

Cited as:
Ottawa Transition Board

Ottawa Transition Board, Applicant v. The Ottawa-Carleton Public Employees' Union Local 503, The Civic Institute of Professional Personnel of Ottawa-Carleton, The Ontario Nurses' Association, Canadian Union of Public Employees Local 2187, Canadian Union of Public Employees Local 2617, Canadian Union of Public Employees Local 4159, Teamsters Local Union 91, Canadian Union of Public Employees Local 1525, Canadian Union of Public Employees Local 1670, Canadian Union of Public Employees, Local 2753, Canadian Union of Public Employees Local 1246, Canadian Union of Public Employees Local 1021, Canadian Union of Public Employees Local 3438, Canadian Union of Public Employees Local 2293, Canadian Union of Public Employees Local 2504-01, Canadian Union of Public Employees Local 2753-01, Canadian Union of Public Employees Local 1525-1, Canadian Union of Public Employees Local 2504, Canadian Union of Public Employees Local 20, International Alliance of Theatrical Stage Employees (Local 471), Ottawa-Carleton Regional Police Association, Ottawa-Carleton Regional Police Senior Officers' Association, The Cumberland Township Professional Fire Fighters Association Local 2621 International Association of Fire Fighters, The City of Kanata Professional Fire Fighters Association, Nepean Professional Fire Fighters' Association, Local 1484 International Association of Fire Fighters, and Ottawa Professional Fire Fighters Association, Responding Parties v. Amalgamated Transit Union, Local 279, Intervenor

[2001] O.L.R.D. No. 107

[2001] OLRB Rep. January/February 92

File No. 2353-00-PS

Ontario Labour Relations Board

BEFORE: Christopher J. Albertyn, Vice-Chair

January 11, 2001

(46 paras.)

Bargaining unit -- Public Sector Labour Relations Transition Act -- Board determining various bargaining unit and representation issues under Public Sector Labour Relations Transition Act in connection with amalgamation of municipalities into new City of Ottawa -- Board declining to establish separate nurses-only bargaining unit or separate unit for nurses employed in homes for the aged and instead including nurses in professional bargaining unit -- Board agreeing to include ONA on ballot in representation vote concerning professional bargaining unit even though ONA represents only 5% of unit's membership and even though large percentage of unit might not arguably be eligible for membership in ONA under its constitution.

Appearances:

Jacques A. Emond, Andrew Tremayne, John Kearney, David Tomalty and David Bray, for the applicant.

David Jewit and Craig Morrison, for the Ottawa-Carleton Public Employees' Union Local 503.

Judith Allen and Rosemary Williams, for CUPE Local 2187.

Caroline Cohen, Beverly Rodnick, Barbara Findlay and Raymonde Boileau, for the Ontario Nurses' Association.

Sheila Stanislawski and Stephen Forestell, for the Civic Institute of Professional Personnel.

DECISION OF THE BOARD

1 This is an application under section 21, 22 or 23 of the PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997 ("the Act") respecting the bargaining rights of the responding parties.

2 This application arises under section 3 of the Act on account of the amalgamation of several municipalities into the new City of Ottawa ("the employer"/"the City"/"the new city") brought about by the City of Ottawa Act, 1999.

3 Agreements have been concluded between the City and many of the responding unions as regards the labour relations consequences of the amalgamation. Several matters between the parties have been resolved. What remained was addressed at a consultation before me in Ottawa on December 15, 2000.

4 The issues addressed at the consultation were the following:

1. Whether there should be a single Professional bargaining unit for the City or whether registered and graduate nurses should be put into a separate unit, or, in the alternative, whether there should be a separate unit for nurses employed in Homes for the Aged;
2. Whether there should be a separate bargaining unit for Library employees;
3. Whether there should be a separate bargaining unit for Part-time Recreation employees;
4. How disputes over particular positions which might fall within either the Outside/Inside bargaining unit or the Professional unit, should be dealt with;
5. Depending upon the resolution of the issues, what should be the description of each bargaining unit and which union should be the bargaining agent for each unit;
6. Whether ONA should be entitled to receive the names, addresses and phone numbers of the employees it seeks to represent.

Background

5 The City has proposed nine bargaining units to replace the numerous units (40 in all) that currently exist. At present the following bargaining units exist:

In the former Regional Municipality of Ottawa-Carleton: with CUPE, Local 503 - a full-time employee unit, excluding, among others, those represented by the Civic Institute of Professional Personnel ("CIPP"), the Association of Allied Health Professionals, and by CUPE, Local 2187; with CUPE Local 503 - a part-time recreation and culture unit; with CIPP - a professional staff unit; with CIPP - a professional staff unit in the Health Department; with the Ontario Nurses' Association ("ONA") - part-time registered nurses at various Homes for the Aged; with CUPE, Local 2187 - a supervisors' unit;

In the former Corporation of the Township of Cumberland: with CUPE, Local 2617 - outside workers; with CUPE, Local 4159 - inside workers;

In the former City of Gloucester: with Teamsters Local Union 91 - employees in the Buildings Operations and Parks divisions; with Teamsters Local Union 91 - part-time employees in the Roads and Sewers divisions; with CUPE, Local 1525 - full-time office and clerical employees;

In the former City of Kanata: with CUPE, Local 1670 and CUPE, Local 2753, two separate units covering the employees;

In the former City of Nepean: with CUPE Local 1021 - outside full-time employees in the Public Works & Recreation Departments; with CUPE Local 1246 - inside full-time employees;

In the former Township of Osgoode: with CUPE Local 3438 - full-time employees;

In the former Township of West Carleton: with CUPE Local 2293 - full-time employees;

Between the Ottawa Public Library Board and CUPE Local 503 (Library Group) - an all employee unit;

Between the Gloucester Public Library Board and CUPE Local 1525-1 - a full time bargaining unit; and a part-time bargaining unit;

Between the Goulbourn Township Public Library and CUPE Local 2504-01- an all employee unit;

Between the Kanata Public Library Board and CUPE Local 2753-01 - an all employee unit;

Between the Nepean Public Library Board and CUPE Local 2504 - an all employee unit;

Between the Corporation of the City of Vanier, Vanier Public Library Board and CUPE Local 20 - an all employee unit.

