before this Board, including Mr. Blair Stannard, Vice-President of PIPSC from 1985 - 1999 charged with the Parks file, as well as Mr. Harry Beach, Chair of the Institute's Group at PCA. Mr. Stannard's testimony clearly establishes that exchanges occurred between the most senior levels of both the PIPS and the future employer in 1997 and in 1998; the conclusion to these exchanges was the reasonable probability of only two bargaining agents remaining i.e.:

- *PIPS representing all professional employees, including those of SSEA and APSFA, on the assumption that these bargaining agents would not wish to pursue their representational rights in the new agency, and*

- *PSAC for its current membership, in a configuration to be defined.*

The testimony of Mr. Harry Beach, Chair of the Institute's Parks Group, points out that the Parks Group is de-facto recognized by the employer, as it was consulted on key issues, invited to meet with senior management and held national consultations, etc.

Speaking to the style of labour relations, Mr. Beach stated that the concerns of professionals are not those of a logger's union! The Institute recognizes that collective agreements in the public service are similar in content and language; but the key must be on the tone and emphasis of one bargaining agent versus another. We could go into minute detail of various agreements and the nuances above; however one has but to read section 1.01 of each PIPS agreement, including that of the SSEA, to observe that they all speak to "professional standards", whereas similar language in PSAC agreements does not mention this theme.

The Professional Role and Situation

Mr. Beach, Ms. Shelley Isabelle, and Mr. Earl Luffman, spoke of their role as professionals in the organization, how it meshes essentially with that of other professionals, as opposed to that of technical, skilled and semi-skilled employees.

The interests and emphasis of professionals is not the one which exists in a blue collar or in a white collar agreement; the Board has heard testimony underlining such emphasis, irrespective of the fact that many items in all collective agreements may be similar: professionals are focussed on an work regime which reflects, research, intellectual work, peer-review, professional development and collaborative approaches. This is contrasted by witnesses from the PSAC who essentially spoke of job security, pay zones and precarious employment for Employment Insurance reasons, as well as occupational safety and health. Two Institute staff officers explained bargaining unit structures essentially at the OSFI and the CFIA as well as at the National Museum of Science and Technology. Their testimony clearly demonstrates that the bargaining unit configuration to be found with these employers did not occur in a vacuum, but were the result of employers and unions adopting a pragmatic approach, something Parks appears not to be searching for.

We now turn our thoughts to what may be considered as the generic elements of this case before the PSSRB.

! ***The Community of Interest of Professionals***

The community of interest for the bargaining unit sought by the Institute is made up of the following elements, as its members are:

- *university trained*
- *concerned by research (Witness Tremblay) (Tre,p.18)*
- *working in their specialty; the work is intellectual, conceptual and involved in design (H . Beach). It matters little that the non-professional holds a university degree, if the degree is not a basic requirement for the job; it does matter however where it is, de facto, being required such as in the case of the SI as demonstrated by witnesses Luffman and Isabelle. As an example, C. Cameron indicated that HR are applied historians who work with planners such as AS and PM employees and as she indicated: the latter may have university degrees but they are not "professionals", as they carry out work from a different perspective.*
- *Mr. Tremblay defined the role of the professional as that of the thinker ("le penseur"), which ensures the linkages to and between other disciplines (Tr p.18)*
- *professionals are accountable, and have considerable latitude (Tremblay p.18)*
- *they integrate research and knowledge from different social and applied sciences (Beach); this work crosses over into specialized fields as testified by C. Cameron; professionals give specialized advice and counsel, which in turn are used by other employees such as GT for the carrying out of the work conceived and designed by the professional (H. Beach),*

- *the focus of professionals in carrying out their work is not technical, manual or clerical work. Rather, they have functional supervision - as exemplified by Doug Stewart's testimony (Stewart Exhibit A. 14 p.8) referring to a Resource Conservation Biologist BI-2 as the scientist and the GT as the one which applies the science*

- *professionals share their specialized knowledge with other professionals (H Beach) and their findings are published as opposed to other employees. (Luffman)*

- *in Examining exhibit A7 tabs 17,19, 21, 27 and 44, witness Campbell filed evidence clearly indicating that professionals tend to report to other professionals or managers as opposed to other classifications.*

- *professionals tend to be more geographically mobile ad mare usque ad mare than the general population at Parks, as supported by the testimony of Mr. Zinkan (Zin p.33)*

- *expectations of professionals are clearly different, as indicated by witness C. Cameron, as they must assess evidence and reach conclusions*

- *professionals are not subject to specific protocol in defining their work (witness Tremblay p.18) as they have considerable latitude.*

- *most professionals at PCA are full time indeterminate employees.*

In the end it is obvious that the professionals share a community of interest which is more specific than simply working for Parks; this is evidenced by witness Carol Whitfield speaking to exhibit A 11. 3 p.18 (p.7), where she declares the BI's community of interest lies with other scientist, as well as the BI and the PG!

We have drawn a tableau of Parks professionals pulled from the testimony of four employer witnesses:

- *C. Cameron declares that the AR, HR and CS share a community, and speaking to exhibit A 8.2 p.7 (p.8) that in examining the Regional Service centres: SI, AR and ENG employees all work together.*

- *L. Tremblay, says the same for the FI, BI, FO, HR, AR.*

- *C. Zinkan speaks the same of BI, CS and PC employees.*

- *C. Whitfield, says the same for BI and PG*

Four managers speaking individually have drawn us a map as to what, in their minds, constitutes a community of interest. This is near the Institute's proposal. Mr. Latourelle, towards the end of his testimony, when questioned by Institute counsel saw no inconvenience to efficiency in keeping together those professionals currently under the PIPS umbrella; Ms. Campbell recognized that such an approach was "consistent", and appropriate (p.4).

The Board is faced with a contradiction, by employer is testimony versus its official position. This contrasts with the consistent view and testimony put in by the Institute.

*! **Strike***

In 1999 members of the PSAC struck the Treasury Board, and in the process Parks Canada as it was then under Treasury Board jurisdiction. The Institute believes that the employer's proposal is designed to alleviate the possible effects of potential strike action by employees in national historic sites and parks, as it places traditional white and blue collar, as well as technical occupations in both units. This encourages whipsawing of units, and the use of strike breakers that the employer could send to sites affected by labour strife.

In so doing, the employer ensures its ability to maintain operations at the expense of either of the bargaining units suggested; an approach which is extremely divisive, as mentioned by several PSAC witnesses. It creates an imbalance of power between the parties. This is not to say that the Institute members in a distinct unit could not affect the employer it does however speak to our view that such employee's concerns would not be addressed in a "general bargaining unit"

Employer witnesses indicated the following:

- *Witness Campbell, referring to exhibit A6 to B4, page 13-14, said the strike was considered a strategic factor, and speaking to exhibit A6, 4, page 11, indicated the strike was fresh in the minds of the focus group developing the section 48 proposal.*

- *Christina Cameron testified that the employer proposal placed her employees in two units, admitting the possibility of strike was a concern. Employer concern may be seen through exhibit P 6.4 P.14 3rd slide, to the effect that two units, professional and non-professional would have the power to close operations. At exhibit A6, tab 4 P15 2nd slide examining the possibility of three units, the commentary "May be possible to carry on in reduced capacity if one unit strike". The strike issue is well evidenced, although employer testimony attempts to diminish its importance, it stands out! The employer has a hidden agenda which is now obvious! <u>It is this not a trivial as expressed, it is at heart of the employer's proposal</u>.*

*! **Multi-disciplinary Teams***

As an element the employer introduced the melting of a hodge-podge of positions concentrated in unit 2: multi-disciplinary teams, better known as matrix teams, where people get together around the table and each bring-in their specialty in reaching a common provisional objective.

These are temporary teams, not a reflection of the hierarchy, where people come and go. Their thrust is in conceiving, deciding, elaborating a plan to complete a project, and some individuals are more important, depending at which step the project team, e.g. "Fort numéro un, Pointe de Lévis", you would have architects, engineers and historians doing most of the intellectual work, as they conceive the plan and lead the project at the onset. An FI may come in and out and manage the budget, but the real thrust belongs with the scientists assigned to the team. Once the design phase is over, while not

becoming exactly secondary, they are overtaken over by technical personnel and labourers. Such teams are not specific to the Parks environment, they are generalized throughout the North American industry as a means to an end. Multi-disciplinary teams should not be the basis for any consideration by the Public Service Staff Relations Board in this application.

Classification and Job Descriptions

! ***Classification System***

Parks Canada inherited the Treasury Board classification system. In the Federal Public Service bargaining units are defined along classification lines; this need not apply to Parks Canada in absolute terms, as the parties attempt to regroup communities in some logical community of interest bubble. The Treasury Board, has various bargaining unit configurations which are recent creations; in fact, the proposal which the Professional Institute has before this Board is simpler, as it suggests that all of its current membership be in the same bubble, to which would be added those employees currently represented by SSEA.

! ***Job Descriptions***

We have been presented a multitude of job descriptions, some inherited from Indian and Northern Affairs, some from Heritage Canada, and others from Parks Canada; many of these are not signed off and not fully reflective of current duties which individuals carry out. We go further and suggest, as supported by some witnesses, that numerous positions are mis-classified, some GT should be engineers, some SIs should be historians, etc. The Institute accepts that positions may be mis-classified, but this can be fixed with the stroke of the managerial pen. It is an administrative problem, not a labour relations problem. The Board should not be concerned with this.

Numerous positions are vacant, in other words, they do reflect some imaginary empires which are useful to managers when going through downsizing as management, as management can simply abolish vacant positions; what is important is that some organizational charts are administrative fiction: in support of this, Mr. Doug Stewart, in reference to Exhibit A1, Tab 2, Page 7, speaking to vacant EG positions, only one of which was encumbered, indicated this position would be reclassified as an engineer. The Board should be weary of the organizational charts presented to it; this is not to say that they are of no use, but one should be cautious in these instances as they muddy the waters versus reality. In contrast, when one looks at the proposal signed by the Institute, no confusion exists when it comes to what professional positions are.

The employer intends to address the issue of classification by introducing the Parks Universal Classification System known as PUCS.. This is unlikely to happen, at least until the year 2002. Let us go one step further, and assume that PUCS is in effect; for PIPSC the most appropriate bargaining unit would still be one made up of professionals. In the real world, such distinction as classification standards are rarely key, as opposed to the concept of community of interest.

*! **Public Interaction***

One of the facets drawn upon by PCA is interaction with the public. We have heard of two types of public: e.g. the general public - the person coming through the gate, versus a more restricted public (stakeholders) such as contractors, counterparts in the provinces or municipalities, a distinction which per se is not always useful.

We look to Christina Cameron's testimony vis-à- vis exhibit A9, Tab 2, page 3, a PM is present with the public 10% - 15% is considered as having public interaction. Another individual, a CO, known as René Reid, in Unit 2 exhibit A10-2, page 10, (Mr. Tremblay's testimony) has no direct public interaction, yet deals with his Provincial/Municipal counterparts in selling the PCA. To say that people in the Policy Development Unit, (Unit 2) have no public interaction is incorrect, as exemplified by Mr. Beach a historian, and Mr. Luffman an SI, as they also deal with the public, although it may be a specialized one; it is not a question of haphazardness or occasional occurrence. Another example, the fire specialist at Exhibit A 10, Tab 2, Page 3 is part of the "service centre" (testified by M. Tremblay) i.e. the Policy Unit, whereas a similar position, another fire specialist, is part of the program unit as in Exhibit A9, Tab 3, Page 14, public interaction is not the focus of their jobs, as it would be for a receptionist or a gate keeper, or a public interpreter.

One can also observe some GT positions, which are technical (GT) interacting with the public, yet they are identified in the Policy Unit, such as witness Derek Cook.

The employer states that the operational unit has a public character to it. We do not dispute this, but are far from satisfied to say that it is exclusive to one unit as we see that positions in both of the proposed units deal with the public. We venture further expressing that most employees assigned to the "Program Unit" little contact with the public. The job descriptions of witness of Doug Martin, a Senior Park Warden - Law Enforcement (exhibit A14, 3.15 - 3.20) "contacts members of the general public are for the purpose of interrogation..." this is not exactly a public function yet the position is assigned to the policy unit. Adding to these inconsistencies, observe the Librarian position at Exhibit A10, Tab 2, Page 12, which obviously deals with the public, yet the employer places her in the Program Development Unit.

The distinction created by the employer is wholly artificial and should not receive consideration by the Board.

*! **Public Interaction Inconsistencies***

Were are faced with numerous inconsistencies in the evidence produced by the employer and in point to the following: Miss Whitfield, in reference to Exhibit A11, Tab 3, Page 19 and 20 speaking of managerial positions recognized that positions are inconsistently allocated in that organizational chart. We also see throughout the documentary evidence that CRs, PMs and ASs are to be found in both units, not necessarily respecting business lines, but appearing reflective of the establishment they work in. Another confusing example is Exhibit A 11, Tab 3, Page 27, a position know as IS position, to which Miss Whitfield clearly indicated that this position takes care of the tourist industry, has no dealings with the public, yet is put in Unit 1. Further, this position even wears a uniform. Why? Nobody can explain.

To push absurdity further, Ms. Whitfield in her testimony, in reference to the janitorial staff in Louisbourg (reference to Exhibit A 11, Tab 3, Page 8) states these employees deal with the public. While we have no doubt that they interact minimally with the public, it surely is not their main function. Another person who has been put in the operational unit (Ms. Whitfield's testimony in reference to Exhibit A 11, Tab 3, Page 3) is the SI, McKinnon. This person takes care of supplying bedding, conciliates and processes bills, yet she is placed in the Program Unit. Is this a job which deals with the public? Certainly not.

Confusion exists again on the issue of public contact in the employer's proposal. In reference to Exhibit A 14, Tab 3, Page 7, CO travel trade marketing officer (K. Fox) to which Mr. Doug Stewart indicated this position deals with the public, yet is placed in the Policy Development Unit. On the other hand, there is an AS4 position called CG Sanderson, at exhibit A 14, Tab 2, page 8, a real property services officer considered as dealing with the public, yet it essentially manages buildings; it is placed in the policy unit.

*! **Secondary Characteristics***

The confusion continues as at exhibit A 14, Tab 8, where a biologist 2 is considered as having a public face, because in responding to emergencies as it handles safety equipment, supposedly giving it a public face. The employer has concentrated on secondary characteristics as opposed to the principal aspects of the position. In another instance, at exhibit 9, Tab 3, page 9 in Mr. Zinkan explains that the GT4, the SI 1 and the CR 4 proposed for the policy unit, have a public face while this may not be the focus of their job. For professionals, the focus it is applying science, whether it be administrative science, social science, applied sciences whereas serving the public is a peripheral activity.

*! **Hours of Work***

Collective agreements resemble each other; however, some major distinctions appear in PSAC and PIPSC concerns. PIPSC members tend to look at more modern forms of work hours management, such as flex time, compressed time, banked time, Mr. Beach can be quoted as saying "when we leave at 4:00 pm, our brains don't stop". This is a key distinction as professionals, are not tightening bolts on an assembly line.

Industrial Relations

Let us turn to the industrial relations aspects affecting the Parks Canada Agency. The employer tabled a series of Public Service collective agreements, which have been reproduced, extended or amended by the parties as Terms and Conditions. It is noteworthy to consider Section 1.02, the "Purpose of Agreement" clause found in all PIPS agreements, which expresses: to maintain "professional standards;" FI's and ES also use this terminology; the PSAC agreements do not.

It is not by happenstance that such language appears in the PIPS collective agreements; this is not to say that employees who are not in what we identify as "professionals", do not conduct themselves in a manner unbecoming, rather Professionals are bound by some higher standards indoctrinated or handed down from or by universities or professional corporations.

Work contracts, whether they be collective agreements or individual contracts of employment resemble each other in their express terms, and I would venture even that of a "GIC", as: all speak of money, hours of work, some expectations and the working conditions: very little difference exists between these contracts. The difference lies in the community of interest, as exists between an engineer working at General Motors plant vs. the labourer turning bolts on the assembly line. The same holds true at Parks Canada: a biologist integrates a number of applied sciences, and social sciences, proposes a hypothesis, makes some rational deductions to see how this can be applied the universe from a different vantage point, as opposed to that of janitor, or a skilled technicians determining the type of varnish to be applied to Georges-Etienne-Cartier's chair. PIPSC collective agreements tend to be worded in broad terms - they are not traditional blue collar or even white collar agreements. PIPSC professionals are interested in peer promotion, professional development, training as opposed to concentrating their energy on coffee breaks, overtime, shift work. What is sought by a group of employees is as important in defining them, not just what is achieved through the bargaining process.

! ***Job Security***

A key issue heard from Public Service Alliance of Canada witnesses is job security, most certainly important to all, but more so when the type of employment one holds is precarious. Mr. Bagnell, witness for PSAC, clearly indicated that the main concern of his members was to get enough weeks to qualify for Employment Insurance; this is a far cry from the professionals who are seldom confronted with this type of economic misfortune. Job security was not mentioned by Institute witnesses.

