SUPREME COURT OF NOVA SCOTIA

Citation: *Portland Street Honda Inc. v. Unifor*, 2019 NSSC 316

Date: 20191022
Docket: Hfx No. 483402
Registry: Halifax, Nova Scotia

Between:

Portland Street Honda

Applicant

v.

UNIFOR

and

Labour Board (Nova Scotia)

Respondents

Judge:	The Honourable Justice Darlene Jamieson
Heard:	May 8, 2019, in Halifax, Nova Scotia
Written Decision:	October 22, 2019
Counsel:	Richard Dunlop and Richard Jordan, for the Applicant Ronald Pizzo and Daniel Wilband, for the Respondents

By the Court:

Introduction

[1] This is an Application for Judicial Review filed by Portland Street Honda Inc. ("PSH") on December 17, 2018. It seeks judicial review of a November 19, 2018, decision and the November 26, 2018 written reasons supporting the decision (collectively "the decision") issued by the Nova Scotia Labour Board ("the Board"). The Board decided that a bargaining unit proposed by the Respondent union, Unifor, and which was restricted to Automotive Service Technicians and Apprentice Automotive Service Technicians (collectively referred to as "ASTs") was appropriate for collective bargaining.

[2] PSH operates a Honda dealership at 36 Baker Drive, Dartmouth, Nova Scotia. Unifor is Canada's largest private-sector union.

Grounds for Review

[3] The Notice for Judicial Review lists three grounds for review. In summary, they are as follows:

1. The decision is unreasonable and the Board violated the principles of natural justice and the rules of procedural fairness by failing to consider PSH's evidentiary and legal submissions.
2. The Board's conclusion that s. 24 of the *Trade Union Act*, R.S.N.S. 1989, c. 475, as amended, originally enacted as S.N.S. 1972, c. 19 ("the TUA") and the *Craft Units and Votes of Employees Regulations*, N.S. Reg. 54/73 (the *"Craft Units Regulations")* do not apply to Unifor's application to represent a Service Technicians Only Unit, is unreasonable.
3. The Board's conclusion that a Service Technician-Only Unit is appropriate for collective bargaining is unreasonable.

[4] With regard to ground for review number one PSH addressed this issue in its written and oral arguments within grounds of review two and three.

[5] The Board filed a Notice of Participation on December 21, 2018. Unifor filed a Notice of Participation on December 20, 2019. The Respondents say the Court should not disturb the Board's decision.

[6] The Record was filed by the Nova Scotia Labour Board on January 22, 2019. It sets out the background to the Board's decision and consists of two volumes containing 60 tabs.

Background

[7] On October 17, 2018, Unifor applied for certification under s. 23 of Part I of the *TUA*. It sought certification of a bargaining unit of employees employed by PSH as ASTs. The Board served PSH with the Notice of Application for Certification on October 17, 2018. PSH filed a written response on October 25, 2018 and Unifor filed a reply on October 29, 2018. The only dispute concerned PSH's position that apprentices should be excluded from the unit. This issue was resolved and the parties agreed the unit would be as proposed by Unifor.

[8] On the morning of November 7, 2018, the Board wrote to the parties, approving the vote count to proceed. The Board proposed a vote to take place the next day. The parties confirmed their availability and the vote was set for 2 pm on November 8, 2018.

[9] On the afternoon of November 7, 2018, after the Board had notified the parties that morning, legal counsel for PSH, Mr. Dunlop, advised the Board he had just been retained. He asserted that the AST-only unit was contrary to the Board's longstanding policy against fragmentation of the workplace. He also argued that it constituted a craft unit pursuant to s. 24 of the *TUA* but did not satisfy the *Craft Units Regulations*. Finally, he stated that the bargaining unit should include 15 additional persons, all of whom shared a community of interest with the ASTs. Unifor took the position that all issues had been agreed to and it was not open for the employer to now resile from the agreement.