In addition to the above bargaining units, the International Alliance of Theatrical Stage Employees ("IATSE") Local 471 held bargaining rights for stage employees in the former Regional Municipality of Ottawa-Carleton and the City of Nepean. There are various police bargaining units,

pursuant to the Police Services Act: between the Ottawa-Carleton Regional Police Services Board and the Ottawa-Carleton Regional Police Association there are the Police Personnel and Civilian Personnel units. Between the Ottawa-Carleton Regional Police Services Board and the Ottawa-Carleton Regional Police Officers' Association there is a Police and Civilian Personnel unit. There are fire units: between various Fire Fighters Associations and the Corporation of the Township of Cumberland, the Corporation of the City of Gloucester, the Corporation of the City of Kanata, the City of Nepean and the City of Ottawa. There are transit units between OC Transpo and CUPE Local 5500 (transit supervisors; security department; equipment division) and between OC Transpo and the Amalgamated Transit Union ("ATU") Local 279.

6 The City proposes: three police units prescribed in the Police Services Act (one for senior officers; one for uniformed police officers; and the civilian unit) - this will involve no change; a fire fighters' unit as defined in the Fire Protection and Prevention Act, 1997 - this will involve the merger of the various fire fighter units; a professional employees unit, which will incorporate all of the professional units; an Outside/Inside unit, which will combine virtually all of the CUPE units and the Teamsters Local Union 91 units; a Library unit, combining all of the library employees; a unit for all stage employees; and a part-time culture/recreation unit. The various police and transit units are likely to fall outside of the jurisdiction of the Board and, other than to a limited extent, will not be further dealt with in this decision. Subject to what follows concerning the professional unit, the remaining units have been agreed with each of the unions which is representative of them. The professional unit is agreed with CIPP, which represents a substantial majority of the employees falling within the proposed unit, although that agreement is contingent upon a determination of whether there ought to be a separate nurses' unit.

7 Teamsters Local Union 91 has concluded an agreement with CUPE Local 503 in terms of which the Teamsters have agreed to merge their former bargaining units with those of CUPE Local 503. The effect of this agreement is that Local 503 acquires the Teamsters' former bargaining units.

A separate nurses' unit?

8 ONA contends that there ought to be a separate bargaining unit for registered and graduate nurses, or, failing that, there ought to be a separate bargaining unit for registered and graduate nurses in the City's Homes for the Aged.

9 All of the parties besides ONA, including particularly the City and CIPP, which would be most affected by ONA's proposal, opposed it. In fact the other parties (the various CUPE Locals, the City and CIPP) have concluded in their Memorandum of Agreement that there ought to be only one professional unit, which should include the City's nurses, for all professional staff. ONA wants the nurses to be cut from that unit.

10 The new City of Ottawa, following the amalgamation brought about by the City of Ottawa Act, 1999, will consist of various sections. One of those sections, People Service, will be made up of six departments: Public Health and Long Term Care; Community Services; Employment and

Financial Assistance; Housing and Libraries. The Public Health and Long Term Care department is projected to have 732 full-time equivalent positions (FTE's). Nurses are spread throughout the different sub-departments: Community Medicine; Health Protection; Chronic Disease & Injury Prevention; Long Term Care. There are over a thousand professional employees in the City who would fall into the professional unit proposed by the parties besides ONA. There are approximately 330 full-time nurses in the Public Health and Long Term Care department. Of them, CIPP has hitherto represented about 280 as part of its existing professional bargaining unit; and ONA has represented 54 part-time nurses in Homes for the Aged. Of the nurses in CIPP's unit, about 60 are full-time nurses in Homes for the Aged. There are several other health professionals in the Health and Long Term Care department who are not nurses and who are currently represented by CIPP. The non-professional employees in the Health department are represented by CUPE.

11 ONA submits that historically it has been recognized by the Board as the bargaining agent for registered and graduate nurses in various contexts and among a range of employers. In its brief ONA provided numerous examples of where it has been recognized for a separate bargaining unit of nurses in local authorities and Homes for the Aged in Ontario and throughout Canada. ONA has a craft status enabling it to represent a horizontal category of employees which cuts across more broadly based bargaining units.

12 ONA points out that the three Homes for the Aged, where it represents part-time registered nurses, are governed by the Hospital Labour Disputes Arbitration Act. Subsection 22(5) and 22(6), as read with subsections 22(1), 22(2) and 22(7) of the Act have a bearing upon my consideration:

22.(1) Subject to any agreement under section 20 that is in effect, the Board, upon the application of a successor employer or any bargaining agent that has bargaining rights, may by order determine the number and description of bargaining units that are appropriate for the successor employer's operations after the occurrence described in sections 3 to 10.

(2) Nothing in this section prevents the Board from making an order that results in a bargaining unit of employees who are members of a profession and engaged in a professional capacity and who for that reason commonly bargain separately and apart from other employees through a bargaining agent that according to established trade union practice pertains to the profession unless such an order would result in an unduly fragmented bargaining unit structure.