Another distinguishing element raised by PSAC through Mr. Bagnell is salary zones. This is an issue exclusive to blue collars to crosses over to managerial testimony. It has never been raised with regards to professionals.

! ***Independent Third Party Review (ITPR)***

Witnesses were questioned (Mr. Latourelle and Mr. Bagnell) with regards to ITPR. A very distinct demarcation line exists between the views of the Public Service Alliance, versus that of the Professional Institute, as the latter refuses to accept the ITPR as it is not independent. Mr. Bagnell who worked on the committee that set up ITPR, admitted that it was not an independent process which could resolve issues other than directly related to the collective agreement. This is a reflection of philosophical differences between bargaining agents before the Board.

! ***Industrial Relations – Potential Interest***

Ms. Elizabeth Crooke, an SI, testified as to her interests vis- à- vis PSAC; we have several reservation as to her testimony, as she indicated she was paying double dues - one to SSEA and one to PSAC, the latter on a voluntary basis. Ms. Crook was not concerned with bargaining unit configuration at all; she was far more concerned with which bargaining agent would represent her and obviously, her preference goes to the Public Service Alliance. The only interest she mentions as a future possible working condition is "divorce leave"; when questioned on this subject by Institute counsel, she was unaware that the Institute had put such demands forward at another separate employer (CFIA), recognizing that the PSAC had not made, to her knowledge, similar demands with any employer. If we were to base our arguments on allocating the SI, strictly on a demand

for "divorce leave", we would say that Miss Crook and other SI should be represented by PIPSC.

Similarities

What are the changes brought about by the creation of the Parks Canada Agency, relative to the former Treasury Board? There are more similarities than there are differences: dispute arbitration has been suspended through an order in council at the Parks Canada Agency, just as in the Public Service, this for an organization that has just obtained its "independence"; we submit because the employer was ordered to do so by Treasury Board. No staffing language is to be found in collective agreements, just as there was none at the Treasury Board; in fact, staffing is now wide open at the PCA, as no regulator is present. The employer is resorting to an artifice.

! ***Human Resources Policies***

Vis-à-vis bargaining mandates and human resource policies, the Institute's experience of separate employers is the Treasury Board holds them on a short leash, as exemplified by the suspension of arbitration as a dispute resolution mechanism. The differences? You can say that staffing is different, for the reasons raised earlier, an independent third-party review which is being suggested, to which the Institute has not adhered to officially; no "National Joint Council" policies exists although the employer has not dropped these in fact, however, it has not given any indication that it wishes to negotiate these.

! ***Blue Collar***

Swaths of blue collar employees within at the Parks Agency are affected by unemployment, seasonal work, the number of weeks one must work to be eligible in order to receive employment insurance benefits, as testified by Mr. Bagnell. This is not a concern for professionals.

! ***GT***

GT employees are technical specialists. They do very precise work which although it may be related to some science, is limited to the material object which, is before them as exemplified by Georges Etienne Cartier's chair, (Mr. Tremblay's testimony). In other words, they do not interpret the broader context, e.g as to the uniforms of the British regiments in the war of 1812, the GT may be interested in buttons, but is not concerned with the broader economic, political, sociologic and demographic issues leading to the war. GTs are specialized technicians who reproduce, maintain and document these artifacts.

For higher classified GT positions, the entrance qualification is a community college/CEGEP degree, although it would appear that market considerations permit the recruitment of university graduates to occupy these positions. Irrespective, the basic requirement remain a degree from a technical school or CEGEP, as testified by Mr. Derek Cook. This is a clear distinction from professionals whose positions require a university degree.

*! **SSEA***

SSEA has not participated at these hearings; it has de facto abandoned its membership within Parks Canada. Approximately 67 employees are covered by the SSEA certificates at Parks, roughly 20 ES's and 47 or so SIs.

ESs are without a doubt, professionals in the fashion expressed by the Professional Institute; from this perspective both the employer's and the Institutes applications meet. The Alliance is in agreement with this position and we believe the issue of the ES's should be considered as disposed of by integrating ESs into the unit proposed by the Professional Institute.

As to SIs, they can be broken into two categories - although again certain positions may be mis-classified in this group. The first category of SI is the type very akin to a scientist, an archeologist or a historian, such as Mr. Luffman who does digs in the field, carries out the analysis and writes the reports flowing therefrom. These are professionals just as Mr. Luffman is in reality an archeologist as exemplified by evidence; further as he holds a university degree and his work is basically intellectual.

The second category is exemplified by Elizabeth Crooke: she performs work similar to that of a PG, a group of employees currently represented by the Institute in the broader Public Service as well as at Parks; she also basically works with other professionals in support of her key activity managing artifacts inventory and retrieve these for the use of professionals. Ms. Cook holds a University degree.

SIs may have a 'palette' of colours as demonstrated by Ms. Crooke, Mr. Luffman, Ms. Isabelle; overall, we believe they should be aligned to the Science and Professional Unit as their work intersects directly with the scientific foundation of Parks. They are managers of science and of the collection, not mere technicians. In support of this argument, if we look at the statement of qualifications which accompanies Miss Isabelle's job description, her most current S of Q clearly requires a university degree. The reality at the Park's agency is that SI are university trained; this is a constant of all of SI witnesses, and not a question of chance. Accordingly, the Institute would have the SI's and the ES be integrated into the bargaining unit proposed by the Professional Institute.

Park Wardens

Several witnesses have broached the subject of Parks Wardens, a group whose existence withing Parks is somewhat ambiguous.

It appears that the basic criteria defining a Park Warden are:

a) *the wearing a uniform, a distinguisher not described by any regulation, and*

b) *holding a weapon's permit known as a PC4 card. As to the mission of this corps, it applies Parks regulations to the public.*

We have heard that some Wardens are part-time, as their basic job is something else e.g. a biologist who happens to apply the regulations when working in an area and notices something unusual, but whose basic duties, are not those of a Park Warden. Other individuals wear the uniform, but do not wear the patches. Some people wear the

uniform and are not Wardens. To add to this confusion, Mr. Stewart in his testimony, referring to Exhibit A1, Tab 2, page 3 said "The Park Wardens was even more confusing", as some were to found in both of the bargaining units proposed by the employer.

Some of the Wardens are GT's, while others are professionals. As an example, individuals who identify themselves as being Wardens, but are only so in an incidental fashion; witness the position held by Mr. Charlie Pacas, a biologist who electrocutes fish in lakes, but wears the uniform. Other wardens are professionals, some are not - such as the fire vegetation specialist, BI2 position, Exhibit A 9, Tab 3, Page 14 - vs. that of a GT at Exhibit A 9, Tab 3, Page 12. In another instance, in reference to a certain Mr. Hunter who works one quarter of the time as a Warden and wears a uniform, (Mr. Martin' s testimony, in reference to Exhibit A 9, Tab 3, Page 15). Holding a PC 4 card is variable, as some individuals have valid cards and some do not.

The matter of Park Wardens must be set aside as it is confusing and of little use in defining bargaining units. It does not assist in defining a true community of interest as would a policeman 's or a fireman's uniform or even a nurse's uniform. Again, several of the so called Park Wardens are to be found in both employer proposed units - see Exhibit A 9, Tab 3, Page 12 - GT3 position.

Park Wardens do not form a community of interest. This element should not be considered by the Board.

*! **Uniforms***

One of the criteria elaborated by the employer was the wearing of the uniforms by different types of employees in the Agency. Janitorial services wear uniforms, people at the reception booths wear uniforms, Park Wardens wear uniforms, and we would venture to say that even people in laboratories such as biologists and historians may wear a uniform appropriate to their environment. But, to use uniforms as a distinction in this case, certainly is not sufficient to define a community of interest.

Inside/Outside Aspects

Among the delineating criteria retained by the employer is the distinction between the employees working outside, versus those working in an office environment. This is contradicted, as in some case, yes, some people do work 100% of their time in an office, such as in FI, but in other cases such as the biologist who is on fire control, Exhibit A 9, Tab 3, page 14 - the incumbent is not exactly working from an office when conducting a burn! Mr. Harry Beach indicated in his testimony that when he is on a dig, he is outside in the rain, in the sun, with mosquitos certainly this is not exactly an office environment. We recognize however, that for the large periods of time, some of these professionals do work in an office.

Mr. Stewart, in reference to an engineering position, had clearly enunciated that this engineer goes to construction sites, walking on scaffolds and handling explosives in certain instances; once again, this is not exactly the traditional office job. In reference to Mr. Stewart's testimony, speaking of a biologist position, it was recognized that the biologist goes out and walks around the swamps and the woods of the Rideau Valley, not exactly office work. In another example, with regards to Exhibit A 14, Tab 2, the engineer 4 uses diving equipment, and works in the office only 60% of the time.

The best analogy that can be made: is a truck driver an office worker? He is working inside, is he not? The same concept applies to an archeologist, biologist or engineer - it is a question of degree of circumstances.

Bargaining Unit Structures

What is before the Board, in terms of proposed bargaining unit structures by the various parties is not undue fragmentation of bargaining units; rather it is a reasoned approach by bargaining agents to reduce the number of bargaining units, while respecting each others lines, and continuing the representation of current memberships. This is certainly not incompatible with the efficiency reasons raised by Mr. Latourelle; what would be unreasonable is maintaining the multiplicity of bargaining units inherited from the Treasury Board. Managers testifying on behalf of the employer held the party line, but in the end when push came to shove, to a man and woman they said they could live with the Institute's proposal, as exemplified by Mr. Tremblay's statement to the effect, he had no problems with the Institute's proposal; this is some distance with the stated position of the employer! Mr. Tremblay went further, expressing the Institute's proposal would not change anything in his day-to-day life as a manager. Mr. Gordon and Ms. Cameron held the official position of Parks; but, when push came to shove, they indicated that the Institute's position did not create a problem for them as managers.

We quote Marc Brière, Jacques Grandmaison, Un nouveau contrat social, Montréal Léméac, 1980, p. 61. "L'unité de négociation doit être l'entité organique de base de la vie syndicale et de la vie économique: elle identifie une famille de travailleurs dans la vie syndicale et une unité de production dans l'organisation économique ou sociale. L'unité de né gociation est à l'organisation syndicale ce que sont le quartier, la ville, le conté ou le pays dans l'organisation politique des communautés locales ou nationales. C'est à ce niveau-là que se joueront tout d'abord, en ses différents aspects, la vie du syndicat et la vie de l'entreprise".

The debate before the Board is not one of administrative business lines or geographic dispersion, but one of community interest. The Institute seeks to consolidate its current representation, and by default, has included SSEA membership.

Park's Mission

Park's mission, as explained by Mr. Latourelle, is based on defined business lines: stewardship of heritage plans, management of cultural resources and natural resources, national and international collaboration, utilization by Canadians and its corporate services. Mr. Latourelle recognizes that the business lines are not clear cut, they do cross over. If we follow the business line approach, the employer should be proposing five communities of interest and not two.

Under examination by Mr. Bird, Mr. Latourelle explains the evolution to agency status, "he thinks" is for reasons of efficiency and simplicity; he does not affirm. Subsequent testimony given by management witnesses must thus be considered in light of this ambiguity.

Mr. Latourelle stated that when Parks was under the Treasury Board, Parks issues were never addressed; the only issue M. Latourelle could identify was pay zones, an issue crossing over to Mr. Bagnell's testimony.

Questioned further, Mr. Latourelle declared that PCA needed flexibility for staffing purposes. This is a rather strong pretence as here, it is under the absolute control of the employer; it is not mentioned in any collective agreement. If this is the basis under which the employer is putting forward this application, it is not serious or it is ill conceived.

Mr. Latourelle stated that the Parks position was the best one for his organization; fair enough, but he could not explain why, nor could he explain why the proposal put forward by the Professional Institute is incompatible to the needs of his organization. In fact, he never even saw it, yet he sits on the Executive Board which made the decision to approve this proposal; this is an incredible way in approaching future relations with whatever bargaining units are conceived from these hearings.

! ***Other Employers***

Ms. Campbell, at Exhibit A 6 filed a series of documents, graphically depicting bargaining unit configurations found with other employers. We will not go through the detail; what is homogeneous in her presentation is, as a general rule, where the Institute has continued its representation at separate employers, Institute professionals remain together. As an example, in the Canadian Food Inspection Agency, there is one large PSAC bargaining unit and there are three PIPS bargaining units; the CFIA is parallels in size and national scope, as it is spread from coast to coast and deal with the public, and public health. At the Office of the Superintendent of Financial Institutions, until recently when the units were merged, three PIPS units existed, today remains one small PSAC unit and a larger one with PIPS this for a 300 body employer. At CCC, PIPS is the sole bargaining agent representing employees in a general bargaining unit, for an employer whose total strength is 100.

We submit that the closest parallel is the Canadian Food Inspection Agency, and the Board should consider this aspect.

! ***Hours of Work***

Another distinction introduced by the employer are the work hours of certain categories of employees work - such as 9:00 - 5:00, Monday to Friday as opposed to shift work, seasonal work, etc. For PIPS, it has been established through the collective agreements that CSs may work shifts; evidence given by Ms. Cameron is that COs, although they generally work 9:00 to 5:00, except when they are doing business travel or travel trade shows. Mr. Beach testified that when he's on a dig, on an archaeological site, that he does very long hours, and so did Mr. Luffman. We acknowledge that a large portion of the hours worked are 9:00 to 5:00, Monday to Friday; but to say this is exclusively the case is incorrect. One has but to examine the SE working conditions, to notice where they have an average work year and they can schedule their time any which way they can and they only get their overtime after having worked 1,850 hours a year. The employer's argument taken alone does not stand.

The PSAC Position

The Board is faced with another issue, as the Public Service Alliance's official position before this Board has been somewhat contradicted by the testimony of four Vice-Presidents of the National Component. We wish to remind the Board that the National Component is not the bargaining agent, and the opinion of the component VP's

should be considered a simply coming from employees. This contrasts with the testimony given by Mr. Blair Stannard and Mr. Harry Beach on behalf of PIPS, the Bargaining Agent clearly enunciating the position put forward by the Institute. Irrespective, the Institute views the Alliance's proposal as being a unit which is appropriate.

The Act

The purpose of the Staff Relations Act is introducing a labour relations regime which ensures industrial peace in the Federal Public Service. The Board does not and must not make decisions in a vacuum, as it operates within a system which is applied and down to earth.

The proposal put forward by the employer is a divisive one suggesting that people with the same classifications GT, CR, AS, PM... could have different working conditions, different salaries. At the other end of the spectrum the PSAC's proposal to regroup its current membership under one umbrella and that of PIPS under another, ensures industrial stability, and is an appropriate bargaining unit. The PIPS, APSFA and PSAC have the advantage of ensuring continuity, historical reference, a reflection of what goes on to a certain degree with other employers in the Federal Public Service. These bargaining agents themselves who are part of the National Joint Council have signed a non-raiding protocol.

The Board's decision impacts beyond the Parks Canada Agency. Its repercussions either maintain some semblance of continuity and history or send the large bargaining agents into a labour relations competition, with employers caught in the middle, and employees affected by turmoil.

! ***Bargaining Unit versus Bargaining Agent***

We stated earlier, the Board's first mission is not in defining which bargaining agent will represent employees. It's first role is defining the bargaining unit, something which is difficult, as a result of the presence of the bargaining agents before it, as they have history, are present in the workplace, are known to Parks Canada, and no outside union is upsetting the balance.

The ability to represent employees, whether they be professionals, the technically skilled, the blue collars, the financial officers ... is admittedly immaterial to the identity of the bargaining agent to do so. However, the Professional Institute has never sought to become a general trade union. If it did, it might as well be called CSN, CUPE, CAW. Professionals in the Federal Public Service, including those of Parks Canada know they have a bargaining agent which is dedicated to their concerns. Accepting the employer's proposal lines drowns the professionals in the sea of a general bargaining unit. It must be rejected. What should be accepted, is a bargaining unit of professionals.

! ***Single Bargaining Unit***

In the course of the hearings, the Board indicated to Counsel, they should prepare arguments, pro and con, relative to a single bargaining unit. The Act gives the Board broad powers, as it can configure any bargaining unit it deems appropriate. In this case, it has the opportunity to define the "most appropriate".

In Canadian terms, Parks Canada is considered a large employer as it has 5,000 employees. Certainly it may not compare in size to General Motors, Bombardier, Canada Customs and Revenue Agency, Canada Post, etc., but it is still a large employer.

One single bargaining unit would not be conducive to industrial peace. As we have stated above, as professionals would loose in this exchange.

Beyond the straight salary issue, concerns of professional are training, professional development, modern forms of work hours, the integration of science into the Parks business, contrast this to Alliance witnesses have spoken of seasonal work, pay equity, unemployment insurance and job security. In establishing an appropriate unit, one must take into account the preference of employees, the history of the bargaining units present in the workplace and a definite tendency of Labour Boards to reduce the number of bargaining units, while considering communities of interest. The Board must, in defining the bargaining unit, consider the greatest advantage of all, and reject artificial restrictions. PCA's proposal is an artificial restriction, attempting to whipsaw unions, in order to potentialy strike break through a division of inside/outside labour, and by placing similar classifications in both units of national scope.