[10] The Board cancelled the November 8 vote and scheduled a Case Management Conference ("CMC") with counsel for the next day. A summary dated November 13, 2018 indicates the Chair noted that the Board had previously certified similar bargaining units. The summary states:

> Caselaw: The Chair indicated that the Board had previously certified similar bargaining units. The Board referred the parties to the following Board decisions
>
> LB-4695 CAW-Canada and Nardocchio's Auto Sales Ltd (March 1999)
>
> LB-4984 CAW-Canada and Hollis Ford Inc. (April 2002)

2012 NSLB 120 IATSE Local 849 and Egg Films Inc. (April 2012) (regarding the applicability of s. 24)

Please also see attached LRB-6341 CAW-Canada and Mac Donald Nissan (May 2010) (missing from online database)

[11] Counsel for PSH, on receipt of the summary, indicated that the Chair had also directed Counsel to the Board's recent decision in ***United Food and Commercial Workers Union of Canada, Local 864 v. Paladin Security Group Ltd***., 2018 NSLB 133.

[12] The Chair set the filing dates for written submissions at the CMC. PSH filed its written submissions, including the Statutory Declaration of Mr. Joseph Burke ("Burke Statutory Declaration") on November 13, 2018. Unifor provided its written submissions on November 15, 2018, including the Statutory Declaration of Mr. Patrick Murray (" Murray Statutory Declaration"). A reply was filed by PSH on November 16, 2018.

[13] On November 19, 2018, the Board wrote to counsel for PSH requesting the 1947 portions of the *TUA* cited in its submissions. A copy of the 1947 *TUA* was provided. On the same date, the Board wrote to counsel for Unifor asking whether, if the proposed unit was certified, Unifor's governance would permit "the Parties/Board to include additional classifications, for example, on an amendment application or are only technicians eligible to join the union?" Counsel for Unifor responded in the affirmative and noted that it currently represented other car dealership bargaining units that contained additional classifications.

[14] The parties were advised by the Board on November 19, 2018, that the Panel had reviewed all of the submissions, and had "unanimously concluded that the bargaining unit proposed by the union, is an appropriate unit." The vote count took place on November 20, 2018, with the union being successful. On November 26, 2018, the Board provided written reasons for its decision.

The Decision

[15] In its decision, the Board indicated that a panel of the Board had been convened, and, "following our full review of the matter including all of the submissions and statutory declarations filed by both parties, the Board decided that the proposed bargaining unit was appropriate for collective bargaining . . . The representation vote was counted on November 20, 2018 as a result of which the union was certified." (Record, tab 59, paragraph 8)

[16] In its decision, the Board, indicated that it addressed the following three issues:

1. Should PSH be permitted to resile from its agreement on the proposed bargaining unit?
2. Does section 24 of the Act apply? and
3. Is the bargaining unit applied for appropriate for collective bargaining?

[17] With reference to issue number one, the Board stated that, notwithstanding PSH's last-minute consultation with legal counsel and change of position, there was authority upon which it could summarily dismiss PSH's objections to the bargaining unit based on the original agreement and the need for the Board to be able to rely upon such filings and agreements. The Board referenced case law in this regard. However, the Board nevertheless decided to hear PSH's arguments, stating:

> Given part of the Respondent's objection was with respect to s. 24 of the Act and the related Craft Unit Regulations, we decided it appropriate to consider this argument as well as set forth our views with respect to the remaining issues raised by the Respondent. (Record, tab 59, paragraph 13)

[18] In relation to issue number two, as to whether s. 24 was applicable, the Board stated that there are two requirements that trigger the operation of s. 24, and determined that Unifor did not meet the second requirement:

> … First, the unit of employees applied for must belong to a craft or group exercising technical skills. That is not in question here. Secondly, s. 24 provides that 'the majority of the group are members of one trade union pertaining to that craft or other skills.' Thus, the Union applying for a craft or technical unit must be a trade union 'pertaining to that craft or other skills.' In our view, Unifor is not a 'trade union pertaining to that craft or other skills.' (Record, tab 59, paragraph 16)

[19] The Board did not accept PSH's definition of "related to", finding that it would make the words "pertaining to" superfluous, because any trade union that had members in it, and applied to certify a group of employees, would "pertain to" or "relate to" that group. In the Board's view, the legislature intended that the section would only apply to groups of employees organized by craft or technical union. It also referred to a policy reason for such an interpretation, being that once a union with membership restricted to a certain craft is certified, this could forever

build a wall around these employees, preventing, for example, further bargaining unit amendments or other reconfigurations.