(3) If the employees in a bargaining unit perform construction work and are represented by a construction union, the Board shall, in making an order under subsection (1), have regard to decisions made by it relating to the description of bargaining units on applications under section 158 of the Labour Relations Act, 1995 and predecessors of that section, but the Board

is not required to follow those decisions if the Board is of the view that it would not be appropriate to do so.

- (4) In subsection (3),

"construction union" means a trade union or council of trade unions, both as defined in section 126 of the Labour Relations Act, 1995 or an affiliated bargaining agent or employee bargaining agency, both as defined in section 151 of that Act; ("syndicat de la construction")

"construction work" means constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site. ("travaux de construction")

- (5) An order under subsection (1) must not result in a bargaining unit that includes employees whose labour relations are governed by the Fire Protection and Prevention Act, 1997 or the Hospital Labour Disputes Arbitration Act together with employees whose labour relations are not governed by the same Act.
- (6) Despite subsection (5), an order under subsection (1) may result in a bargaining unit that includes employees whose labour relations are governed by the Hospital Labour Disputes Arbitration Act together with employees whose labour relations are not governed by that Act if,
- (a) a bargaining unit of a predecessor employer included employees whose labour relations were governed by the Hospital Labour Disputes Arbitration Act together with employees whose labour relations were not governed by that Act; and
 - (b) the Board is of the view that it would be appropriate to issue such an order.
- (7) In making a determination under this section, the Board shall have regard to the purposes of this Act.

13 CIPP responds that it has represented all of the City's professional employees, including nurses, since 1953, a period of nearly 50 years. Throughout that time CIPP has had a no-strike/no-lockout provision in its collective agreement with the City, the consequence of which has been that interest arbitration has been the method for resolution of collective bargaining disputes between CIPP and the City over the years, when they have been unable to come to terms

themselves. In other words, CIPP already operates under a regime which is contemplated by the Hospital Labour Disputes Arbitration Act.

14 ONA alludes to the fact that the parties have recognized separate units for part-time culture/recreation employees and for Library employees. It contends that to recognize a separate nurses' unit will be no more fragmenting of the bargaining configuration in the City. The other parties respond that the Library is a separate employer, distinct from the City, and has always been so. Bargaining has been with a separate library board, which will continue after the amalgamation. As regards the recreation unit, because of the seasonal nature of the work in that unit, it has traditionally made sense to have the part-time employees who fall within that unit treated differently and separately from the City's regular employees. That has been the case historically. All parties accept that the employees within that unit have a separate community of interest from the employees in the Inside/Outside unit, and that they should be in a distinct bargaining unit.

15 ONA points out that only the City of Toronto is exceptional as regards the recognition of a separate nurses' bargaining unit. In Toronto, as part of the restructuring of the City under the Act, the Board found (in City of Toronto, [1998] OLRB Rep. Sept./Oct. 772) that ONA was not entitled to a separate nurses' bargaining unit. The Board had this to say on the matter:

72. What is troubling about ONA's proposal is not only that it would subdivide an established broader based bargaining unit (which has been perfectly workable in the past), but also that it does not encompass the whole of its standard professional unit. What ONA seeks is a unit of SOME of the nurses employed by the new City in ONE PART of the new City's Department of Community and Neighbourhood Services.
73. ONA's proposed unit INCLUDES several hundred nurses - now mostly represented by CUPE and to a significant degree now situated in the inside unit). But ONA's proposed nurses in public health EXCLUDES several hundred other nurses in the same City Department, who are also mostly represented by CUPE. Insofar as the City as whole is concerned, ONA is seeking only PART of its traditional craft unit.
74. If ONA's proposed unit were accepted there would be a pocket of several hundred nurses in the health department division of the Department of Community and Neighbourhood Services, and separate pocket of several hundred other nurses who are part of a more broadly based bargaining unit that pertains to that same Department. The professional group would be divided, because ONA only wants part of its traditional craft unit, in a part of the new City's restructured organization. And to get there, one would still have to subdivide an existing broader inside unit, that has proved quite workable in the past.
75. In my view, ONA's proposed unit ("some nurses in some nurses out") does not produce a rationalized bargaining structure for the new City's

operations, represents undue fragmentation in the circumstances, and is an unwarranted departure from the existing status quo - by which I mean the broader inside unit with CUPE Local 79 from which so many nurses would have to be removed, if the ONA proposal were granted.

76. In my view, the ONA's proposed unit of nurses in the "health department" is not "appropriate for the successor employer's operations" within the meaning of section 22(1), and further that this is not an appropriate case to exercise whatever discretion may be available in these circumstances under section 22(2).
77. Registered nurses can and, in the circumstances of this case, should be appropriately situated in the larger, municipal inside workers bargaining unit - as many of them have been for many years. In my opinion, in the context of the megacity, that is what best meets the purposes of Bill 136. I am not persuaded that the practice elsewhere in the province is very useful in dealing with the situation of the new City; and I accept instead, the submissions of the City and CUPE Local 79 as to what is appropriate for the new City's operation.

[emphasis in original]

16 ONA failed to persuade the Board of the need for a separate nurses' unit in The City of Toronto. ONA applied for reconsideration of the Board's decision. In the reconsideration decision, City of Toronto, [1998] OLRB Rep. Nov./Dec. 920, the Board found that there was no presumption in favour of an "all nurses" bargaining unit under the Act. The Board did point out, though, (at paragraph 17) that the "all nurses" option was not pressed until the request for reconsideration and (at paragraph 18) it held that ONA could not pursue the "all nurses alternative under the umbrella of reconsideration." The Board's comment influenced ONA's decision to contend for the bargaining unit it seeks in this application. It decided to apply for an all nurses unit to meet the Board's concern that this option had not been sought in the main application concerning Toronto's restructuring.