To quote Professor Gerard Hébert's "Traité de négociation collective" page 619, "le but de l'accréditation n'est pas de bouleverser l'entreprise, mais d'assurer aux salariés le droit à un négociation ordonnée et efficace." Further, at page 619 Professor Hébert also states balkanization of collective bargaining should be avoided. Bargaining agents are proposing three bargaining units: one for the FI's, one for PIPS and one all-encompassing general unit for PSAC, this is far from balkanization. Speaking to the dimensions of bargaining agents in reference to Professor Hébert's treaty on Page 621, "de notre côté, la grande unité risque d'étouffer tout particularisme, et contribue, pour sa part, à faire du travailleur un numéro pour son syndicat, tout autant que pour son employeur." Professor Hébert (Page 624), speaking of liberal arts professionals, in reference to the Canada Labour Code which favours regrouping bargaining units composed of exclusively of professionals, points out that such bargaining units may also include employees carrying out duties akin to those of professionals but without having a university degree.

The PSSRA at Section 33(2) reads "in determining whether a group of employees constitutes a unit appropriate for collective bargaining, the Board shall have regard to the plan of classification, including occupational groups, or sub-groups established by the employer for positions in the Public Service." Unless any such bargaining unit would not permit satisfactory representation of the employees to be included, this does not mean that the Board must apply the classification system in effect at Parks Canada, a carbon copy of the Treasury Board's, <u>but it certainly must consider it</u>. The proposal put forward by the Professional Institute is much closer to continuity when one speaks of classification and occupational groups established by the employer for positions in PCA, rather than the employer's suggested model. <u>Ample room exists at Parks for several bargaining units including one for professionals</u>.

The Institute does not support artificial bargaining unit lines, however, what the employer is proposing is just that. It has alluded weakly, that it requires this to ensure some flexibility for staffing. The Institute suggests that as a result of the current classification standard, being that of Treasury Board, and of history, the employer is actually shooting itself in the foot by its proposal; whereas, APSFA the Alliance and Institute proposals covering current memberships rationalize the movement of human

resources within their respective proposals. Again, we remind the Board, staffing is not a negotiated item at this point in time. We also underline, that in no instance was there a mobility issues raised for PIPSC members. The Institute's proposal ensures industrial stability; it does not maintain the ante-status quo of ten small bargaining units just for PIPSC.

I turn to one of our authorities, Canada Post Corporation a CLRB decision form 1988; 150 PIPSC members made up of CS and Eng, NU employees were present, in a 50,000 body pool, as Canada Post inherited three small bargaining units from Treasury Board; the question the CLRB put to itself was, whether it was appropriate to maintain these groups, or was it to sweep them into larger bargaining units; the Board dictated the latter as the work was performed by a relatively small number of individuals: "it is simply not appropriate to maintain a group of 150 employees as a separate bargaining unit as their ability to negotiate effectively would be totally without meaning." This is not the case at hand at the Parks Agency as we are addressing of approximately 10% of the total number of employees, unionized and non-unionized, which would be represented by the Professional Institute, whereas in Canada Post it was less than 0.3% of the population.

To paraphrase the Canada Post Corporation 1988 decision in determining the appropriate units, the Board will consider among other things:

- *Duties, qualifications, skills and tools of the employees;*
- *Work rules and conditions applying to them;*
- *Transfer and interchangeability between employees;*
- *Integration or interdependency of one to another;*
- *Employee preference.*

Most Appropriate Unit

The Act speaks only of "appropriate" bargaining unit. Nonetheless, at the commencement of the hearings, the Board clearly indicated its intention to establish the most appropriate bargaining unit.

The most appropriate bargaining unit is one which closely meet the needs of the employees and the employer today and in the near future, allowing the employer to conduct its operations in a reasonable and logical manner as possible, while at the same time protecting the rights of employees as provided under the Public Service Staff Relations Act. The Board must consider a configuration which allows and provides for employees the greatest benefit while employed with the Parks Canada Agency, to alleviate, to the extent possible, considerable fears with regards to job security to permit the greatest amount of flexibility to employees in furthering their careers within the organization, without being artificially restricted.

Professionals are looking for a formal recognition structure within the organization; the testimony of management witnesses points out that the employer would have no real difficulty with the PIPS proposal. It is our belief that the bargaining unit sought by the Institute is appropriate and strong enough to negotiate satisfactory collective agreements. We put to the Board that regrouping the PIPS professionals under one umbrella, including SSEA, establishes a "rapport de force", a sufficiently strong unit with the ability to affect PCA's planning, purchasing, long-term research, in a fashion bringing the employer to negotiate an acceptable collective agreement.

From the Canadian Broadcasting Corporation 1977, Mr. Norman Bernstein, then a member of the CLRB at page 21, says: "There is more to labour relations than law, economics and the techniques of collective bargaining. A host of factors is difficult to evaluate, particularly in this field, influence how an employer and his employees get along. The impact of the prevailing social climate, the ideology or socio -political positions of the parties, their self-image and respective goals, not to speak of their relative economic and political strength are also factors in the labour relations equation." These elements speak in support of the PIPS proposal.

Further, Mr. Bernstein at page 22 of the decision: "Bargaining units encompassing thousands of employees spread over vast geographic areas can, by their sheer magnitude, be less effective than smaller units. The advantages of size and considered bargaining power are often counterbalanced by less flexibility in responding to local and regional needs and interests. In negotiating on behalf of all those it represents, the large bargaining agents, must at times of necessity, sacrifice some of it's constituency for the sake of the mass." This is the inherent danger in the employer's proposal, as professionals would be drowned in the mass.

Doctrine and Jurisprudence

The Institute has used the expression "Professional" throughout the hearings. For reference purposes, we have included some definitions coming from Gérard Dion Dictionnaire canadien des relations du travail where two definition can be found; we draw your attention to the one entitled "professionnel salarié" which reads: "les caractéristiques du professionnel salarié sont une formation poussée de nature spécialisée, l'autonomie professionnelle et l'acceptation d'un code d'éthique de la profession." In another definition in Dion's dictionary, "professionnel" is: "personne qui exerce un travail déterminé d' une façon habituelle, en fait sa carrière et le moyen de gagner sa vie et celle des siens."

Another authority is Labour Law Terms, by Jeffrey Sack, which defines a professional employee as "one whose education, training and qualifications may, in some Canadian jurisdictions, result in special treatment such as exclusion from collective bargaining, inclusion in a separate bargaining unit, etc."

We turn to some broader doctrine and refer to Professor Gérard Hébert's Traité de négociation collective. At page 619 it speaks of a natural bargaining unit basically constituted on two elements; a community of interest and a certain homogeneity of occupations; this natural unit is concerned with the preservation of labour peace in the business.

We turn to Jacob Finkleman and Shirley Goldenberg Collective Bargaining in the Public Service, at page 100 Mr.Finkleman speaks of two fundamental approaches as to the type of bargaining unit: "On the one hand there are arguments to be made for the multiple unit approaches that emphasizes the criteria of community of interest among the population of the unit, on the other hand, if composite units were established, craftsmen and professionals find themselves in the minority and there special interest in these might be subordinated to the wishes of the majority". This is in fact, what the employer is proposing by lumping the professionals with CRs, ASs, PMs, GTs, etc.

We refer to section 33 (2) of the Act: "in determining whether a group of employees constitutes a unit appropriate for collective bargaining, the Board shall have regard to the plan of classification". This does not mean that the classification is all-encompassing as in the Treasury Board example of classifications; in fact, when one looks at the french version of the Act, it says "La Commission tient compte du mode du classification"; "tient compte", does not mean the Board is bound by the classifications. The current classification tools, in effect at Parks Canada are those of the Treasury Board, and vis-à- vis the application of section 33(2) of the Act, nothing has changed concerning the classification plan.

Again in Finkleman, at Page 116 speaking to the larger units, says the more likely it is that minority within a group will feel that their special interests have not been adequately recognized and the greater the possibilities of internal friction, this we put, is what the employer's proposal means; problems will occur, as it is undeniable that 350 - 450 professionals would be drowned in a 1,500 body unit. Bigger in this case, does not mean better bargaining.

! ***Review of the Jurisprudence***

 General Principles

In Canadian Museum of Civilization at page 9, the then CLRB: "in matters of determining appropriate bargaining units, it is trite law that a labour relations board is vested with the ultimate discretion in determining what constitutes and appropriate bargaining unit. That issue is not a question of law, but rather a factual determination that is dependent on the circumstances of each case".

Certainly, the Professional Institute is in agreement with this approach, and emphasizes that the criteria established over the years by the Labour Relations Boards are guidelines to be followed, "Signposts which may lead to a particular conclusion, but should not slavishly be followed. It is quite logical, that no two cases involving the determination of appropriate bargaining units will ever be exactly science" (Canadian Museum of Civilization).

In Canadian Museum of Civilization, the direction the Board took was in establishing bargaining units that allow the employer to conduct its operations in a reasonable and a logical manner as possible, while at the same time protecting the rights of employees.

 Community of Interest

In Canadian Museum of Civilization a small employer made up of roughly 500 employees, the Board determined that two bargaining units would be appropriate. One general unit to PSAC, and another small unit to PIPS. Traditional PIPS groups, whose contingent was small such as engineers and CS, went over to the larger PSAC unit, while another unit for PIPS was established as all, HR and SE were to be found in one administrative unit within the Museum of Civilization; this is not the case at Parks where professionals are spread all over the organization.

The National Capital Commission decision referring to a United Steel Workers of America versus Usarko 1967 decision of the OLRB. The criteria used to assess the community of interest was, and remains:

- *Nature of work performed;*
- *Conditions of employment*
- *Skill of employees*
- *Administration*
- *Geographic circumstances*
- *Functional coherence and interdependence*

Although these criteria remain valid, it is fair to say they must be interpreted in light of the current collective bargaining conditions. The conditions of employment are of professionals are generally similar, with some differences; one must consider the nature of the work performed by professional is scientific in nature, it is intellectual, it is conceptual, it is integrative.

Of the test criteria, one speaks to professional standards, i.e. the skills of employees, our members are highly educated, they are university trained. The administrative structure of Parks seems to have little impact on either of the parties proposals here, and the very nature of Parks Canada disperses employees geographically throughout the country.

The final element is functional coherence and interdependence. If we were to follow the employers proposal, the employer is be divided along the five or six business lines, implying that an equal bargaining units could be established; however this is not is not be sought by any party.

In testimony, some witnesses expressed that Parks Canada is one big family, and that the broadest community is that of Parks Canada. In Canadian Museum of Civilization at page 10, this issue is addressed in the following manner... "all employees work together to the fulfilment of the broad objectives of the organization is another factor which justifies the single bargaining unit. The latter proposition is obvious and true and it applies to all undertakings in all fields and not merely to the Museum. But this has not deterred labour relations boards from determining that several bargaining units are sometimes appropriate, nor has it restrained organizations from efficiently managing their labour relations when dealing with several bargaining units". (emphasis added).

Speaking to multi-disciplinary teams, in Canadian Museum of Civilization (page 11, paragraph 2) "the dissemination of knowledge can take several forms. In the case of an exhibition, there is a work relationship between the scientific researchers and the other participants responsible for the production of the exhibition and parallel activities. Thus, the scenario developed by the researcher provides the necessary link between the scientific research findings and their concrete expressions for the purpose of dissemination." In our opinion, the some holds true for the professionals at Parks whether they be historians, biologist, archeologists, engineers, etc.

Again on community of interest, in Canadian Museum of Civilization (page 12), the CLRB indicated: "a separate bargaining unit offers a group of employees whose work and occupational training characteristics significantly distinguish them from all the other employers is an appropriate mechanism for negotiating there conditions of employment". We believe this holds true for our members at Parks.

- ***History***

The Board should consider the history of certifications and negotiations which existed before the creation of the Parks Agency. We agree that this case should not be treated as a first application for certification, that certainly is not the purpose of section 48.1, but analogies exist: in Canadian Museum of Civilization at page 10, third paragraph, "in this regard, the historical criterion is a factor that may be taken into consideration because the pre-existing facts still remain"(emphasis added).

We have heard in testimony, that overnight certain things did change, while overall, most did not. What changed in substance:

- *the suspension of the National Joint Council policies, taken out of the Collective Agreement by virtue of legislation,*

- *staffing, which no longer has the checks and balances of the Public Service Commission, in fact the employer has a freer hand on this last matter.*

- *Vis-a-vis the substance of collective bargaining and the issues that we see here, with the exception of the National Joint Council, there has been in reality no change as to the pre-existing conditions, and in fact the parties have signed memoranda of understanding reproducing the terms and conditions of various collective agreements for similar groups found at the Treasury Board.*

- *The employer alluded to "pay zones" as a problem, to which the Institute expresses: if it was so concerned, it could have negotiated this at on set through the re-opener clause found in collective agreements.*

We refer you to Section 6 (1) of the Parks Canada Agency Act dealing with the responsibilities of the Agency; the Agency is responsible for the implementation of policies of the Government of Canada that relate to national parks, national historic sights and other protected heritage area. In sub-paragraph 2, the Agency shall ensure that there are long-term plans in place for establishing systems of national parks, national historic sites and marine conservation areas. The Act reflects somewhat, the community of interest of employees represented by Professional Institute as, who does the long term plans? It is management, through the intellectual and conceptual power it can harness, i.e. the professionals; a parallel can be drawn with the Canadian Museum of Civilization, where the scientific researchers were deemed as insuring that the first set of the Museum's objectives are fulfilled were placed in a distinct bargaining unit.

In the National Energy Board decision at page 7, in reaching its conclusion the Board had taken into account that there had been no change in the mandate of the employer, just as in the Parks situation, and that the Terms and Conditions of Employment had remained essentially the same. One should note that the number of employees represented by the Professional Institute at the National Energy Board is approximately 100 out of a total of approximately 300 employees.

In Canada Post Corporation 1988, several unions were in play, and the Board at page 22 of the decision is to be quoted "The employees have historically approached collective bargaining differently than has either LCUC or CUPW. There needs and desires are different as a result of their respective working conditions". We believe this decision has

'echo', vis-à- vis the professionals; as Mr. Beach has expressed, professionals historically approach bargaining in a different, more collaborative fashion. To quote Mr. Beach, "We are not a logger's union."

*! **Appropriateness of the Bargaining Unit***

In the case of Canadian Forces staff of the non-public funds decision in 1998 PSSRB 125-18-78, a consolidation requested by the employer under section 27 of the Act; the employer argued that it was allowed to implement a new job evaluation plan and simplify the organizational structure of Canadian Forces Base, Gagetown. It was found that "consolidation of long-standing bargaining units must be approached with caution requiring strong and cogent evidence to justify the altering of an existing bargaining structure which appeared to work well over many years". We submit that a de facto PIPS bargaining unit/employee organization exists and is recognized by the employer. A bargaining structure of 10 PIPS units exists and should be married into one.

In National Energy Board involving the Professional Institute, PSSRB file No. 125-26-60, involving a section 27 under the PSSRA, (page five, last paragraph) the Board made two fundamental determinations, while it made no finding as to whether the classification plan of the employer was a plan of classification for purposes of the Act. It did find on the basis of the evidence induced, that a single bargaining unit would not permit satisfactory representation of the non-professional employees. It also found that there were two appropriate bargaining units. One of which was described as the professional unit, and the second included all other employees. The Staff Relations Board's determinations were based on lack of community of interest between these two groups of employees, and under the Section 27 Request for Review (NEB Page 6).

In the National Capital Commission case, PSSRB Files # 142-29-312 & 313, the National Capital Commission became a separate employer. Both PIPS and PSAC were present and applied for certification for all remaining employees to be encompassed within a proposed administrative and technical bargaining unit. In this instance, the applicants alleged that there was a lack of community of interest between these employees in the proposed professional bargaining unit and employees in the proposed administrative and technical bargaining unit. The Board found that one unit comprised of all employees of the employer was appropriate for collective bargaining, as this was co-extensive with the employer's plan of classification. The Board indicated in this decision, that it's policy was to avoid a proliferation of bargaining units. In the same decision however, the Board in reference to the Heating Power and Stationary Plant case - Board File # 146-2-138-140-142 said "that is not to say that there are no circumstances in which a service-wide occupational group should not be split into two or more segments. In relation to the NCC, it is noteworthy that its 800 employees are centrally located in the urban Ottawa-Hull area - a considerable distinction from Parks.

The NCC decision also refers also to the Canada Post Corporation, 1988: "Our principal objective is to ensure that the configuration of bargaining units that we determine allows and provides for employees the greatest benefit while employed with the corporation, to alleviate to the extent possible, their considerable fears with regards to job security to permit the greatest amount of flexibility to employees in furthering their careers... "

The Board adheres to the philosophy that favours the formation of large bargaining units and looks with disfavour on the notion of artificial fragmentation of bargaining units."