[20] The Board also noted that it had previously held that s. 24 and the *Craft Units Regulations* only applied to the certification of small single craft units associated with the construction industry, referring to its decision in ***I.A.T.S.E., Moving Picture Technicians, Artists and Allied Crafts, Local 849 v. Egg Films Inc.***, 2012 NSLB 120. It also stated that, just as it had not applied s. 24 to the occupational units at issue in ***Egg Films, supra*** it had never applied s. 24 to groups of automotive service technicians. The Board concluded that, regardless of the non-applicability of s. 24, it was not precluded from certifying a group with technical skills under s. 23, as it had done in the past.

[21] The Board spent the remainder of its written decision (paragraphs 22 to 33) discussing issue number three: was the proposed bargaining unit appropriate for collective bargaining? The Board noted its longstanding approach to a Part I certification, as outlined in ***Paladin, supra,*** and said this was the approach taken in the PSH case. It began its analysis with s. 25(14) of the *TUA*, noting that the considerations in that provision are not an exhaustive list. The Board further referred to the eight factors summarized by George Adams in his text *Canadian Labour Law* (the "Adams factors") and considered the labour relations implications of certification. The Board concluded:

> We have no hesitation in finding that there is a strong community of interest in the proposed bargaining unit based on these factors. We note that the automotive service technicians have a unique pay structure within the workplace and as they have specialized qualifications, there is no interchange of employees. While there may also be a community of interest with other employees, this does not mean the unit applied for is not an appropriate one.
>
> In our view, this bargaining unit is an appropriate and viable one for collective bargaining. The Union submitted copies of collective agreements it has negotiated with respect to five bargaining units of automotive service technicians in Nova Scotia. It pointed to the Statutory Declaration of Patrick Murray which supports its position that 'the Respondent's operations and work processes are the same processes used in every automotive dealership for which the union has bargaining rights.' It pointed out that these units have engaged in multiple rounds of collective bargaining with their respective employers and are viable and successful bargaining units.
>
> (Record, tab 59, paragraphs 27 and 28)

[22] The Board rejected PSH's position that the automotive service technicians and the proposed bargaining unit were so functionally integrated with the 15 other employees, whom PSH argued should be included, that the proposed unit was not appropriate for collective bargaining. The Board referred to the principles concerning functional integration set out in ***Can Am Produce & Trading Ltd. v. Retail Wholesale Union, Local 580***, 2001 CarswellBC 3191 (B.C.L.R.B.), indicating they had been adopted as an adjunct to its jurisprudence. The Board then indicated that a proper weighing of these factors led to the conclusion this was an appropriate unit. It further indicated that, as in ***Paladin, supra,*** its primary concern on an initial application is to facilitate collective bargaining and give effect to employees' wishes to unionize. It then referenced the Adams text at 7.80, where Adams commented that "labour boards are more flexible in their assessment of the criteria on a first application for certification in a workplace and traditionally give more weight to access to collective bargaining and deference to employee wishes. In subsequent applications, employer concerns about fragmentation may be given more weight."

[23] The Board concluded:

> The concerns raised here by the Respondents do not, in our view, 'tip the balance' in favour of a larger bargaining unit based on all of these factors. As this Board in *United Steelworkers, Local 3172 and Eastern Mainland Housing Authority*, Decision # LRB-6062 commented, there are various means by which the Respondents goal of a more comprehensive unit could be accomplished through established labour relations processes.
>
> Our approach to this matter has been guided by the specific provisions of the Act, the preamble to the Act, and the current constitutional context in which we operate. In our view, having considered the circumstances of this case, including all of the factors and policy considerations discussed above, we decided to approve the Union's proposed unit.
>
> (Record, tab 59, paras. 32 and 33)

The Statutory Scheme

[24] In this judicial review, the relevant legislation is the *Trade Union Act,* and the *Craft Units Regulations* made under s. 10 of the *TUA.* The Board, in coming to its decision, was interpreting and applying the provisions of its home statute and regulations.

[25] Sections 23, 24, and 25 of Part 1 of the *TUA* state:

Application for certification as bargaining agent

23 (1) A trade union claiming to have as members in good standing not less than forty per cent of the employees of one or more employers in a unit appropriate for collective bargaining may, subject to the rules of the Board and in accordance with this Section, make application to the Board to be certified as bargaining agent of the employees in the unit.

(2) Where no collective agreement is in force and no bargaining agent has been certified under this Act for the unit, the application may be made at any time.