17 The Board's decision in the City of Toronto reconsideration does not suggest that ONA's application for an all nurses' unit would have been successful had it been advanced initially, rather than only at the reconsideration stage. It makes clear only that the Board would not consider the proposal as part of a reconsideration application.

18 Counsel for CUPE Local 503 points out that the agreements concluded between the City and the various unions have been the result of extensive negotiation and a process of give and take by the parties to those agreements. He submits that the creation of a separate nurses' unit at a late stage in the process of determining the bargaining unit composition for the new city will affect the agreements reached by the principal parties affected by the amalgamation. It might cause a more

general re-opening of discussions and negotiations on bargaining unit composition. In other words, the current proposal of the bargaining unit configuration depends upon a series of compromises which the parties to the agreements have made in order to address the labour relations consequences of the amalgamation and any tinkering with their arrangements can affect what they have agreed upon.

19 ONA cites the following cases in which an all nurses bargaining unit was determined by the Board to be the appropriate unit under the Act following an organizational merger or restructuring: CENTRE FOR ADDICTION AND MENTAL HEALTH, [1998] OLRB Rep. Sept./Oct. 759 and GREY BRUCE HEALTH SERVICES, [1999] OLRB Rep. Jan./Feb. 57. Each of these cases is distinguishable on one or other significant ground and both decisions were made in the context of hospital, rather than municipal, amalgamation.

20 In the CENTRE FOR ADDICTION AND MENTAL HEALTH the Board was faced with three predecessor hospitals. In two there were separate nurses' bargaining units. In the third hospital there was an all employee unit. The new hospital in that case agreed that there ought to be a separate nurses' bargaining unit. There was only one nurse working in the "all employee" unit at the time. The Board found a nurses' bargaining unit to be the most appropriate, having considered "the consensus between the hospital and ONA and the statutory language, among other factors" (762, paragraph 13). In that case the consensus was between the hospital and ONA. In this case the consensus is between all of the parties, save for ONA. There it made no sense to break the dominant historical pattern of separate bargaining for nurses; here the dominant historical pattern is for nurses to bargain as part of the professional unit.

21 GREY BRUCE HEALTH SERVICES involved the amalgamation of five hospitals. In all of them there had been separate nurses' bargaining units. The new hospital wished to have two bargaining units: one for employees providing direct patient care (including nurses among other health professionals) and another for clerical and service employees. All of the unions affected by the amalgamation supported the notion of a separate nurses' bargaining unit. The Board accepted the unions' submission. It took account of the then current structure for bargaining at the various hospitals and considered what would be least disruptive. These facts are clearly different from those in this case. Here the historical precedent favours the continuation of a professional bargaining unit, in which nurses are included, rather than a separate nurses' unit.

22 This case does not involve a hospital setting in which there is an historical presumption in favour of a separate bargaining unit for nurses. The presumption is less strong in the municipal sector. Furthermore, the presumption in favour of a craft unit does not apply when to create such a unit involves carving it away from a larger unit which better reflects the established bargaining pattern. The craft presumption yields to the collective bargaining goal of broader, more stable bargaining units.

23 The Board exercises a different discretion when determining an appropriate bargaining unit

under the Act than it does when determining a bargaining unit under the LABOUR RELATIONS ACT, 1995. In a certification application the Board is determining a unit appropriate for collective bargaining for unorganized persons. Under the Act there is no issue of access to collective bargaining. The emphasis is on broader, rationalized bargaining unit structures. Under the LABOUR RELATIONS ACT, 1995 the difficulties of organizing a large bargaining unit may be a relevant consideration. That is not so under the Act. Similarly, in the absence of agreement, unlike the situation of the normal successorship rules which apply under the LABOUR RELATIONS ACT, 1995, there is no presumption under the Act in favour of preserving the pre-existing bargaining unit structures. The test is different under the Act from that under the LABOUR RELATIONS ACT, 1995, and there is a different focus and emphasis. Under the LABOUR RELATIONS ACT, 1995 the test is whether the union's proposed bargaining unit is appropriate for collective bargaining; under the Act the test is whether the proposed bargaining unit is appropriate for the operational needs of the new entity's operations. The emphasis is now on the employer's operational needs. That is clear from the provisions of subsection 22(1) of the Act, quoted above. The determination of the appropriate bargaining unit must also be made in the context of the purposes of the Act, under section 1, which read:

1. To encourage best practices that ensure the delivery of quality and effective public services that are affordable for taxpayers.
2. To facilitate the establishment of effective and rationalized bargaining unit structures in restructured broader public sector organizations.
3. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees following restructuring in the broader public sector and in other specified circumstances.
4. To foster the prompt resolution of workplace disputes arising from restructuring.

24 A further consideration is the extent of agreement between the employer and the trade unions affected by the amalgamation. The Act regards the agreement of the interested parties to be significant, indeed binding upon the Board, subject to certain limitations upon what the parties can and cannot agree. This is apparent from sections 20 and 21 of the Act. A high premium is placed on the parties' agreement. In this case there is no universal agreement because ONA is not a party to the agreement between the City, CUPE Local 503 and the CIPP, which will affect most employees of the new city. However the extent of agreement on the bargaining unit configuration of the new city is substantial and I should not abrogate that agreement unless there are compelling labour relations reasons for doing so.

25 The City takes the position that its operational needs will be best served by having a single professional bargaining unit, as it has agreed with the CIPP and CUPE Local 503. Although the City is not the sole judge of what is most in its operational interest, its view of the matter is an important consideration.