Referring to the same decision, the Board indicated that it was not obligated to establish the most appropriate bargaining unit. Nonetheless, it did indicate that it remained its intention to establish bargaining units" which most closely met the needs of employees and of the employers today and in the future". (page 19 of the decision). Again at page 19: "The direction the Board has taken in the instant case has been to try to establish bargaining units that will allow the employer to conduct its operations in as reasonable and logical a manner as possible while, at the same time, protecting the rights of employees as provided under the Canada Labour Code"; further: "Our principal objective is to insure that the configuration of bargaining units that we determine allows and provides for employees the greatest benefits while employed with the Corporation to alleviate to the extent possible their considerable fears with regards to job security and to permit the greatest amount of flexibility to employees in furthering their careers within the organization without being artificially restricted."

In Canada Post 1988, page 23, the Board described as of equal importance, the disappearance of artificial boundary lines between two bargaining units, as opposed as jobs in different units worked in a continuum. One must appreciate that, in the Canada Post decision, seniority between various bargaining units was an important issue. This is not so in the Parks case, as seniority does not exist in the Public Service, and is not to be found in the Collective Agreement.

In Canada Post 1988, the employer's proposal, at least for PSAC, meant that bargaining units would whipsaw units, whereas the PSAC's proposal to regroup all its members avoided this. This finds application at Parks Canada. "Whipsawing" can be explained as creating higher and greater expectations being seeded in the minds of employees, and bargaining for both sides gets more and more difficult, if not destructive (Page 23, paragraph 3 of the Canada Post decision). This is what PCA is doing by placing similarly classified positions in different units.

Again in Canada Post, Institute groups had sufficient commonality with other groups represented by PSAC and thus, they were lumped in with PSAC. We underline this represented 150 employees in a 50,000 employee organization or 0.3% of the population.

In Atomic Energy of Canada Limited, Canada Labour Relations Board (decision # 1135, at page 4) in reference to a decision of the British Columbia Labour Relations Board, it is expressed "The Board will not lightly interfere with established bargaining structures, particularly in cases where to do so would result in the loss of bargaining rights for one of the trade unions involved." Although the case at hand is a section 48, not a section 33 request for consolidation of bargaining units, we turn to the AECL/itself quoting the BCLRB p.5: "The Board will not consider consolidation applications in the same way which it considers fresh applications for certifications." Further, the same decision: "Mere Administrative inconveniences and inefficiency of itself would normally not suffice". Parks Canada's Chief Administrative Officer declared that the employer 's proposal was he thinks for reasons of efficiency.

The Institute proposal does not inhibit efficiency.

In Atomic Energy of Canada Limited decision at page 5, the CLRB is to be quoted "The Board is properly, much more concerned with the interests of employees as such and in the instant case there has not been, as there was in some of the major restructuring cases which have been referred to, any expression of employee dissatisfaction with the present structure, nor has the employer established but employee interest would be better served to any significant degree by a changed structure." (emphasis added). We put to this Board, that no PIPS members expressed dissatisfaction vis-à- vis its proposal, nor did any other bargaining agent. The real bargaining unit structure within Parks and is PSAC, PIPS, APSFA, and SSEA, the latter no longer being a player.

Section 48 (4) of the Act, gives the Board authority to determine whether the employees of Parks Canada who are bound by a collective agreement constitute one or more units, appropriate for collective bargaining. The Act speaks of one or more units, as such, the Board must envisage this.

! ***Multiple Units***

The CLRB, in addressing the issue of fragmentation of bargaining units, itself referring to the British Columbia Ferry Corporation decision 1977, in Canada Post Corporation in 1988 (p.20), "The need to guard against fragmentation of the employees among more than one bargaining unit, with the latent potential which that would have for competitive bargaining in sequential shutdown of the essential service." At no point was the issue of "essential services" raised by the employer for any of its programs.

In reference to the Air BC Ltd. 1990 decision, Canada Labour Relations Board, the conclusion was that a five-bargaining unit structure was appropriate, as it reflected the practice which has evolved in the airline industry, based mainly on diverging communities of interest in various occupational groups in this industry; one must note that Air BC had grown from 150 employees to 900 strong. The parallel to be made at Parks is: their exists a federal public-service industry, where several bargaining units are to be found with the same employer; parallel this instance to the Treasury Board universe, or consider the configuration found at the Canadian Food Inspection Agency.

! ***Employee Wishes***

The Patent Examination 1988 PSSRB 142-2-274 decision applies to Parks, as the Board has heard from Professionals that they wish to be in a distinct bargaining unit; at no time was it expressed by professionals that they wished to be in a larger unit as put by Institute's witness, Harry Beach, who expressed "we are not a loggers union".

In the Patent Examination case the Board determined that a district bargaining unit was warranted, as Patent Examiners were part of the Scientific Regulation bargaining unit, and as their existence in this last structure (page 15) "... caused frustration unhappiness and discord in the bargaining unit. From the very beginning, the inability of the two sub-groups to co-operate has seriously impaired there capacity to participate effectively in collective bargaining".

We quoted Mr. Norman Bernstein earlier in the Syndicat des employés de production du Québec and Canadian Broadcasting Corporation and CUPE in a CLRB decision # 94 of 1977. These have application at PCA.

! ***Human Resources Management***

In Via Rail Canada Inc., CLRB decision 963, 1992 decision, two craft unions, one working for CN and one working for Via, were merged by decision of the Board, as no substantial and distinct community of interest existed between these separate craft employees. At page 14 of the decision, it is indicated clearly that the employer was hampered by lateral mobility of all craft employees in their long-term job security - the existence of ward jurisdiction disputes, and two seniority systems. At page 14 "This panel of the Board does not believe that it is sound practice to establish as appropriate, a bargaining unit composed of white collar and blue collar employees." Contrast this to the Parks Canada Agency: no real impediments appear to affect the administration of the employer, no seniority applies, no impediment exists vis-a-vis lateral mobility as the employer controls all of staffing. The other concern raised by the employer was "pay zones" although it never expanded on this.

Final Remarks

The positions put forward by the three bargaining agents in this instance speak to sound labour relations, as they are a reflection of the history and the continuity of labour relations in the Federal Public Service. This is emphasized by the fact that none of the bargaining agents wishes to step over each others boundaries. The only issue at hand, between the PSAC and the Professional Institute is to the SI's go.

We believe, based on the Jurisprudence that SI are akin to Professionals and should be meshed with the unit as proposed by the Institute. The employers proposal is one of administrative convenience, it is intended to whipsaw and potentially pits employees against employees, drowns professionals in a broad community of interest where they will be in a minority situation, a situation non conducive to labour relations peace.

The single bargaining unit also will not lead to labour relations peace, as we refer to Mr. Bernstein's comments in the CBC decision, 'larger is not necessarily bigger'. Again, you would have to pit 5,000 employees with divergent interest - one who is pulling to get unemployment insurance versus the other who is trying to fight for professional development and peer review. Although not necessarily in opposition, they are quite a contrast, and reflective of different of interests.

! ***The Board's Role***

The Board's role in this for the purpose of this section 48 application in our view is:

- *At 48(4)(a) to determine whether the employees of Parks Canada constitute one or more units appropriate for collective bargaining.*

- *At 48(4)(b) determine which employee organization shall be the bargaining agent for employees in each unit.*

In order to make its determination at section 48.1 (4), in our opinion, the Board must consider all of the facets of the Act, and in particular, section 33(2), which directs the Board "to have regard to the plan of classification, including occupational groups and sub-groups, established by the employer for positions ... and shall establish bargaining units co-extensive with classes, groups ... unless any such bargaining unit would not

permit satisfactory representation of employees ... and would not constitute a unit appropriate for collective bargaining."

The Institute's position is the one closest to the Act, as:

- *the classification system is the same existed previous to conception of the Parks Canada Agency;*

- *the boundaries proposed by PIPSC have endured through the years, with minor exceptions;*

- *the entrance requirement for most of the positions coming within the realm of PIPSC's proposal require a university degree. Where no degree is required by the classification standard, the basic job requirements for the positions sought by the Professional Institute of the Public Service of Canada, de facto require a university degree.*

- *It ensures industrial peace and stability.*

We ask that the Board grant the Professional Institute's application.

For the PSAC

I. INTRODUCTION

1. *The Board is being asked in this matter to fashion a bargaining unit structure for Parks Canada employees that provides for effective collective bargaining and the efficient administration of labour relations. The parties have presented the Board with significantly different proposals. The Board, in the course of the hearings, has asked the parties to address an alternative option. Simply put the questions are:*

    a. *In exercising its authority, pursuant to Section 48.1(4) of the Act, should the Board find two bargaining units of Parks Canada employees appropriate for collective bargaining based on the employer's proposal for the creation of a Program Delivery and a Program Development bargaining unit or should the Board find that two or three bargaining units are appropriate for collective bargaining as proposed by the certified bargaining agents.*

    b. *In the alternative, should the Board find that one bargaining unit of Parks Canada employees is appropriate for collective bargaining.*

2. *The present applications are pursuant to Section 48.1 (3) and request a determination pursuant to Section 48.1 (4): which states:*

    a. *Where an application is made under subsection (3) by an employer or bargaining agent, the Board, by order, shall*

        i. *determine whether the employees of the separate employer who are bound by any collective agreement or arbitral award constitute one or more units appropriate for collective bargaining;*

ii. *determine which employee organization shall be the bargaining agent for the employees in each such unit; and*

iii. *in respect of each collective agreement or arbitral award that applies to employees of the separate employer,*

1. *determine whether the collective agreement or arbitral award shall remain in force, and*

2. *if the collective agreement or arbitral award is to remain in force, determine whether it shall remain in force until the expiration of its term or expire on such earlier date as the Board may fix.*

3. *The Parks Canada Agency was proclaimed on April 1, 1999. The employees of the Treasury Board of Canada who had been working for Parks Canada prior to the transition on April 1, 1999 ceased to be employed by the Treasury Board as of that date and became employees of the new agency.*

4. *The creation of the agency takes the Parks Canada Agency employees out of the sphere of Treasury Board negotiations. The new employer has the authority, as mandated by Treasury Board and subject to the Act to negotiate collective agreements that will govern the terms and conditions of its employees. It is a new era of collective bargaining that will build on the foundation of the collective agreements negotiated in over thirty years of Public Service wide collective bargaining with Treasury Board. These collective agreements continue in force until they expire or are renewed under a new bargaining regime with the Parks Canada Agency. In April 2000, the Alliance came to an agreement with the employer to apply to Parks Canada employees the major provisions negotiated with the Treasury Board of Canada in the last round of bargaining. This agreement is reflected in a Memorandum of Understanding (exhibit: C-4, Tab 2).*

5. *On August 3, 1999, the Professional Institute of the Public Service of Canada filed an application pursuant to Section 48.1 seeking an order that would recognize a PIPSC bargaining unit of Parks Canada employees appropriate for collective bargaining.*

6. *On August 27, 1999, the employer filed an application pursuant to Section 48.1 seeking a determination that would find two bargaining units, including all employees of the Parks Canada Agency, as appropriate for bargaining.*

7. *On September 14, 1999, the Alliance responded to the employer's application proposing a single, consolidated bargaining unit of Parks Canada employees previously certified and represented for purposes of collective bargaining under the Program and Administrative Services Group (Table 1), the Operational Services Group (Table 2), the Technical Services Group (Table 3) and the Education and Library Science Group (Table 5).*

8. *On October 13, 1999, the Association of Public Service Financial Administrators filed a response with the Board requesting the recognition of a separate bargaining unit for the FI group employees of the Agency. On or about this time, the Social Science Employees Association indicated it had no objection to the applications filed under Section 48.1 and the International Brotherhood of Electrical Workers confirmed it*

would not be intervening in the proceedings before the Board.

II. GOVERNING PRINCIPLES

9. *There is limited jurisprudence issued by this Board with respect to applications pursuant to Section 48.1. In Canadian Food Inspection Agency (Board file: 140-32-14) the parties arrived at an understanding that was accepted by the Board on consent. Related questions of bargaining unit review pursuant to applications for certification have been dealt with by the Board in the certification of employers such as the National Energy Board, (Board file: 142-26-297 to 301) the National Capital Commission (Board file: 142-29-312,313) and the Canada Communications Group (Board file: 142-28-302 to 310). In other jurisdictions similar questions involving successorship applications have been canvassed as in Canadian Museum of Civilization (CLRB 87di165, April 1992)*

10. *In the case before the Board, Parks Canada has become a separate employer under Schedule 1, Part II of the Public Service Staff Relations Act.*

> *The employees of Parks Canada continue to be governed by the same terms and conditions of employment and by the Treasury Board collective agreements in place for each of the occupational groups. The employer representatives remain the same, the bargaining agents remain the same and by and large, the work done by employees remains the same, as do many of the employees themselves.*

11. *Parks Canada has become a separate employer in its own right, but continues to be subject to the legislative framework of the PSSRA. An important element of the Parks Canada legacy is the history of negotiation and representation that evolved under the legislative framework of the broader Public Service. Labour relations in the Federal Public Service are highly regulated, as distinguished from provincial jurisdictions. This includes the provisions of the PSSRA with respect to the designation of employees (Section 78.1 to 78.5), the provisions for the identification of managerial and confidential exclusions (Section 5.1to 5.3) and the limitations on the scope of bargaining in the Public Service as determined by the Act. While the status of Parks Canada as an employer has been recognized, the legislative context of the administration of labour relations and collective bargaining will continue to be exercised within the PSSRA legislative framework.*

12. *This Board is bound to give consideration to the applications before it in view of this legislative framework and the rights and limitations it imposes on the parties as they move into a new era of bargaining with Parks as a separate employer.*

13. *The purpose of Section 48.1 is to provide for the continuity of bargaining rights to protect the negotiated terms and conditions of collective agreements in situations of transition of a portion of the public service from Schedule I Part I of the Act to Schedule I Part II of the Act. The Intent of Parliament is to provide stability and continuity in employee rights and to recognize existing bargaining relationships. Otherwise, the Act would not have been amended in 1993 to include Sections 48.1 and parties to such transfers would be left to avail themselves of Section 28 with respect to new applications for certification.*

14. *The Alliance respectfully submits in the context of the applications pursuant to Section 48.1 before the Board in this case that where a bargaining unit proposal meets the following criteria that proposal will necessarily be the most appropriate unit and should be accepted and adopted by the Board:*

    a. *Does the bargaining unit structure permit satisfactory representation of employees?*
    b. *Does the bargaining unit structure take into account the prehistory of collective bargaining relationships including bargaining unit and bargaining agent?*
    c. *Does the bargaining structure provide for reasonable administrative efficiency in the employers operations?*

    It is the submission of the Alliance that the Alliance bargaining unit proposal answers the above questions in the affirmative and should accordingly be accepted by the Board.

Jurisprudence

15. *In considering the question of satisfactory representation in National Energy Board the Board stated the following:*

> *The jurisprudence is extensive in relation to what constitutes satisfactory representation. In the decision of United Steelworkers of America v. Usarco Limited v. Group of employees (1967) OLRB Rep 526, the Ontario Labour Relations Board found four principal factors which a labour relations board should take into consideration in determining the appropriateness of bargaining units. These four factors are:*
>
> a. *Community of interest; this factor may be determined by considering the following criteria: nature of the work performed, conditions of employment, skills of employees, administration, geographic circumstances and functional coherence and interdependence;*
> b. *Centralization of managerial authority*
> c. *Economic factors; and*
> d. *Source of work.*
>
> *All these factors are interdependent but are not necessarily to be given the same importance and weight. Moreover, each case must be assessed on its own merits, depending on the evidence adduced. Some will be more crucial than others in the determination of the appropriateness of a bargaining unit.*
>
> *Since the above decision was rendered in 1967, there have been further developments in the jurisprudence expanding the criteria to be considered. In the decision by the Canada Labour Relations Board in The Canadian Museum of Civilization and Public Service Alliance of Canada, Professional Institute of the Public Service of Canada and other unions (unreported, supra) another criterion was considered, namely the history of certifications and negotiations.*

> *The Board's finding in NEB recognized the changing climate of labour relations in the Public Service and the increasing tendency to create new employer organizations. The Board drew from the experience of the Canadian Museum of Civilization (supra) where the Canada Board had seen fit to add to the criteria for establishing appropriate units the consideration of the history of certification and bargaining. Just as this Board applied these criteria in considering the facts of the NEB case, so should the Board give serious weight to these factors in the present case.*

16. *It should also give consideration to the full consequences of the employer's proposal and the onus that the employer bears in making this proposal to fragment existing bargaining units. This Board, like other labour relations boards, has consistently required that some substantial justification for a change in existing bargaining unit structures be established, where change in those structures is sought. The Labour Relations Board of British Columbia stated this rather forcefully in MacMillan Bloedel Limited (Alberni Pulp and Paper Division) (1984), 8 CLRBR (NS) 42, as follows in the headnote of the decision:*

> > *The Board enunciated the legal framework which it accepted as applying to applications for consolidation under the Labour Code. First, the Board will not lightly interfere with established bargaining structures, particularly in cases where to do so would result in the loss of bargaining rights for one of the trade unions involved. Rather, consolidation of existing bargaining rights is an extraordinary measure which the Board will resort to only in situations where there is serious labour relations problem for which consolidation is the result most able to further the principles and policies of the Code. Second, the Board will not consider consolidation applications in the same way in which it considers fresh applications for certification. Third, the kind of jeopardy which an employer or other applicant relies on in support of such an application must be of a profoundly serious nature. Where real and demonstrable adverse labour relations consequences are evident, the Board will also be required to consider the possibility that such consequences will recur in the future. Mere administrative inconvenience and inefficiency, of itself, normally will not suffice. The Board must be satisfied that effective industrial relations have been virtually frustrated by the impugned bargaining structure. The Board has in the past and will continue to exercise its discretion on consolidations applications in such a way as to confine its intervention in longstanding historical bargaining relationships to situations where extraordinary relief is required.*

17. *The Parks Canada application to this Board, if it is successful, will have the effect of the loss of bargaining rights for one or more of the presently certified bargaining agents. The employer has the onus to demonstrate that there are serious labour relations problems that justify the change. In this respect we rely on a number of precedent cases including: Atomic Energy of Canada Limited, (1995),99di37 (CLRB no. 1135), Insurance Corporation of British Columbia et al. (1974) 1 Can LTBR 403 (B.C.), and BCT. Telus (Re)(2000), (CIRB No. 73) and Canada Post Corporation (1989)*

(CLRB No. 767).

III. SUBMISSIONS OF THE UNION

18.As we have stated above, the following questions should guide the board in arriving at a determination in this case:

- *a. Does the bargaining unit structure permit satisfactory representation of employees?*
- *b. Does the bargaining unit structure take into account the prehistory of collective bargaining relationships including bargaining unit and bargaining agent?*
- *c. Does the bargaining structure provide for reasonable administrative efficiency in the employers operations?*

19.In other cases Boards faced with questions of this nature have identified very similar factors. In considering a bargaining unit consolidation application in Canadian National Railway Company (1992), 88di139, (CLRB No. 945), page 148, the Canada Board reviewed some of the precedent cases and stated the following most relevant:

> *While there is no specific presumption in favour of all-employee (or even "all craft employee") bargaining units (see Alberta Government Telephones Commission (1989), 76 di 172 (CLRB no. 726), pages 182-183), the Board has long favoured the larger, more comprehensive unit. In Canadian Pacific Limited (1976), 13 di 12; [1976] 1 Can LRBR 361; and 76 CLLC 16,018 (CLRB no. 59), the Board adopted an analysis of the relevant factors set out in the decision of the British Columbia Labour Relations Board in Insurance Corporation of British Columbia et al., [1974] 1 Can LRBR 403 (B.C.), pages 408-411. The factors there considered included the following:*
>
> > *administration efficiency and convenience in bargaining;*
> > *enhancement of lateral mobility of employees;*
> > *facilitation of a common framework of employment conditions;*
> > *increased industrial stability.*

20.In the present case the employer's presentation is suggestive of a new application for certification rather than an approach that seeks to demonstrate, in view of the continuity of collective agreements and bargaining relationships that the above criteria will be achieved by the new bargaining structure.

21.The employer's proposal, on the basis of the evidence of the Chief Administrative Officer, Mr. Latourelle, is to realize administrative efficiency, simplify the human resources framework and policies and address Parks Canada specific issues in collective bargaining. Specifically, Mr. Latourelle cited the need to address "pay zones" under the new collective bargaining regime. Mr. Latourelle also stated the need to address "quality of life" issues in the collective agreements. Other witnesses addressed other factors, specifically, Mr. Zinkan speaking in general terms of greater

simplicity and efficiency in the new structure and stated it, "Positions us well for the future". The employer's submission is that these objectives can best be achieved by allocating all the bargaining unit positions in the Parks Canada workforce to two new, and previously undefined bargaining units based on a review of existing operations and the analysis of a small group of senior Parks Canada managers. We submit that the employer has not met the heavy burden of proof they have in demonstrating this case.

History of Certification and Bargaining

22. *Employees are collectively involved across the Parks systems in delivering the Parks Canada mandate from coast to coast to coast.*

23. *Two separate and distinct groups on the basis of the employer's proposal do not exist. There are patterns of work and interaction which can be observed, and the employer has brought these into focus. Should the existence of these patterns compel the recognition by this Board of two separate bargaining units? We submit that these patterns do not compel the definition of two groups.*

24. *Among the over four thousand five hundred Parks employees there are a great number who are interdependent and working at all levels between parks, historic sites, field units and service centres and the national headquarters to directly support and deliver Parks Canada programs. They do not see themselves a two separate groups as has been indicated by the evidence of Mrs. Martin, VanRumpt, Cooke, Bagnell, Watt or Ms. Crook.*

25. *The management focus group was directed by the Collective Bargaining Committee to go back and develop the option that would be best for Parks Canada. Ms. Campbell indicated to the Board that the employer's proposal only emerged as a consensus out of the management group meeting on July 7 and 8, 1999 following a suggestion from one manager, Graham Noseworthy, that this would be the way to go. In starting by "wiping the slate clean" and developing the proposal for a two unit, Program Delivery and Program Development structure, the employer has failed to relate the workplace patterns back to existing issues or problems in the present collective bargaining regime which would justify such intervention by the Board. The employer has, with direction from the Collective Bargaining Committee, ignored the history of bargaining and negotiation as a factor which was not significant. Ms. Campbell testified that the employer compared the collective agreements of the various bargaining agents and found them similar. This does not consider the context of bargaining in the highly regulated Public Service of Canada and the fact that there are also significant differences in the agreements (A-6, Tab 10).*

26. *The employer is abstracting from the actual relationships which presently exist in the workplace.*

27. *How is "public identification", as identified in the "Broad Community of Interest Patterns", reflected in collective bargaining language? There is no substantial evidence indicating how the division of the workforce on the basis of these criteria "Broad Community of Interest Patterns" would respond more effectively or efficiently to existing problems or issues in labour relations at Parks Canada. To the contrary, the evidence of Mike Bagnell, Doug Martin, and Derek Cooke is that to recognize a distinction between some employees of field units and other employees working in*

the same workplace, under the same collective agreements will create a division that does not presently exist. Persons now working under the same collective agreements as GT, EG, AS, CR, PM, GS who have worked under these collective agreements for many years will be put on a different footing and possibly disadvantaged with respect to their co-workers.

28. *The employer's "clean slate" approach does not take into consideration the complex history of bargaining and representation of Parks Canada employees. In the B.C. Labour Relations Board case of MacMillan Bloedel Limited (Alberni Pulp and Paper Division) and CPU, Local 592 et al, the Board dealt with an application to consolidate into two bargaining units the work which had previously been performed by four bargaining units. The Board said at p.57:*

> *As its starting point in considering the merits of that application, the panel made it clear that the Board will not engage in the wholesale review of previous unit determinations. It is noted that while the Board generally prefers large integrated bargaining units, a long history of collective bargaining in a particular form creates its own community of interest which should not lightly be disturbed.*

29. *In the labour relations of the Public Service this community of interest includes the process of negotiation of collective agreements and style of bargaining and representation, but also the ancillary processes of dealing with the determination of designations in which Parks Canada departmental representatives have been involved; the managerial and confidential exclusions process in which Parks Canada representatives have also been involved; and grievance representation and problem solving processes which have involved members of all the occupational groups affected by this application.*

30. *We submit that the employer acted without serious consideration of previous bargaining history. There is no evidence before the Board that the interests of employees in collective bargaining would be better served by the structure proposed by the employer. There is little evidence that employees have not been well served in bargaining together at the Treasury Board tables. In fact the contrary is true as indicated in A-6, Tab 10 page 2 where under the comparison of collective agreements "Unique Provisions" four appendices have over the years been negotiated under the PSAC/Treasury Board Table 3 and Table 2 agreements specific to the Parks Canada environment.*

For all of the above reasons, we submit the Alliance proposal considers and respects the history of certification and the legacy of over thirty years of collective bargaining. The employer's proposal has not seriously considered these factors.

It is also evident that as a consensus of the managers, guided by the labour relations staff developed the proposal we now have before us, the timeframe was very tight.

Satisfactory Representation

31. *A separation, along the lines proposed by the employer, would result in a relatively large operational unit and in collective bargaining terms, a smaller and potentially less effective combined professional and administrative unit. A possible consequence of this was described in Mr. McNamara's testimony regarding the outcome for negotiations of a two unit structure where one unit has less bargaining power has*

the potential to lead to a "whip-sawing" of the other bargaining unit which would be under great pressure to follow the pattern established by the lead unit. It is the evidence before the Board that the focus group of managers, following the June 16th presentation to the Collective Bargaining Committee of Parks Canada were directed to go back and come up with the option that was best for Parks Canada. In the view of the focus group, the best was a two unit structure which had the potential to provide the employer the strategic advantage Mr. McNamara described. The concerns that it would divide the workplace and establish divisions that are not presently manifested were clearly expressed by Mr. Bagnell in his testimony. These considerations appear not to have been weighed by the focus group.

32.Mr. McNamara, PSAC negotiator for both the Canada Food Inspection Agency and the Parks Canada Agency cited the Canadian Food Inspection Agency (Board file: 140-32-14) as a situation where the Board has found a single bargaining unit combining Table 1, 2, 3, and 5 of the Treasury Board units into one consolidated bargaining unit. Mr. McNamara's evidence was that this unit has proven an effective structure for collective bargaining and representation for an employer of a similar size and similar national scope as the Parks Canada agency. The evidence of Mr. McNamara was that employees at CFIA were from a range of occupational groups including Administrative, Operational and Technical groups (Tables 1,2,3 and 5). These employees include shiftworkers, seasonal workers, and administrative staff at worksites across the country. Their terms and conditions of employment have been codified into one collective agreement that incorporates the provisions negotiated for these groups under Treasury Board (C-5). This agreement is now providing a base for current negotiations seeking new provisions and improvements for CFIA members of the Alliance. Mr. McNamara expressed the view, based on his negotiation experience, that the best structure for initiating a bargaining relationship with Parks Canada was at one bargaining table where the best provisions of existing Treasury Board agreements could be consolidated into one document. He described this process and the need to take the best language from the various agreements to protect employee rights.

33.It is in the employer's evidence that such a structure, parallel to the PSAC proposal was also given favourable consideration. The reaction of the focus group to the option of a Non-Professional/Professional unit split for the agency is indicated in "The Parks Canada Collective Bargaining Regime: Strategic Options for Bargaining Unit Reconfiguration", A-6, Tab 5, pg. 19. The paper indicates that "The option (a Non-professional/Professional unit split) would support a move towards more standardized conditions among non-professional employees… This option was considered by the focus group who felt it was not ideal, but could be lived with." In effect the employer's representatives indicate here that they can live with the proposal of the Alliance as now before the Board and that the Alliance proposal would have the advantage of moving towards more standardized conditions "among non-professional employees".

For the above reasons it is clear that the Alliance proposal would provide for satisfactory representation of employees.

Administrative Efficiency

34. *Mr. Latourelle, in his evidence, spoke about seeking administrative efficiency and simplicity as the objectives of the employer in the new agency structure. If this is the case, then a finding for a unit as proposed by the Alliance would have the benefit of achieving substantial administrative efficiency in the consolidation of Tables 1, 2, 3, and 5 representing approximately 90% of Parks Canada employees at one bargaining table.*

35. *What the employer's witnesses have acknowledged in indicating, virtually unanimously that "they can live with whatever the Board finds", is that there is little dispute on the need for consolidation. Both parties the Alliance and the employer are in substantial agreement that major consolidation of collective bargaining makes labour relations sense.*

36. *A single bargaining unit regrouping Tables 1, 2, 3 and 5, as proposed by the Alliance, would, in our submission establish a credible balance at the bargaining table and permit effective collective bargaining. It would also allow for terms and conditions to be established in one collective agreement for a range of employee groups and situations and lead to more uniformity and equitability in terms and conditions of employment.*

37. *The union's proposal would provide for greater administrative efficiency than the proposal of the employer. The employer's proposal would split the existing occupational groups such as the GT, GS, CR, AS, PM and EG now negotiated as elements of Tables 1, 2, and 3 whereas the union's proposal would consolidate them in one collective agreement. The employer would also split representation in field units between two collective agreements whereas the proposal of the PSAC would go to a uniformization of terms and conditions for all these groups under one collective agreement. The net result of the employer's proposal is less uniformity in terms and conditions of employment in the workplace and hence, less administrative efficiency.*

38. *It is illustrative that in Canadian National Railway Company (supra) the Board was presented extensive evidence regarding the major difficulties experienced by the employer in administering its operations and labour relations including overlapping of functions, archiac craft rules, difficulties in work assignments and staffing to support a request for a single bargaining which the Board allowed. In the present case the voluminous evidence submitted by the employer does not substantively address such problems. In another relevant decision, Atomic Energy of Canada Limited (1995), 99di37, (CLRB No. 1135), the Board considered the employer's request to consolidate six units into one against the wishes of the certified bargaining agents:*

> *While the company might find it somewhat more convenient to deal with one bargaining agent rather than four in the administration of collective agreements, that consideration does not outweigh, in the circumstances of this particular case, the value of maintaining the traditions of employees representation by the bargaining agents in question here. This is not to say that the institutional interests of the trade unions carry great weight in cases such as this; the Board is, properly, much more concerned with the interests of employees as such, and in the instant case there has not been, as there was in*

> *some of the major restructuring cases which have been referred to, any expressions of employee dissatisfaction with the present structure, nor has the employer established that employee interests would be better served in any significant degree by a changed structure. (pg. 42)*

39. *In another recent decision cited as BCT.Telus (Re) (2000) (CIRB No.73) the Board considered the merger of two enterprises comprising 17,000 employees and four unions. The Board found that the employers presented a strong case for a separate community of interest for field sales employees, but the Board held that full consideration was required of the application of terms and conditions of employment established under collective agreements to these employees and judged that these historical facts indicated that the employees should be included in the single, consolidated bargaining unit found to be appropriate. The employer's evidence, however detailed and voluminous could not counter the community of interest that had been established over time in the employer's organization.*

    In the present case there is no evidence of the employee dissatisfaction or of the serious operational problems that would support the change the employer is seeking. Moreover, as has been demonstrated above, it is clear that the employer's proposal is fundamentally disruptive. We submit the Alliance proposal meets the requirement to provide for reasonable administrative efficiency.

Multi-tasking

40. *The Board heard from Ms. Crook, Mr. Martin and Mr. Van Rumpt on the effects of Program review 1 and 2 on staffing levels and on the consequence impact on jobs. Mr. Van Rumpt described the management direction which encouraged employees to learn the skills of other positions provided opportunities to train in these skills. He described the training received by Heritage Conservation people designated as Program Development to assist in and substitute for interpreters. Mr. Van Rumpt indicated that this was the reality of the scaled down Parks Canada worksite where there were fewer bodies to do the same work, "everybody gets involved". He illustrated this point by speaking of the mechanic who as a regular part of his functions also did data entry in the administration office. Doug Martin described how the purchasing function in Banff had become a responsibility of each section. Elizabeth Crook described how, in the Atlantic Service Centre, she had assumed duties that would previously have been done by clerical staff.*

    The point here is that as functions are shared, administrative work is spread through the organization and persons are cross-trained to take on a variety of tasks, the distinction being drawn between the administrative and development side and the delivery side becomes more and more blurred and have less relevance in the determination of appropriate bargaining units. The blue collar - white color division promoted by the employer's proposal has less relevance to work at Parks Canada. This changing reality is reflected in labour board decisions, notably. The Hospital for Sick Children, (1985) O.L.R.B. Rep. Feb.266.