26 While ONA's proposed bargaining unit structure, with a separate nurses' unit carved out of the professional unit, may be an appropriate unit under the Labour Relations Act, 1995, it does not fit with the most effective bargaining unit structure for the new city. It represents a fragmentation of the professional unit which is proposed by the other parties, without any clear justification, other than the fact that historically separate nurses' units have been recognized in Ontario and throughout Canada. ONA's alternative proposal of retaining a separate Homes for the Aged nurses' unit, would be even more fragmenting of the bargaining unit structure within the City. It is a less acceptable alternative than ONA's principal proposal.

27 I am persuaded by the considerations the Board took into account in The City of Toronto, above. They apply equally in this case. As stated by the Board (at paragraph 72), what is troubling about ONA's proposal is that it would "subdivide an established broader based bargaining unit (which has been perfectly workable in the past), ..." In this case, ONA has applied to represent all nurses (in Toronto it applied to represent only some of the nurses), but that does not detract from the fact that it seeks to break up a bargaining unit which has included nurses and functioned successfully for over 50 years. To break up such a unit requires some strong justification. The community of interest between nurses is simply not sufficient. The current bargaining structure has demonstrated a long standing community of interest between the nurses of Ottawa and other professionals. The effectiveness of the larger professional unit over a sustained period of time militates against that unit being subdivided.

28 In the circumstances I find that there should not be a separate nurses' bargaining unit, nor should there be a separate bargaining unit of nurses employed at Homes for the Aged. The nurses of the City should be part of the professional unit agreed upon between the City and CIPP.

29 In reaching this conclusion I have taken into account the provisions of subsection 22(6), as read with subsection 22(5), of the Act. The professional bargaining unit will include employees (those hitherto represented by ONA) whose labour relations are governed by the HOSPITAL LABOUR DISPUTES ARBITRATION ACT. As stated earlier, interest disputes in the professional bargaining unit have always been dealt with by interest arbitration, such as is contemplated under the HOSPITAL LABOUR DISPUTES ARBITRATION ACT. Moreover, nurses, who would likely otherwise have fallen under that Act, have been subject to the collective agreements which were concluded for successive periods of time on their behalf by the CIPP. This is a case in which, despite the provisions of subsection 22(5) of the Act, it is appropriate that the professional bargaining unit include nurses.

Which unions will represent the bargaining units?

30 Leaving aside the three police units, the fire fighters' unit, and the transit units, what form part of this application are the professional employees unit, the Outside/Inside unit, the Library unit, the unit for stage employees, and the part-time culture/recreation unit. I will shortly deal with the bargaining agency for the professional unit. In respect of the other units, having regard to the

provisions of subsection 23(11) of the Act, the following unions have established sufficient representivity to be declared the bargaining agent for each without the need for a representation vote: the Outside/Inside unit - CUPE Local 503; the Library unit - CUPE Local 503; the stage employees unit - IATSE Local 471; the part-time culture/recreation unit - CUPE Local 503. I will make declarations to confirm these conclusions.

31 This leaves the professional unit. It is overwhelmingly represented by CIPP, but ONA possesses some members within it. Should CIPP be declared the bargaining agent for the unit, or should ONA be entitled to participate in a representation ballot to determine whether it or CIPP should be the bargaining agent?

32 Subsection 23(2), as read with subsection 23(1) of the Act, requires the Board to conduct a representation vote of employees to determine the bargaining agent where there is more than one union which can become that agent. In the professional bargaining unit it would appear to be necessary to determine which of CIPP and ONA will be the bargaining agent. Under subsection 23(16) the Board determines the choices and candidates for bargaining agent that are to appear on the ballot. However, in order for the Board to require the conduct of a representation vote, it must be satisfied that the unions which may win the ballot can represent the employees who will fall within that unit.

33 ONA represents about 5% of the employees who will be part of the professional unit. When asked whether ONA wished to be considered as the possible bargaining agent for the professional unit, in competition with CIPP, which represents about 95% of those in the unit, counsel for ONA affirmed that to be so. When asked whether ONA, which has established itself as a craft union for registered and graduate nurses, was constitutionally capable to admit those who will form part of the professional unit as its members, counsel confirmed that to be so. A copy of ONA's constitution was produced to confirm this. Under Article 3(1)(a) and (b) - Membership - of ONA's constitution the following appears:

- 3.01(a) All registered or graduate nurses and certain other allied personnel who are eligible to engage in collective bargaining are eligible for membership in the Association.
- (b) "Allied Personnel" shall be defined as all Regulated Health Professionals and/or persons who, in the opinion of the Board of Directors, assume job functions traditionally held by registered and graduate nurses. This would also include any positions into which registered or graduate nurses are hired, notwithstanding the duties that they assume or job classification into which they are placed. Allied personnel would also be deemed to include any other persons who it is necessary to include in a Bargaining Unit in order to achieve or maintain bargaining rights for allied personnel and/or registered or graduate nurses.

ONA's counsel contends that "allied personnel" includes the professionals in the professional bargaining unit because that interpretation is necessary to maintain ONA's bargaining rights for the part-time nurses in the Homes for the Aged.