Fragmentation

41. *The employer's proposal to split representation of AS, PM, GT, GS, CR and EGs tantamount to an application to fragment existing bargaining units and the Board should apply the same standard of assessment requiring that an applicant seeking severance of a group from a certified bargaining unit meet a heavy burden. In a recent case before this Board, Canada (Canadian Forces, Staff of the Non-Public Funds) and United Food and Commercial Workers Union, Local 864. (1998) C.P.S.S.R.B. No. 99, the employer cites previous precedents with respect to fragmentation:*

> *Counsel for the Applicant has frankly acknowledged that it is required to discharge a significant burden in view of the fact that the applicant is proposing the fragmentation of an existing bargaining unit. In fact, in a number of cases dating back to the Board's earliest days, the Board has expressed its apprehensions about fragmenting existing bargaining units. For example, the Board made the following observations in the Heating, Power and Stationary Plant Operation No. 2 (1970), PSSR Reports K607*
>
> > *One of the major concerns of the Board in carrying out its responsibilities under the Public Service Staff Relations Act to determine the appropriateness of bargaining units under s 32 is the proper functioning of the bargaining system in the Public Service. The sheer size of the Service, the dispersal of employees throughout the county and at various points in the world, the complexity of the employment relationship and the multiplicity of classifications into which the employees are divided makes undue fragmentation impractical and probably unworkable. It should be borne in mind that, in some respects, the employer in the Public Service is unlike other employers. There are probably some employers that may be under an obligation to bargain for employees in a greater number of bargaining units than the number that has already been established in the Public Service Of Canada. Nevertheless, lack of uniformity in conditions of employment among various sections of the Public Service is more difficult to justify than it is in the private sector. It is our considered opinion that the inclination of the Board should be towards service-wide occupational group should not be split into two or more segments. However, there is a heavy burden resting on an applicant that seeks severance.*
>
> *The Board's jurisprudence is replete with similar expressions of concern (see the Board's decisions cited by the parties, supra). It should be noted, however, the Board's predilection against the fragmentation of bargaining units is primarily a consequence of the legislative framework within which the Board operates, and in particular, the language of subsection 33(2). It is quite apparent from reading that provision that there is a strong, albeit rebuttable, presumption in favor of bargaining units which are, in the words of*

> *this subsection, "coextensive with the classes, groups or subgroups" set out in the employer's plan of classification. In fact, if one compares the language of the current provision (which was part of the 1993 amendments to the Act) with its predecessor (subsection 32(2), it is apparent that Parliament intended to strengthen the predisposition towards bargaining units encompassing an entire occupational group or subgroup, as opposed to a smaller bargaining unit configuration…*
>
> *In view of this statutory direction, it is clear that there is a heavy onus on the part of the Applicant to demonstrate that the current bargaining unit, which is coextensive with the Technical Inspection group definition, and has been in place for nearly thirty years, does not permit satisfactory representation in respect of those employees who are member of the Applicant.*

42. *By extension, this onus also lies with Parks Canada in the present application. In over thirty years of representation and collective bargaining which has produced collective agreements which fix terms and conditions of employment in the Parks Canada workplace today, no evidence is before the Board that the process has failed or created serious problems which cannot be addressed in the new bargaining forum that the creation of the Agency has made possible.*

43. *The proposal of the Alliance under this new bargaining regime can effectively deal with all Parks Canada service wide issues. It will also provide a rationale continuity from Treasury Board collective agreements, the terms and conditions of which are now in force in the workplace. Further, it will avoid divisions between existing classification groups that would be the inevitable consequence of the division in bargaining units represented by the employer's proposal of a two unit structure fragmenting existing bargaining units.*

44. *It will ultimately allow Parks Canada employees represented by the respondent to engage in a balanced collective bargaining relationship at one bargaining table and will enhance common conditions of employment, two critical factors identified for consideration in Insurance Company of British Columbia (supra).*

SI Group Allocation

45. *The Institute has asked the Board to include the ES and SI group members in the bargaining unit proposed by the Institute. The Alliance submits to the Board that the SI group employees should bargain with the bargaining unit that they share the greatest community of interest.*

46. *Should the Board find that the Alliance and Institute proposals for bargaining units configuration have merit we submit that the SI group employees should be allocated to the Alliance bargaining unit in consideration of the evidence before the Board respecting these employees.*

47. *Elizabeth Crook who occupies a SI-3 position in the Atlantic Service Centre testified that the major part of her interactions as Atlantic Registrar/Collections Manager was with GT, AS, CR, PM and GS employees of Parks Canada in the Atlantic Service Centre and the Field Units in her region. This was supported by Exhibit C-1 Tab 2 -*

Crook in the document "Work Journal 2000". Ms. Crooks evidence is that hers is a technical job requiring her to manage the collection of artifacts and deal on a constant basis with Field Unit staff who were collections managers classified as CR, PM, GS and GT. Ms. Crook indicated she was one of a number of Collections Registrars across the Parks system and that the registrars regularly communicated by conference call. Ms. Crook testified she started her employment with Parks Canada as a CR-2 and then moved into a SI-1 position. Until recently she supervised an assistant in a GT-1 position. She testified to having ongoing responsibility in packing and unpacking artifacts and managing documents and the Artifact Information System (AIS) database. Ms. Crook indicated that the minimum qualifications for an SI position do not require university education.

48. *The Board also heard from Shelley IsabeI, as SI in the Ontario Service Centre. Ms. Isabel also started with Parks in a CR-3 Collections Assistant position and then moved to an SI-1 position. She indicated she had also recently competed for a PM position and aspired to move to the PM group in her career progression. Ms. Isabel indicated she does not have a university degree. Ms. Isabel described her work as managing documents and an archeological collection. She indicated she did not see herself in a policy job and was involved in the hands on work of packing and unpacking artifacts, occasionally using a forklift and moving materials in the collections area.*

49. *The Board heard from Derek Cooke who testified he started his first full time job with Parks Canada in an SI position after working as a seasonal animator. Mr. Cooke's SI position was a Collections Manager at Louisbourg from which he later moved to a GT position. Mr. Cooke testified that the SI work involved managing the artifact collection at Louisbourg. This work prepared him for his present work as a Conservator in the Ontario Service Centre.*

50. *In the Western Region, Mr. Charlie Zinkan described the work of Cathy Hourigan, SI-1, Data Management Assistant, in Banff as doing "traditional library functions". Mr. Doug Martin also described his role in providing Ms. Hourigan union assistance. He described Ms. Hourigan's role as operating the Park library and dealing with the public, visitors, and researchers as library clients.*

51. *Ms. Cristina Cameron, in her testimony, described the work of Steven Dale, SI-2, Coordinator, Curatorial Resource Centre (A-8, Tab 9). She indicated Mr. Dale was responsible for the records area and did document management, managed resources materials and a records database. He works in conjunction with Don Boisvenue, CR-4, Records Clerk (A-8, Tab 2, p.7) in carrying out this work.*

52. *Mr. Luffman, testified that as an SI he did the work of an archeologist. On questioning, Mr. Luffman confirmed he did not have a degree in archeology and had worked into the responsibility of archeological work as an SI. He indicated he had never undertaken to challenge his classification situation. He also indicated he had no knowledge of other SIs with similar duties. Mr. Laurent Tremblay also described the work of SI working in the area of archeology as cleaning and recording artifacts at archeological dig sites.*

53. *The evidence before the Board is that the SI group, across Parks Canada, perform technical work managing document collections, artifact collections and working with the artifact information database. While the SIs participate on multidisciplinary*

teams their principle interactions are with other Parks employees represented by the Alliance. There is no evidence that the career progression of SI group members is into professional group positions presently represented by the Institute. There is evidence that CRs move into SI positions and aspire to move from SI positions into PM or GT positions (Isabel and Cooke). The Alliance submits that the SI group shares a community of interest across the Parks System with employee groups represented by the Alliance, and that the Board should include this group for purposes of collective bargaining in the Alliance bargaining unit.

IV. SUBMISSIONS OF THE EMPLOYER

54. Mr. Bird, counsel for Parks Canada, acknowledged at the outset of the hearings, the heavy onus of the employer in seeking to create a new structure for collective bargaining which makes a radical break with the past history of negotiation and representation for Parks Canada employees and proposes what is, in the view of the employers, the "most" appropriate bargaining unit structure.

Management Focus Group Process

55. The process followed by management to arrive at the bargaining unit proposal before the Board was a hurried process of consultation between a small group of 10 managers.

56. The group, according to the evidence of Amy Campbell had one live meeting on July 7 and 8, 1999 at which the members were present. Otherwise they met by conference call and had an earlier meeting on May 26, 1999, which was not well attended (A-6, Tab 4). The was a pressing need to establish a proposal for presentation to the PSSRB based on the previous work done by Ms. Campbell. By Ms. Campbell's own admission the "process got away from us".

57. A key presentation of options had been made to the Collective Bargaining Committee on June 16, 1999 (A-6, Tab 6). The Collective Bargaining Committee directed the Focus Group to come up with a proposal that would best meet the needs of Parks Canada. It is our submission that in looking at Parks Canada's employees the focus group did precisely what they had been directed to do and were motivated by strategic collective bargaining considerations.

58. Collective bargaining was a key consideration. As the group met in its first full meeting on July 7,1999, in the month prior to the filing of the employer's application, Ms. Campbell indicated that the focus group discussed the strike by PSAC Table 2 members. In her words, "They (focus group) had been interested in talking about it…it was fresh in their minds…. In a lot of Parks and sites, Table 2 had shut them down". Ms. Campbell goes on to say that she does not think the strike was a significant factor as the meeting went on. We submit that consideration of strike action was not far from the preoccupations of the management group. It is also evident that as a consensus of the managers guided by the labour relations staff developed the proposal we now have before us and agreed to take it to the Executive Board, the timeframe was very tight.

59. *Ms. Campbell indicates in her testimony that the material we now have before us in exhibit A-6, Tab 8 (a) to (r) was developed in November 1999 well after the application had been filed and following a meeting of management held in Sydney in September 1999 to test the proposal with other managers. Ms. Campbell, in questioning, recognized that the data available to her was incomplete. She also indicated that as material was prepared to support the application, which had already been filed, some of the observations are based on limited examples. This is notable at A-6 Tab 8 Q indicating a very small number (10 and 7 respectively) of responses for the Parks Canada on the question of Education Leave in a population of over four thousand five hundred employees.*

60. *In contrast to the broad and inclusive approach followed in the two year preparation for transition to the Agency, the important process for the establishment of a bargaining unit structure was undertaken in secrecy by a very small group. The evidence of witnesses closely involved in the employee transition committees which travelled across the country prior to transition was presented by Doug Martin, Elizabeth Crook, John Watt and Mike Bagnell. They indicated that in the many meetings they attended there was no discussion of any bargaining unit questions. To the contrary, there was a common understanding that the unions would go back into bargaining without delay, representing their membership at one table with Parks Canada management directly addressing Parks Canada issues. A great deal of trust and cooperation was established in the pre-transition consultation process. Employer-employee relations appeared to be at an all time high as much work had been accomplished with respect to classification, national joint council agreements and health and safety issues. While the employer was under no obligation to involve bargaining agents and represented employees in a discussion of appropriate occupational groups we can only speculate that perhaps it may have resulted in a more direct and mutually acceptable outcome. This and other Boards have found that the failure of the employer to pursue resolution of issues in a consistent manner is not supportive of applications seeking an extraordinary remedy from the Board. In this respect we refer to Canada (Canadian Forces, Staff of the Non-Public Funds) and United Food and Commercial Workers Union, Local 864. ((1998) C.P.S.S.R.B. No. 99), and Atomic Energy of Canada Limited, (supra).*

Dividing the Units

61. *The massive volume of evidence put forward by the employer in this case can be summarized under several key points. At exhibit A-1, Tab 13 the employer provided the Board a document entitled "Broad Community of Interest Patterns" indicating nine factors distinguishing the proposed Program Delivery unit from the proposed Program Development. This template appears to be at the heart of the employer's proposal. The points contained in it were referred to consistently by the employers witnesses as the underpinning of the argument for a separation of employees as described in the employer's proposal. These points deserve scrutiny in light of the evidence before the Board:*

Program Delivery	*Program Development*
a. Significant Seasonal Component	*Ongoing Effort*
b. Outdoor Environment	*Indoor Environment*
c. Operational Setting	*Corporate/Service Centre Setting*
d. Overtime/Weekends/Holidays	*Monday-Friday*
e. Shift Work	*Day Work*

f. Public Identification	*Less Public Identification*
g. Public Safety Concerns	*Not Significant*
h. Uniforms	*None/Lab Coats*
i. Direct Delivery to the Public	*Public Interaction not Core Element*

a. *Significant Seasonal Component/Ongoing Effort: Clearly the large majority of the Agency's seasonal workers are located in the field units. The fact, as indicated by Mr. Bagnell's evidence, is that there are also seasonal positions among the proposed Prog. Development positions at his Louisbourg worksite (C-3, pages 3, 4, 5 and 6) including: page 3, the Administrative Clerk, two General Administrative Clerks, the Revenue Clerk; page 4, the Personnel Clerk, the Human Resource Clerk, the Compensation Clerk; page 5 the Furnishings Collection Assistant, the Period Cloth Fabricator, the Inventory Clerk and the Photo Archives Clerk; page 6, the Engineering Clerk. These seasonal employees proposed for the Development unit share the same labour relations issues as other seasonal employees and are covered by the same collective agreements. Both Mr. Bagnell, speaking of members at Louisbourg, and Mr. Doug Martin, speaking of his experience as a seasonal Warden and union representative for seasonal workers in Banff and the mountain parks, related that many Parks Canada seasonal employees enjoy long service with the employer. They are permanent employees covered by all the terms and conditions of the collective agreements and benefit plans. Mr. Bagnell sees them as sharing a clear community of interest with others in his workplace. There are also other seasonal employees included in the proposed Development unit across other Field Units. In her testimony on April 6, Amy Campbell indicated that, "There are seasonal employees just about everywhere at Parks Canada". With respect to "Ongoing Effort" Derek Cooke spoke to the Board of the cyclical pattern of work that affected service centre employees as well as field unit employees across the system. He and his colleagues work intensively to meet the priorities of the cycle established by the opening and closing of Parks and National Historic Sites and deliver their programs and services. This view was reinforced by Robert VanRumpt, District Technical Officer, EG, in the Yukon Field Unit.*

b. *Outdoor environment/indoor environment: While many of the Parks Canada employees designated by the employer to the Delivery unit work out of doors, it is also the evidence before the Board that a significant number of the employees designated in the Development unit also work outdoors. Mr. Tremblay, Executive Director, Québec indicated in cross-examination that certain Québec Service Centre staff spend between 30-35% of their time in the field including specialists in fire control and emergency measures, conservationists, and archeologists and their technical assistants (A-10, Tab 2, page 3,4,5 and 6). Mr. Zinkan, in cross-examination, indicated that Dave Hunter, Environmental Management Officer in Banff, spends, by his estimate, 25% of his time out of the office, on site. Mr. Derek Cooke a GT Conservator in the Ontario Service Centre also testified to a very busy schedule of visits to field units and national historic sites and described others in his workplace who had similar involvement doing field work with "in-situ" artifacts and with field unit staff. A significant part of this work is done in an outdoor environment. Mr. Robbie VanRumpt, a employee designated for the Development unit gave evidence that he spent as little as one half hour to one hour of a regular day in the office during the busy summer months. He also*

testified that in his former position as an Extant Recorder working in the Ontario Regional Centre which is now the Ontario Service Centre, he spent much of the year visiting field units and working in an outdoor environment. Mr. VanRumpt also spoke of the Service Centre staff who, during the high season spent extended periods doing field work and on-site projects in his region. Doug Martin, a GT Warden designated for the Delivery unit also spoke of close interaction with Western Canada Service Centre staff in Calgary with responsibilities for enforcement and their close involvement in Warden training and special projects with field unit enforcement employees. The overall evidence indicates that Service Centre employees who are involved in field work, working with field units in conservation, research, archeology, fire management, environmental protection and enforcement are, as a regular part of their duties working in an outdoor environment.

c. *Operational Setting/Corporate - Service Centre Setting: Mr. VanRumpt's evidence was that he did not consider his job an office job, but that he spent a significant amount of his time in the field doing measurements, working with trades, working with interpreters and various municipal officials and contractors. Mr. Derek Cooke made a similar observation regarding his work in the Ontario Service Centre. He indicated he did less than 5% administrative work and was frequently travelling to and visiting projects, doing installations and visiting historic sites during the summer months. In this capacity he was involved in dealing with the public and was included in interpretative events. He also indicated that he wore period costumes, when requested, during some events. He also described the others in the Service Centre who worked in labs or workshops doing restoration or collections management. Mr. Earl Luffman, SI in the Atlantic Service Centre indicated he spent up to 3 months of the year in the field on archeological digs. Elizabeth Crook spoke of the work she did in the Service Centre packing and unpacking artifacts dealing with issues related to handling of artifacts. Ms. Crook indicated she was called on occasion to travel to sites to work with Collections Managers on collections issues. She also indicated that she had been called out to deal with artifacts on site on an emergency basis. Shelley Isabel also indicated she worked in a warehouse setting, occasionally driving a forklift and lifting and packing artifacts. While many of the positions designated for the Program Development unit do involve "corporate setting" jobs, a large number also involve working in the field with other field unit staff in conditions that are clearly not a "corporate setting". Service Centre staff, according to the evidence, worked in labs, restorations shops, storage and warehouse environments and frequently, in the field doing physical work in conjunction with field staff.*

d. *Overtime/Weekends/Holidays versus Monday-Friday: What is remarkable from the evidence before the Board is the level of commitment of employees focussed on delivering the Parks Canada mandate. As indicated in the points above, the employees who testified on their work, including Derek Cooke, Eliabeth Crook and Robbie VanRumpt, all designated for the proposed Development unit, spoke of hands-on-work, significant voluntary overtime and a constant practice of going farther than required. The evidence was that while significant overtime was worked in the Service Centre, there was an unofficial agreement that it would not be claimed in cash. As a consequence, the overtime work done by Service Centre and National Headquarters staff is*

understated with respect to the overtime pattern of the Program Delivery group. It is significant that both groups work under the same collective agreements, and the same overtime clauses apply to both the Field Unit staff and Service Centre staff.

e. *Shift work/Day work: Doug Martin testified on the shift work done by those in the Wardens service. In exhibit C-2 Banff Warden Service Shift Schedule, it is indicated that positions such as that of Dave Hunter, Environmental Management Officer are also scheduled shifts as a Duty Warden. Mr. Martin's evidence is that Wardens such as Mr. Hunter work shifts, wear a Warden's uniform and do law enforcement duties. Mike Bagnell also testified that as a seasonal worker, he did not work shift but a regular compressed hour work week as did other trades persons in seasonal positions in his workplace.*

f. *Public identification/less public identification: On this factor the employer's evidence is that those delivering Parks services to the public have the greatest public identification. It was also in evidence that a significant number of the positions identified as Program Development, especially at the field unit level, have extensive "identification" with the public. This is the case for Hillary Husar, CR-3, the Court Clerk (A-9, Tab 3, pg. 15) who sells fishing permits to the public, provides information and attends in provincial court. It is also the case for Marie Nylund, CR-3, Ya Ha Tinda Ranch (A-9, Tab 3, pg. 14) who deals with campers and park visitors at this site as per Mr. Martin's evidence. It was also similar for Heather Dempsey, Ecosystem Communication Officer, GT-3, who is responsible among other duties for the school program, making presentations at schools and to guides and brownie groups on such issues as the elk hazard in the Banff area.*

g. *Public Safety Concerns/Not Significant: The Wardens Service is the frontline of the organization in dealing with public safety, but even within this service positions are divided between Delivery and Development units involving significant overlap and lack of clear separation. Mr. Martin described the positions of Program Development where individuals continue to carry out enforcement work, such as Mr. Hunter, Environmental Management Officer, Don Mickle, Cultural Resources Officer or Tom Hurd, the Wildlife Specialist (A-9, Tab 3, pg. 14,15). All have responsibilities for law enforcement and participate in public safety. Also vitally involved in public safety are the Fire Management staff of the Western Canada Service Centre who work closely with the Warden Service in dealing with fires and planning and managing controlled burns across all western field units. This staff is frequently in the field for these events according to the employer's evidence. Mr. Tremblay described the close interaction the Fire Management Staff of the Québec Service centre have with the Québec field units, close communication and collaboration including work on site in burn situations and in training of field unit staff (A-10, Tab 2, pg.2, also Tab 13). This position, classified GT-5, works under the same collective agreement as the Warden positions that it interacts closely with in the field units.*

h. *Uniforms/None - Lab Coats: The pattern of uniforms is inconsistent. While there is a strong pattern of operational group employees being provided with some identifiable clothing, the evidence is, from Mr. Zinkan and Mr. Martin, that uniforms provided by the employer to Park Wardens are worn by*

Wardens in both proposed Development and Delivery units.

i. *Direct Delivery to the public/Public interaction not core element: Much was made throughout the presentation of the importance of public contact in the determination of bargaining unit appropriateness. Mr. Latourelle indicated that generally everyone within the Agency deals with someone outside of Parks Canada. The evidence of Ms. Crook was that Service Centre employees dealt extensively with outside agencies, museums, public inquiries, researchers, academics and other government agencies. This was documented at C-1, Tab Crook, second document "Work Journal 2000". Mr. VanRumpt gave evidence on being regularly incorporated in presentations by interpreters and himself doing presentations at the Commissioner's Residence. He also spoke of organizing and making presentations at public consultation meetings in Dawson City. Mr. Martin spoke of the involvement of the biologist and environmental officers in the Wardens Service with the public in the course of their field work in the parks - contact and delivery of service to the public is inevitable in these situations. Mr. Cooke spoke of his presentations to groups in the context of projects such as the Underground Railway project. He also indicated he wore period costumes and participated in historical reenactments. Some employees are clearly frontline, dealing with the public all day every day, but a significant number, as represented by the examples above, deal with the public but on a less continual basis.*

62. *In summary, the distinctions made by the employer through the presentation of this case under "Broad Community of Interest Patterns" are flawed. There are evident patterns of work distinguishable across Parks Canada, but the employer has drawn a line across occupational groups, worksites and positions which is not supported upon close examination according to the evidence of the individuals who appeared before the Board. There are numerous exceptions and inconsistencies across the distinctions the employer is attempting to make between the Program Delivery and the Program Development bargaining units. It is one view of the Parks Canada workplace but it abstracts from many of the actual working relationships and interdependencies which are in place, evidenced here and which have been established over time.*

V. JOB EVALUATION PLAN

63. *John Watt has been a union representative on the National Classification Working Group since 1998. He described the development of the Parks Canada Classification System (PCCS) and introduced into evidence the January 12, 2000 draft of the plan with its four factors and sixteen elements (C-4, Tab 1(3rd)). He described how this plan had been adapted from the Universal Classification System of Treasury Board.*

64. *Mr. Watt indicated he thought the work on PCCS was about two thirds complete. He described how the plan had received unanimous support of the executive committee in 1998. He also indicated that a random sample group of 370 Parks Canada employee had completed their classification questionnaires (C-4, Tab 2(3rd)). Mr. Watt described how he and the committee had had over 16 meetings across the country and had spent three weeks in Ottawa in November/December 1999 rating approximately 310 of these questionnaires. The balance of the questionnaires, to his knowledge had not been completed, as the PCCS plan appeared to have been delayed in the Spring of 2000. Mr. Watt indicated he looked forward to the new job evaluation system, as it would allow all Parks Canada jobs to be measured against*

each other, and would finally identify and measure aspects of his work which had not been measured under the old system. In his view this would recognize the contributions made by employees and facilitate and support collective bargaining.

65. *The advent of this new system evaluating jobs across the Agency also supports the move to a simpler consolidated bargaining unit structure without artificial boundaries established between groups of employees. The proposal of the Alliance minimizes these boundaries in comparison to the employer's proposal which seeks to create new boundaries between groups.*

VI. SINGLE BARGAINING UNIT

66. *The Board asked the parties in their arguments to address the question of a single bargaining unit for all Parks Canada employees.*

67. *While none of the parties have proposed such a unit it has become clear in the testimony of the employer's witnesses such as Mr. Tremblay, Ms. Whitfield and Mr. Zinkan and Ms. Cameron that they "could live with" any determination that the Board made. It was also clear that there were no well-focussed issues based on Parks Canada experience in labour relations that were advanced in support of the split proposed between Development and Delivery. The impression left by management witnesses was that in the best of all worlds, all other factors being equal, that a two unit structure based on a Program Development and a Program Delivery unit would be the best solution for Parks Canada management.*

68. *In cross-examination, several of the witnesses of the Alliance including Doug Martin and Mike Bagnell indicated that in their personal view, the best bargaining unit structure was that which put all bargaining unit employees in one unit. This was a reflection of the reality of collective bargaining and the general sense that a union is most effective if it speaks on behalf of the greatest number of workers at the bargaining table. Again, as above, these comments were offered in response to questions which suggested <u>that all other factors being equal what would you see as the best arrangement for Parks Canada</u>.*

69. *The reality is that all other factors are not equal. Employees have a bargaining history and part of that bargaining history is a relationship with a bargaining agent. Each bargaining agent has their own style of representation which is a reflection of membership interests. As indicated by Mr. McNamara the Alliance has made job security a priority issue across the Public Service in the past decade along with key issues such as pay equity. We have submitted above that the bargaining history of the Alliance membership along with that of other employee groups represented by other bargaining units must be weighed heavily in the Board's consideration of these applications. Without question, the Alliance has the experience and ability to effectively negotiate for all Parks Canada employees at one bargaining table, but this is not what our application seeks. Ours is a proposal that all Table 1,2,3 and 5 bargaining group employees negotiate as a single bargaining unit. Unlike the Board's decision in the National Capital Commission (Public Service Alliance and National Capital Commission, (1994) C.P.S.S.R.B. No. 112) the present application is not a new certification pursuant to Section 28 and there is no new plan of classification in place. As indicated in the Board's decision in Canada (Canadian Forces, Staff of the Non-Public Funds) and United Food and Commercial Workers Union, Local 864. ((1998) C.P.S.S.R.B. No. 99),*

> *Subsection 33(2) of the Act must find strict application in cases of new certifications pursuant to section 28 only. Review applications such as this one for the consolidation of longstanding bargaining units must be approached with caution.*

VII. REPRESENTATION VOTE

70. The Alliance, in the course of these proceedings has provided the Board with evidence of support which is clear. Should the Board find for the union's proposal of bargaining unit grouping Tables 1, 2, 3 and 5 for purposes of future collective bargaining with the Parks Canada Agency, we submit that a representation vote will serve no labour relations purpose.

71. If, in the alternative, the Board were to find for the employer's proposition of two units, we would submit again that a representation vote would serve no labour relations purpose. In the proposed unit designated as Program Delivery by the employer, the Alliance currently represents all employees and there is no evidence to challenge its support within this unit.

72. Within the unit designated as Program Development by the employer which would subsume the employees currently represented by PIPSC, APSFA, SSEA and the PSAC, the PSAC currently represents a majority of over 72% of the employees. The requirement of a representation vote is a matter for the discretion of the Board, but we submit on the basis of the present level of representation that such an order would serve no labour relations purpose.

73. In the second alternative, should the Board find one bargaining unit appropriate for all represented Parks Canada employees, the Alliance again takes the position that a national representation vote will serve no labour relations purpose. This submission is based on the fact that the Alliance currently represents over 90% of the four thousand seven hundred (4,700) employees at Parks Canada (Exhibit: A-1, Tab 13). Members represented by PIPSC, APSFA and SSEA collectively represent approximately 440. On the basis of the membership evidence which the Alliance has provided to the Board in this matter, and the make up of the represented employee population, it is submitted that a representation vote is not a requirement.

> *In Seaspan, (37 di 38; [1979] 2 Can LRBR 213, CLRB Decision No. 190) the Canada Board addresses as similar set of facts in a successorship application where employees of different unions are intermingled:*
>
> > *The appropriate bargaining structure in this case consists of a single bargaining unit of all unlicensed employees of Seaspan.*
> >
> > *Section 144(3)(a)(ii) requires that the Board determine which trade union shall be the bargaining agent for the employees in the unit it has determined is appropriate. Normally this would involve a determination of the wishes of the employees in the bargaining unit by means of a representation vote or the examination of evidence of membership in a trade union. In this case there is a considerable disproportion in the numbers of the employees belonging to different unions who were intermingled after the sale of the*

business. The S.I.U. members (former Gulf of Georgia employees) constitute approximately twenty percent of the total number of bargaining unit employees. Such a disparity in size between the two groups of employees makes it unrealistic to require that a representation vote be taken in the bargaining unit. Since the C.B.R.T. enjoys the support of the overwhelming majority of the employees in the unit. Since the certificate of bargaining authority issued to the C.B.R.T. with respect to the Seaspan employees it represented prior to the acquisition of Gulf of Georgia reflects the Board's present determination of the appropriate bargaining unit, it is not necessary for us to amend the certificate. The certificate issued to the S.I.U. with respect to Gulf of Georgia is, by consequence of this decision, revoked.

VIII. CONCLUSION

74. The Alliance is very cognizant of the diversity within the Alliance membership and the particular needs of employee groups such as Operational and Administrative staff, Specialists, Technicians, Wardens, Trades, Interpreters and those who work in particular environments such as the historic sites and canals. It is in evidence that these members all share a strong community of interest. As a group they are deeply committed to fulfilling the mandate of Parks Canada and are proud of the role of Parks Canada in the broader national community. These employees are, in large part, presently governed by similar terms and conditions of employment codified in four collective agreements with the Treasury Board. They have an interest in negotiating together to improve these terms and conditions of employment and, under this new regime, addressing issues specific to the Parks Canada working environment.

75. We submit that the unit proposed by the Alliance reflects the history of certification and bargaining of Parks Canada employees. It promises to allow the employer to realize significant administrative efficiency in dealing with labour relations. The proposal will also provide for stability and continuity in labour relations consistent with the legislative intent of the successorship provisions of the Act.

76. It is our view that a single consolidated bargaining unit comprising administrative, technical and operational employees will permit Parks Canada members of the PSAC to be most effectively represented in collective bargaining and will also foster a climate of stable labour management relations into the future. It is the ***most*** *appropriate unit for collective bargaining.*

In all the circumstances the Alliance requests that the Board certify the unit that we submit is appropriate without recourse to a representation vote.

For the APSFA

Nature of Application

1. Successor rights may be defined, in part, as labour code provisions which allow a bargaining agent to continue to represent employees in a bargaining unit upon the sale or other divestiture of an organisation. The successor employer is responsible for its predecessor's rights and obligations to employees under existing collective agreements.

2. In response to the increasing trend to divest federal government programs to other employers, successor rights provisions were extended to the Public Service Staff Relations Act in the spring of 1996.

3. The successor rights provisions under Section 48.1 of the Public Service Staff Relations Act provide an opportunity for the employer, or any affected bargaining agent, to make application to the Public Service Staff Relations Board to re-determine the inherited bargaining units.

4. In this case, Parks Canada Agency (Parks) has filed an application seeking to re-configure the pre-existing eleven bargaining units into a new dual unit structure, the Program Delivery and Program Development Units. This proposed structure would have the effect of eliminating the pre-existing unit within which the Financial Management Group employees (FI's) have historically bargained.

5. The nature of the employer's application is of particular significance because it dictates the factors the Board will consider in this re-determination exercise, as well as the weight given to those various factors.
6. Inherent to the nature of Parks' successor rights application are the following characteristics:

> *(a) the application is not presented on a "clean slate" – the concept of succession applies to pre-existing bargaining units; and*
>
> *(b) Parks is effectively seeking to consolidate the pre-existing units;*

7. The consequences of the relief sought by the employer are also significant. The reconfiguration proposed by Parks would eliminate a bargaining unit and, apparently, the representation rights of the existing agent. Accordingly, the application is arguably akin to de-certification proceedings.

8. The successor rights application is not, therefore, in the nature of a fresh certification application but should be considered in a similar context as that applied to consolidation and de-certification proceedings.

9. This Board has previously considered an employer's application for the merger of two bargaining units in an organisation and concluded that there is a distinction between applications for certification under section 28 of the Act and requests for review of long-standing bargaining structures under section 27. Review applications for consolidation "must be approached with caution."

Staff of the Non-Public Funds and United Food and Commercial Workers Union, Local 864 (Gagetown), unreported (PSSRB), 1998, at p.54
Tab 12, Book of Authorities

10. The provisions for a reconfiguration of bargaining units under section 48.1 were intended to be exercised where there has been a significant change, upon devolution to new employer status, resulting in true organisational inefficiency or disruption in industrial relations. New agency status alone does not entitle the employer to engage in wholesale restructuring.

Onus

11. This panel has already indicated that it will ultimately determine "the most appropriate bargaining units." APSFA concurs with the application of a higher onus given the nature of the application being a request to alter the existing bargaining unit structure.

12. From APSFA's perspective, the re-determination process was triggered by the filing of Parks' application. The employer is clearly seeking specified relief by requesting:

(a) a reduced number of units;
(b) a particular composition of the units; and
(c) a departure from the status quo being the inherited structure.

13. Relative to APSFA's position, the employer bears the onus of demonstrating that its proposed consolidation of a number of units into the dual unit structure constitutes "the most appropriate" configuration.

Standard of Proof

14. The Canada Labour Relations Board has characterized the evidentiary requirements for a consolidation application in terms of two necessary pre-conditions:

*(a) one of the units **must no longer be appropriate**; and*
*(b) there must be some **jeopardy to the employer**, potential or present.*

B.C. Ice & Cold Storage and Meat Cutters (1978),
CLRBR 545 at 548
Tab 13

15. In the Atomic Energy case the employer applied to merge six bargaining units into one. The Board said that

> *[it], like other labour relations boards, has consistently required that **some substantial justification** for a change in existing bargaining unit structures be established, where change in those structures is sought. …there is an onus on the applicant in an application such as this to establish **good grounds** for the Board's interference with established bargaining structures.[emphasis added]*

Atomic Energy of Canada Limited (1995), 99 di 37
At pp.40 and 41
Tab 14

16. In Atomic Energy the Canada Labour Relations Board cited MacMillan Bloedell Limited (Alberni Pulp and Paper Division) as to the evidentiary standard in consolidation cases:

> *the Board will not lightly interfere with established bargaining structures, particularly in cases where to do so would result in the loss of bargaining rights for one of the trade unions involved. Rather, consolidation of existing bargaining rights is an extraordinary measure which the Board will resort to only in situations where* ***there is a serious labour relations problem*** *for which consolidation is the result most able to further the principles and policies of the Code. …The kind of jeopardy which an employer relies on* ***must be of a profoundly serious nature.*** *…****Mere administrative inconvenience and inefficiency, of itself, normally will not suffice. The Board must be satisfied that effective industrial relations have been virtually frustrated by the impugned bargaining structure.*** *[emphasis added]*
>
> *MacMillan Bloedell Limited (Alberni Pulp and Paper Division)*
> *(1984), 8 CLRBR (NS) 42 at pp. 44 to 45*
> *Tab 15*

*17. In the Gagetown case, the Board noted that "****strong and cogent evidence*** *is required to justify altering an existing bargaining structure which appears to have worked well over many years." [emphasis added]*

Gagetown, supra, at p. 5

18. Clearly labour relations boards will require compelling evidence of real change in the workplace which undermines the existing bargaining structure in order to justify the merging of units.