34 The following list gives a sense of the kind of positions which fall within the professional unit: Officer, Community Resources; Analyst, User Support; Analyst, Assistant Helpline; Language Consultant; New Media Officer; Signals Engineer; Eng-Operations/Maintenance Support; Analyst, GIS Project; Systems Analyst; Analyst, Systems Support; Senior Analyst, Inventory; Coord. Corporate Computer Training; Analyst, Project Support; Analyst, Helpline; Corporate Librarian; Environmental Auditor; Analyst, Senior Financial; Program Analyst, Data Management; Coord. Operation Training; Coord. Records & Info. Mgmt; Analyst, GIS Support; Purchasing Officer; Senior Fin. Reporting Accountant; Senior Fin. Systems Accountant; Telecommunications Coordinator; Analyst, Network Support; Analyst, Technical Support; Database Administrator; Coord. French Language Servs.; Coord. Communications - IPA; Translator, Senior; Process Chemist; Analyst, Systems Support; Supervisor, Communications; Pavement Engineer; Eng - Transitway Project; Eng - Transitway Engineering; Eng - Vehicles & Equipment; Coord. Finance & Human Resources; Landscape Architect; Liaison Officer; By-Law Administrator; Analyst, Senior Systems; Analyst/Programmer, Scientific; Coord., Microcomputer Support; Coord., Capital Budget; Coord., Operating Budget; Web Administrator; Analyst, Senior Network; Analyst, Senior Technical; Coordinator, Helpline; R3 Business & Configuration Analyst; Systems Analyst II; Water Resources Engineer; Eng - Operations; Senior Project Manager; Operations Engineer; Eng - Approvals; Eng - Structural Design; Eng - Project Manager - GIS; Eng - Water Distribution (Clyde); Eng - Project - Mtce & Const.; Eng - Solid Waste; Transit Priority Projects Manager; Eng - Design; Process Engineer; Coord. Lab Services; Asset Management Project Manager; Coord. Waste Diversion; Coord. Data Mgmt Services; Project Manager, Systems; Yr2000 Project Coordinator; Scada Coordinator; Coord. Signals and Systems; Officer, Senior Policy & Purchasing; Chief Accountant; Senior Investment Officer; Coord. Corporate Network; Coord. Technical Services; Program Engineer - Water Div.; Maintenance Engineer - WEPD; Operations Support & Programs Eng.; Senior Fleet Engineer; Maintenance & Technology Engineer; System Mgr-Corporate Radio System; Eng - Test Lab; Eng - Proj. Manager - Roads; Eng - Sr. Proj. Manager; Engineer (Electrical) WEPD; Eng - Proj. Manager - Structure; Contracts Maintenance Engineer; Eng - Electrical; Process Engineer - Water Quality; Senior Review Engineer; Senior Water Resources Engineer; Eng - Project Manager/Supv.; Supervisor, Indus. Waste; Project Mgr, Business Technologies; Regional Forester; Eng - Signals & Communications; Eng - Roadway Design & Const.; Eng - Structural; Eng - Mgr. Transitway Projects; Education Services Coordinator; Social Worker - Carleton Lodge; Occupational Therapist - I.L.; Dietitian - HFTA; Registered Nurse - CIPP; Nursing Coordinator; Clinician/Educator; Coord. Respite Care; Nursing Supervisor II; Coord. Staff Development; SW - Island; Social Worker/Coord. Day Centre; Supervisor, Social Service; Supervisor, Therapeutic Services; Project Eng - Transportation Planning; Project Eng - Sustainable Trans Plng; Planning Engineer - Environment; Sub-Watershed Planner; Community Resource Officer; Engineer, Transportation Planning; Engineer - Modelling; Project Manager, Management Systems; Analyst, Economic Planner; Planner - Modelling; Planner, Intermediate -

PPD; Planner, Intermediate - PAD; Sr. Project Mgr, Policy Planning; Sr. Project Mgr, Proj./Infrastructur; Senior Project Mgr, Modelling; Senior Project Manager, DAD; Planner, Senior PPD; Project Coordinator (Facilities); Officer, Technical Support; Rental Coordinator; Officer, Property Acquisition; Coord. Property Management; Coord. Technical Services; Coord., GIS Services; Senior Analyst, GIS; Project Manager, GIS; Project Coordinator; Coord. Communications - ICS; Coord., Communications; Coord. Overpayment Recovery; Spvr, Budgets, Reporting & Analysis; Income MTCE. Project Assistant; Projects Officer; Research Assistant; Officer, Policy And Planning; Supvr, Plng&Perf Measurement Unit; Funding & Empl. Dev. Coord.; Coord, HR Planning, Training & Devel.; Coord. Operat'l Policy Dev. & Trg; Area Manager; SW - Emp Counsellor; SW - Outreach Worker; SW - Sup. Living Staff; Supervisor, Supported Living Servic; Coord., Business Systems Solutions; Supvr, Systems Planning & Development; Systems Analyst; Systems Support Analyst.

35 It is plain from this list that large numbers of positions in the professional bargaining unit do not fall within a health care, let alone a nurses', bargaining unit. The question is whether ONA can represent them under its constitution. In other words, can the preservation of ONA's 5% of the bargaining unit justify it taking on 95%, most of whom have no connection with health care, on the basis that they are "allied personnel"?

36 ONA points out that in CITY OF TORONTO, above, it was entitled to be on the ballot to determine which union would become the bargaining agent of the new professional unit. It elected not to avail itself of that entitlement. It suggests that it should have the same entitlement in respect of the Ottawa professional bargaining unit.

37 ONA's primary focus of representation has been on nurses and, in rare circumstances, in order to preserve its bargaining rights among nurses, it has become the bargaining agent for other health care personnel. It appears though that it has no history or presence as a representative of the kinds of positions which will fall within the professional unit.

38 The City's counsel makes the point that ONA's constitution gives a mechanism for the union to retain bargaining rights in respect of nurses where it is necessary to represent non-nurses who are allied personnel. This, he suggests, is intended as a shield, to protect existing membership, not as a sword to advance ONA's representation into areas it has not traditionally traversed. In his submission, it would be most unusual for ONA to represent engineers and financial officers and others who fall within the professional bargaining unit.