The Test

19. Parks has presented its case to the Board on the basis of a very narrow interpretation of 'community of interest'. APSFA maintains that community of interest is but one of the factors to be considered in determining the most appropriate bargaining units.

Viability

20. While most labour boards apply some community of interest criteria for determining appropriate bargaining units, the more modern view has shifted away from the application of the traditional categories originally enunciated in Usarco. Adams recognizes the evolution of a broader focus in assessing the appropriateness of bargaining units:

> *More recently, the sharp focus on community-of-interest "tests" for fashioning bargaining units as found in Usarco Ltd. has dimmed with recognition that employees of an employer have many different "interests", not all of which conflict and not the least of which may be a common interest*

> *in combining their bargaining power against their employer. As a result, labour boards have redirected their focus to addressing the more general question of whether or not the proposed unit is viable for its members and the employer. In CUPE and Hospital for Sick Children (Re), the Ontario Board put the question this way:*
>
> > *…does the unit which the union seeks to represent encompass a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis* ***without at the same time causing serious labour relations problems for the employer.***
>
> Adams, G.W. Canadian Labour Law, Second Edition,
> At page7-5, Tab 16

21. The configuration of bargaining units in the Museums case is consistent with this broader philosophy incorporating a consideration of what is viable as opposed to adopting a slavish adherence to specific criteria developed over the years. A unit of thirty-five scientific researchers was created amongst a workforce in excess of 550 employees. The Canada Labour Relations Board noted that:

> *(a) the similarity and specificity of the interests involved, as well as the number of employees affected - approximately 35 - are sufficient to convince the Board that a bargaining unit for these employees is viable;*
>
> *(b) the existence of a separate bargaining unit for the researchers is not a hindrance to the fulfilment of the employer's statutory purpose;*
>
> *(c) the separate unit is not a hindrance to the sound and efficient management of the organization in the observance of the objectives of the corporate plan; and*
>
> *(d) the creation of this separate unit is not meant to fragment the bargaining units or to unreasonable increase their numbers, but establishes a framework that ensures respect for and advancement of the parties involved.*
>
> *Canadian Museum of Civilization v. Public Service Alliance of Canada (1992),*
> *92 CLLC 14,353 at 14,362*
> *Tab 17*

Community of Interest Factors

22. There are a host of 'community of interest factors' which may be applied in a given case.

> *In applying these factors, it is a labour board's objective to fulfil its obligation to maximize an employee's freedom to join a trade union of his or her choice while at the same time*

> *promoting harmonious labour relations through effective and efficient collective bargaining procedures.* ***Each case requires a labour board to balance the aforementioned factors by assigning weight as deemed appropriate by the board in light of its experience and wisdom in such matters.***
>
> *Adams, supra at p.7-4, Tab 16*

23. APSFA maintains that the "Broad Community of Interest Patterns" (Exhibit A1, Tab 13) identified by Parks as the criteria which dictated the distribution of the positions between the bargaining units could not have served as any meaningful measure of the FI work in order to ascertain whether a community of interest existed between the FI positions and the other employees in the proposed Program Development Unit.

24. The only useful criteria which might be applied to evaluate community of interest relative to the FI's are:

(a) nature of work;
(b) terms and conditions of employment;
(c) interdependence of function.

History of Collective Bargaining and Style of Representation

25. There is abundant authority for the proposition that the history of bargaining and labour relations is a significant factor which must be considered by labour boards in determining bargaining units.

26. In Atomic Energy, the board found that the value of maintaining traditions of employee representation by existing bargaining agents outweighed the employer's convenience in dealing with fewer agents, and declined the employer's proposed consolidation.

Atomic Energy, supra, at p. 42, Tab 14

27. A similar result ensued in MacMillan Bloedell concerning the consolidation of four units into two. The labour board in that case determined that the bargaining history outweighed the employer's convenience and said that it would continue to exercise its discretion in such a way so as to "confine its intervention in longstanding historical bargaining relationships to situations where extraordinary relief is required."

MacMillan Bloedell, supra, at p.44 and 45
Tab 15

28. In Cariboo Memorial Hospital the Canadian Labour Relations Board was asked to determine which of several bargaining agents should represent certain employees. The Board noted that it was "not writing on a clear slate" in the case before it:

> *There has been no question in practice about which union represents which employees. The engineering group has been satisfied with the representation it has received from the Operating Engineers and is loyal to that union.* ***In defining and re-defining appropriate bargaining units that kind of history is all-important.*** *It indicates the*

> *existence of workable relationships amongst the employer and both unions and tends to produce an even stronger community of interest among the group of employees than was present on the original certification. … to sweep the engineers into the [other unit] against their wishes, could only damage the future of collective bargaining at [the hospital]. [emphasis added]*
>
> *Cariboo Memorial Hospital (1974), CLRBR, 418 at 421*
> *Tab 17*

Employee Wishes

29. Labour relations boards are said to be sensitive to the wishes of employees. To displace an incumbent union, there must be some evidence adduced to suggest dissatisfaction with the existing structure and representation.

30. The absence of such evidence favours a result confirming the status quo regarding the pre-existing bargaining structure on an application to merge units:

> *…the Board is, properly, much more concerned with the interests of employees as such, and in the instant case there has not been, as there was in some of the major restructuring cases which have been referred to, any expression of employee dissatisfaction with the present structure,* ***nor has the employer established that employee interests would be better served, to any significant degree, by a changed structure.*** *[emphasis added]*
>
> *Atomic Energy, supra, at p.42*
> *Tab 14*

The Evidence

Parks as a New Separate Employer

31. Alan Latourelle, the Chief Administrative Officer for Parks, confirmed that the mandate of Parks has remained the same, relative to its pre-Agency status. Broadly speaking, Parks Agency is engaged in activities designed to protect nationally significant examples of Canada's natural and cultural heritage as well as present that heritage through interpretive and educational programs.

32. There is no evidence that the devolution to new employer status has impacted Parks' operations in any way material to its ability to carry out its mandate, conduct its operations or engage in harmonious labour relations.

33. In particular, there was no evidence adduced to suggest that there has been any material change in Parks operations or organization affecting the FI group which has impacted Parks' mandate, operations or industrial relations.

34. Similarly, in support if its application to alter the bargaining unit structure the employer has not tendered strong and cogent evidence in respect of the FI group, to demonstrate:

(a) jeopardy to labour relations under the inherited bargaining unit structure;

(b) inability of the employer to conduct its affairs in an efficient and effective manner as a consequence of the pre-existing group structure; nor

(c) cogent reasons as to why the pre-existing structure involving a separate FI group is no longer viable.

35. Clearly there has been no significant change in the employer's organization to merit the consolidation of the FI unit into the larger Program Development Unit. In fact, the sole justification for the merger of this unit appears to be an alleged administrative inconvenience in having to deal with another bargaining agent. Administrative convenience is not viewed as a valid reason to support a consolidation. Moreover,

(a) APSFA has a proven history of harmonious labour relations, incorporating a non-confrontational approach to dispute resolution;

(b) consequential "inconvenience" is highly questionable and has not been proven;

(c) "inconvenience occasioned by having to deal with an additional agent would be trifling, resulting in only one more agent and would not entail a proliferation of units.

Employer's Method of Determining Bargaining Units

36. The proposed dual unit configuration was apparently crafted by a focus group comprised of ten managers from across the country. Parks engaged the services of a consultant to guide that process. The findings of the focus group were presented to the Executive Board of Parks which endorsed the proposed Program Delivery and Program Development structure.

37. It is clear from the evidence that:

(a) the FI's were never considered to form a separate unit;

(b) the specific skill sets of the FI's and the actual work that they do was not considered by the focus group nor the Executive Board;

(c) it was a foregone conclusion that the FI's would be subsumed into the larger Program Development Unit; and

(d) it was presumed that APSFA would not intervene in any re-determination application.

38. The consequence of this perfunctory dealing with the Financial Management Group is that the placement of the FI's into the Program Development Unit was not as a result of an inquiry based on the community of interest criteria.

39. Ms. Campbell, the consultant engaged by Parks, maintained that "each and every job" was considered against the community of interest criteria. However, cross-examination of the members of the focus group who testified at the hearing yielded evidence to the effect that any consideration of the FI group was cursory, at best, and based on a very limited familiarity with the true nature of the FI function.

40. According to Parks, the "Broad Community of Interest Patterns" included:

- *Seasonal v. non-seasonal*
- *Outdoor v. indoor*
- *Operational v. corporate setting*
- *Overtime/weekends/holidays v. Monday to Friday*
- *Shift work v. day work*
- *Public face v. no public face*
- *Safety concerns v. no concerns*
- *Uniforms v. no uniforms*
- *Direct delivery to public v. no public interaction*

Broad Community of Interest Patterns
Exhibit A1, Tab 11

41. These criteria serve only as a superficial catalogue of some working conditions affecting some Parks Canada employees. The consultant engaged by Parks admitted on cross-examination that the list does not prompt any consideration of the nature of the work performed by the occupational groups, nor a review of the skill sets of employees. These latter features, insofar as community of interest is concerned, are the elements which best reflect the distinct labour relations concerns for the FI's. The list utilized in the Parks model is incapable of profiling the FI position in any meaningful way.

Viability of Bargaining Unit

42. According to the testimony of the consultant, Campbell, the viability of the FI's as a smaller occupational group constituting a separate bargaining unit was never considered.

43. In keeping with the evidence of Mr. Perkins for the employer, the FI's were dismissed as having insufficient numbers to justify a separate group. In actual fact, effective representation of interests of the FI members within a larger group, such as the proposed Development Unit, is less likely given that their unique professional financial concerns will be dwarfed by the sheer numbers of employees having other labour relations concerns.

44. The fundamental flaw in the employer's approach to the process in this cursory fashion is that the conclusion regarding the placement of the FI's was made without the appropriate inquiry.

45. Consistent with a more modern approach to assess the appropriateness of bargaining units, the evidence of Sylvie Larouche supports the argument that the FI's have a sufficiently coherent, and distinct, community of interest to bargain together on a viable basis without causing serious labour relations problems for the employer. Again, no evidence to the contrary was led by the employer.

46. Moreover, features of the FI group are reminiscent of the Museums case in that:

(a) their interest are similar and specific;
(b) numbers of approximately 35 are viable in a separate unit;
(c) the separate unit is not a hindrance to the sound and efficient management of the organization; and
(d) retaining the pre-exiting FI unit does not unreasonably increase the number of units and ensures respect for and advancement of the interests of the parties involved.

Community of Interest Factors

Nature of work

47. The evidence tendered by APSFA on behalf of the FI's emphasizes the true finance function associated with the FI occupational group. Sylvie Larouche testified as to the distinction between a more clerical book-keeping function and the more sophisticated advisory role which FI's play in the organization. The requirement of the FI's to rigidly apply sound financial principles and their accountability to their professional organizations underscores the important role of the FI in administering the public purse.

48. Through the employer's witness, Mr. Perkins, Parks tendered evidence to suggest that a number of other occupational groups - AS CO CR - also performed a "finance function", and therefore, the FI group did not engage in a distinct role within the organization. The evidence to support that contention is not probative and does not, in fact, support the conclusion proffered by the employer in that:

(a) the witness was not personally familiar with the positions forming the basis of this exercise;

(b) the percentage of finance function of these sample positions was simply estimated on the basis of job descriptions;

(c) the job descriptions had not been verified and many were not signed off by the supervisor; and

(d) a "finance function" was considered to be anything ranging from the collection of revenues from automatic fee machines to in-putting employee time sheets.

Terry Perkins – Job Descriptions, Exhibit A13

49. The employer's evidence in this regard actually emphasizes APSFA's contention that there is a fundamental lack of comprehension of the FI role. Conversely, the Larouche evidence described the need for the FI's, and their representative agent, to foster the professionalism of their group with a view to preserving and enhancing its integrity. These preoccupations for the FI carry over into the labour relationship but have no bearing on the CR AS and CO.

Terms and Conditions of Employment

50. The evidence of the employer's witnesses Mr. Tremblay and Mr. Stewart, as well as the evidence of Ms. Isabelle, described the role of other 'professionals' within the organization including architects, historians, engineers, biologists and archaeologists. Parks proposes to place all of these groups in the Program Development Unit on the basis that, as professionals, they have a shared community of interest, based on the criteria applied by Parks in its re-configuration exercise.

51. Through the testimony of various witnesses these occupational groups were shown to have conditions of employment which give rise to significant health and safety concerns, a labour relations feature which is essentially of no concern to the FI group. For example, historians may work in a laboratory or heritage environment where toxins and lifting requirements raise health and safety issues. Architects, engineers and biologists engage in field work on canal projects or natural heritage conservation and Archaeologists share similar health and safety concerns associated with field work or a laboratory environment.

52. This lack of common ground on these fundamental issues again raises the spectre of overshadowing the specific interests of the FI's relative to the other professionals proposed for the Development Unit.

Interdependence of function

53. Parks employees may engage in multi-disciplinary teamwork on specific projects from time to time. The evidence of Ms. Larouche is that the input from the FI who may participate in such a team is of a different character and their effort is not integrated with others employees in a like fashion. The FI's are often viewed as the "financial police" and in that regard, their contribution may give rise to conflict.

54. Unlike other professionals at Parks, FI work is not focussed on Parks' substantive conservation and heritage mandate but relates to financial administration. To that end, their career progression does not traditionally involve upward movement into other occupational categories within an organization in order to progress in a financial management career. Mobility is to a higher FI level within the organization, or in the broader public service giving rise to labour relations concerns such as integrity of selection standards and related classification issues.

History of Collective Bargaining and Style of Representation

55. No consideration by Parks was evidently given to these factors in crafting the employer's proposed structure apart from the presumption, evident from the Campbell evidence, that APSFA would not resist the Parks proposal and the FI's would be subsumed into a larger unit.

56. Similarly, no evidence was introduced as to any labour relations reasons which would outweigh the established bargaining history.

57. Consistent with the Atomic Energy and MacMillan Bloedell cases, this element of historical bargaining relationships is "all important" where the consolidation of the FI unit into a larger group would result in the elimination of the pre-existing unit and loss of representational rights for the incumbent agent.

58. The evidence tendered by APSFA shows that the Association has not simply adopted a "me to" approach in its efforts to preserve a smaller, group-specific unit. The Association was originally created as a proactive movement to better serve the labour relations interest of the FI group and to provide an alternative style of representation. To the extent that APSFA has fostered that alternative style in its approach to labour relations is a significant factor in assessing the appropriateness of a separate FI unit.

Employee Wishes

59. The FI group has expressed its desire to have a separate unit. FI's have given a mandate to resist the consolidation of the FI group into a larger unit.

Single Bargaining Unit

60. A single bargaining unit blending the members of the financial management group with the employees currently represented by the Alliance, and proposed for the Program Delivery Unit, as well as the other professional and clerical workers proposed for the Program Development Unit is not viable.

61. There are obvious differences between terms and conditions of employment. Shift work, health and safety concerns (as previously related to the other professional groups as well as the Program Delivery workers) and regional disparity in pay are some examples of labour relations issues which do not address the needs of the FI group.

62. The more fundamental philosophical differences resulted in the departure of the FI group from the Alliance as its former bargaining agent. The preference for an alternative style labour relations relative to the other traditional trade unions is an additional and compelling reason why a single unit is not viable from the perspective of the Financial Management Group.

63. The consolidation of the FI group within a larger group dominated, in numbers, by workers with different labour realities and issues would result in the loss of any ability of the FI's to assert their specific professional financial interests in the broader industrial relations context.

Representation Vote

64. The successor rights provisions in the Act (subsection 48.1(8)) provide the panel with jurisdiction to direct a representation vote "as the Board considers necessary".

65. In the event that the FI group is subsumed into a larger unit, APSFA requests that a representation vote be held with APSFA appearing on the ballot because:

(a) the merger with a larger unit would be specifically contrary to the express wishes of the FI's and they should be afforded an opportunity to demonstrate their wishes through a vote; and

(b) all employees should have the opportunity to vote for an agent who has consistently pursued alternate dispute resolution and developed a non-confrontational style of labour relations.

Order Requested

66. APSFA requests that the employees in the Financial Management Group, currently classified FI, constitute a separate bargaining unit and that the Association of Public Service Financial Administrators shall be the bargaining agent for that unit.

67. In the alternative, and in the event that the FI group is merged with a larger group, APSFA requests that a representation vote be held and that the Association of Public Service Financial Administrators shall appear on the ballot.