39 CUPE Local 503 takes the position that ONA should be on the ballot.

40 The Board does not usually have regard to a union's constitution to determine whether the union can represent employees for whom it seeks bargaining rights. There is a distinction, of course, between being a member of a union and being represented by it. Hence, although there may be a limitation upon ONA to admit as members the kinds of persons who will fall within the professional bargaining unit, it may yet represent them. In my view, despite doubts as to whether ONA can

admit engineers and other non-health care professionals as its members, it is not a useful exercise to investigate a union's constitution to determine whether it can represent particular categories of employees. Subsection 111(4) of the Labour Relations Act, 1995 allows the Board to ignore union membership eligibility requirements in particular circumstances. While there is no equivalent provision in the Act, it would not serve any good labour relations purpose to delve in this case into whether ONA can represent non-nurses in the professional unit.

41 ONA has members in the professional unit and it should be entitled to compete with CIPP for bargaining agent status. It should be part of the ballot to determine the bargaining agent for the professional unit. However, it has indicated that it may choose not to participate in the ballot. If that is its choice then it should notify the Registrar promptly so that arrangements for the ballot may cease and unnecessary cost and effort can then be avoided.

42 Accordingly, there will be a ballot in respect of the professional bargaining unit to determine whether CIPP or ONA will be the bargaining agent. Arrangements for the ballot will be made by the Board's Labour Relations Specialist, Mr. Bowman (who has hitherto had extensive dealings with the parties regarding the amalgamation), with the City, CIPP and ONA. Once the arrangements are made, I will issue a separate decision in respect of the vote, setting out where and when the vote will occur and on what terms.

43 ONA has sought an order that it receive the names, addresses and telephone numbers of employees in the professional unit. That issue is also referred to Mr. Bowman, who should endeavour to get agreement between the parties. Should that not be possible, the matter should be re-listed for hearing.

Disputes concerning whether particular positions fall within the Outside/Inside bargaining unit or within the Professional unit

44 In the Memorandum of Agreement concluded between the City, CIPP and CUPE Local 503 a process has been agreed upon to resolve disputes as to which categories of employees fall within either the Inside/Outside unit or the Professional unit. There is no reason why the Board should interfere in that process at this stage. What the parties have agreed appears to be a sensible method for resolving the disagreements regarding the appropriate bargaining unit location for particular positions. Should they need at some stage to revert to the Board for direction, then they may do so.

45 Clearly if ONA participates in the ballot affecting professional employees and succeeds in that ballot, that will affect the parties' agreement concerning the disputed positions. In that event, the matter can be re-visited.

Disposition

46 The Board makes the following declarations and orders and issues the following directions:

1. There will not be a separate nurses' bargaining unit, nor will there be a separate bargaining unit for nurses in the City's Homes for the Aged.
2. Nurses will be part of the professional bargaining unit described below.
3. By virtue of the agreement between the City and IATSE and IATSE's representative position in relation to the employees affected, IATSE Local 471 is declared to be the bargaining agent of the City's stage employees. The bargaining unit is described as follows:

1. Stage employees at the City of Ottawa's CentrepoinTE Theatre engaged in theatrical presentation and production and event preparation, set-up and tear-down save and except:

Supervisor of Production Services; Persons above the rank of Supervisor of Production Services; and, Employees in other bargaining units.

The City of Ottawa agrees that all commercial users that require additional staff beyond their own regular touring complement shall be obligated to hire Union members.

Notwithstanding the above paragraph, the additional staff required shall be hired by the City. Roster employees shall have first preference among Union members to perform work at CentrepoinTE Theatre for which they are qualified.

2. For all employees engaged in stagehand work for the take in, set-up, presentation, tear down and load out of all live concerts, theatrical performances and wrestling events presented by the City of Ottawa as Producer (excluding sports events, consumer/trade shows, charitable/non-profit events mutually agreed between the parties and work falling within the current scope of another bargaining unit at the following venues):

- * The Ottawa Civic Centre
- * The Frank Clair Stadium
- * The Aberdeen Pavilion
- * The Coliseum

In the event that the Producer engages in work excluded from 2 above, the Producer agrees to meet with the Union and discuss the possibility of such work being performed by Union members.

3. The parties agree that "volunteers" are not "employees" for the purpose of this collective agreement.
4. By virtue of the agreement between the City and the various Fire Fighters' Associations, the combined Association is recognized and declared to be the sole bargaining agent for collective bargaining for all fire fighters, as defined in Part IX of the Fire Protection and Prevention Act, 1997, who are employees of the City of Ottawa Fire Department, exclusive of volunteers, the Chief and Deputy Chiefs, and those other persons/positions excluded from the bargaining unit by agreement of the parties or through the application of Section 41 and/or 54 of the Fire Protection and Prevention Act, 1997.
5. Subject to the terms of the Memorandum of Agreement concluded between all of the CUPE Local unions affected by this application, the CIPP and the City on October 18, 2000, CUPE and its Local 503 are declared to be the exclusive bargaining agent for the City's Inside/Outside bargaining unit, the description of which is as follows:

The Employer recognizes the union as the sole and exclusive bargaining agent for all employees of the Employer, including part-time, casual, and temporary employees save and except those persons specified in Appendix 1:

Appendix I

All students employed during the school vacation period (April 1st to September 7th);

All persons employed in the Offices of the Mayor, Councilors and City Manager;

All persons employed in Human Resources Department;

One Administrative Assistant for each General Manager and one for each Director;

All persons who provide administrative and coordination support to Council, Boards and/or their Committees;

All budget analysts and budget officers involved in budget analysis related to labour relations issues;

All Volunteers*;

Members of all other bargaining units at the City of Ottawa;

Any other persons excluded under the provisions of the Ontario Labour Relations Act.

* Clarification Note: The parties agree to maintain the historical practices regarding the use of volunteers.

Clarification Note:

Positions within the scope of this bargaining unit may:

- i. include responsibilities for supervision of activities of employees who report to the position and/or;
- ii. require employees to have professional memberships, degrees or equivalent credentials.

Clarification Note: The parties agree to discuss the exclusion or inclusion of co-op students on an individual case-by-case basis.

Clarification Note:

The employer agrees that it will not move into the Professional bargaining unit, positions which are within the scope of this agreement or which fell within the scope of the CUPE Local 503 and 2187 bargaining units of the former City of Ottawa and Region of Ottawa-Carleton and which require employees to have elements of a "professional capacity", unless otherwise agreed to by the parties, or unless there is a significant change to the scope of job responsibilities in the new city relating to the "professional capacity" of the position.

Letter of Understanding The parties agree that historically positions within the predecessor HR departments have been non-union and that the services provided by the new HR Department will include types of positions, which have been historically excluded. Accordingly, the parties agree that the type of position within the attached HR structure/services should be non-union.

However, if other non-historical HR services are added or transferred to Human Resources, the parties shall meet to review and agree upon the placement of such positions. If the parties cannot reach agreement, they will refer the issue to the Ontario Labour Relations Board for determination.

6. The appropriate bargaining unit for the City's professional employees is the following:

The Employer recognizes the union as the exclusive bargaining agent for all those employees of the Employer employed in professional positions or in positions having a "professional capacity", save and except those persons exempted because they perform work in a management capacity or exercise confidential responsibilities relating to labour relations issues, all students employed during the school vacation period (April 1st to September 7th), all persons employed in the Offices of the Mayor, Councillors and City Manager, all persons employed in Human Resources, all budget analysts and budget officers involved in budget analysis related to labour relations issues and members of all other bargaining units at the

City of Ottawa.

Clarification Note:

"Professional" positions or positions requiring employees to have a "professional capacity" will usually but not necessarily require eligibility for membership in a professional association, (or require similar such credentials) and are those positions that by the nature and scope of responsibilities and contacts demanded, require an incumbent to have a certain body of specialized knowledge usually obtained through the completion of a university degree or equivalent achievement in a particular field or discipline. The positions within the union may fall into one or more of the following categories:

- i. developing standards, policies and strategies, making recommendations and justifying findings;
- ii. continuing and substantive responsibility and accountability for program design development and management;
- iii. providing expert professional advice, direction, service/care and/or leadership.

Positions which fell within the scope of the CUPE Local 503 and 2187 bargaining units of the former City of Ottawa and Region of Ottawa-Carleton and which required employees to have elements of a "professional capacity", continue to be excluded from the professional bargaining unit unless otherwise agreed to by the parties, or unless there is a significant change to the scope of job responsibilities in the new city relating to the "professional capacity" of the position.

Letter of Understanding The parties agree that historically positions within the predecessor HR departments have been non-union and that the services provided by the new HR Department will include types of positions, which have been historically excluded. Accordingly, the parties agree that the type of position within the attached HR structure/services should be non-union.

However, if other non-historical HR services are added or transferred to

Human Resources, the parties shall meet to review and agree upon the placement of such positions. If the parties cannot reach agreement, they will refer the issue to the Ontario Labour Relations Board for determination.

7. There will be a representation vote to determine whether CIPP or ONA will be the bargaining agent of the professional unit. Labour Relations Specialist Bowman will make arrangements for the vote with the City, CIPP and ONA, after which I will issue a further decision setting out the terms of the vote.
8. ONA's request for the names, addresses and telephone numbers in the professional bargaining unit is deferred for later consideration.
9. Subject to the terms of the Memorandum of Agreement concluded between all of the CUPE Local unions affected by this application, the CIPP and the City on October 18, 2000, CUPE and its Local 503 are declared to be the exclusive bargaining agent for the City's Part-time Culture/Recreation bargaining unit, the description of which is as follows:

The Employer recognizes the union as the sole and exclusive bargaining agent for all employees employed for not more than an average of twenty-four (24) hours per week, or on a casual as-required basis, whose primary responsibility is the performance of duties related to the delivery of sports, recreation and cultural programs, save and except persons hired for special recurring or non-recurring events (e.g. Winterlude), students or persons employed during the school vacation period (April 1st to September 7th), volunteers*, members of the other bargaining units at the City of Ottawa and any other persons excluded under the provisions of the Ontario Labour Relations Act. Positions falling within the scope of this bargaining unit include but are not limited to the general classifications specified in Appendix 1.

* Clarification Note:

The parties agree to maintain the historical practices regarding the use of volunteers.

Appendix 1

Attendant
Cashier
Leader
Programmer
Operator
Assistant
Monitor
Coordinator
Director
Driver
Lifeguard
Instructor
And other general classifications of a like nature.

10. There will be a separate bargaining unit for all Library employees. The bargaining agent will be CUPE and its Local 503. The extent of the exclusions from that unit have yet to be negotiated between the Ottawa Public Library Board and CUPE Local 503. To the extent that these parties require the Board to determine the matter, they may request the Registrar to re-list the matter for hearing.
11. A process has been agreed upon to address disputes as to whether persons fall within the Inside/Outside CUPE unit or within the Professional unit. To the extent the parties are unable to resolve matters through the agreed process, they may request the Registrar to re-list the application for hearing.
12. The existing police service bargaining units, subject to the necessary changes as regards the description of employer and of the Police Association in each case, shall be the police bargaining unit in the new city.

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