(3) Where no collective agreement is in force but a bargaining agent has been certified under this Act for the unit, the application may be made after the expiry of twelve months from the date of certification of the bargaining agent, but not before, except with the consent of the Board.

(4) Where a collective agreement relating to the unit is in force and is for a term of not more than three years, the application may be made only after the commencement of the last three months of its operation.

(5) Where a collective agreement relating to the unit is in force and is for a term of more than three years, the application may be made only

> (a) after the commencement of the thirty-fourth month of its operation and before the commencement of the thirty-seventh month of its operation;
> (b) during the three month period immediately preceding the end of each year that the collective agreement continues to operate after the third year of its operation; or
> (c) after the commencement of the last three months of its operation.

(6) Two or more trade unions claiming to have as members in good standing of the unions a majority of employees in a unit that is appropriate for collective bargaining may join in an application under this Section and the provisions of this Act relating to an application by one union and all matters or things arising therefrom, apply in respect of this joint application and the unions as if it were an application by one union.

(7) Where an application is made under this Act for the certification of a union or unions as bargaining agent of employees in a unit, the employer shall not, without consent of the Board, increase or decrease rates of wages or alter any other term or condition of employment of those employees before the Board has given its

decision on the application or, in case the Board certifies a union, before notice to commence collective bargaining has been given under Section 33.

Group with technical skills

24(1) Where a group of employees of an employer belong to a craft or group exercising technical skills by reason of which they are distinguishable from the employees as a whole and the majority of the group are members of one trade union pertaining to that craft or other skills, the trade union may apply to the Board and, subject to Section 23, may be certified as the bargaining agent of the employees in the group, if the group is otherwise appropriate as a unit for collective bargaining.

(2) The Board is not required to apply this Section where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made.

(3) Where the employees of an employer are certified in accordance with this Section, the employer pursuant to subsection (5) of Section 98 is not bound by any accreditation order made pursuant to this Act.

Certification of bargaining agent

25(1) Where a trade union makes application for certification in accordance with Section 23, the Board shall take a vote of the employees in the unit applied for to determine their wishes with respect to the certification of the applicant trade union as their bargaining agent.

…

(4) The Board shall determine whether the unit applied for is appropriate for collective bargaining and the Board may, before certification, if it deems it appropriate to do so, include additional employees in or exclude employees from the unit.

…

(14) The Board in determining the appropriate unit shall have regard to the community of interest among the employees in the proposed unit in such matters as work location, hours of work, working conditions and methods of remuneration.

[26] The *Craft Units Regulations* state:

1. In considering any application herebefore or hereafter made to the said Board under Section 24 (1) of the said Act for certification of a trade union as bargaining agent of the employees in a group belonging to a craft or exercising technical skills, and in determining whether the proposed group is otherwise appropriate as a unit for collective bargaining and whether the union should otherwise be certified, the Board shall require to be satisfied:

> (a) that no material community of interest exists between the proposed group and other employees of the employer;
>
> (b) that the industry in which the employer is engaged belongs to a class of industry which traditionally or normally is organized by craft unions pertaining to such respective crafts or other skills;
>
> (c) that the continued normal operation of the employer's production process is not dependent upon the performance of the assigned functions of the employees in the proposed unit;
>
> (d) that the proposed group is more appropriate for collective bargaining than an employer, plant or sub-plant unit which included the employees in the group.
>
> 2. This Section shall not apply to the construction industry, to any non-commercial institution, or to any other industry that does not produce or deal in goods or services on a commercial basis.

[27] Other sections of the *TUA* relevant to the parties' positions include ss. 2, 92, and 98:

> PART 1
>
> **Interpretation**
>
> **2 (1)** In this Act,
>
> (w) 'trade union' or 'union' means any organization of employees formed for purposes that include regulating relations between employers and employees which has a constitution and rules or by-laws setting forth its objects and purposes and defining the conditions under which persons may be admitted as members thereof and continued in membership;
>
> (x) 'unit' means a group of two or more employees and 'appropriate for collective bargaining' with reference to a unit, means a unit that is appropriate for such purposes whether it be an employer unit, craft unit, technical unit, plant unit or any other unit and whether or not the employees therein are employed by one or more employers;

PART 11- Construction Industry Labour Relations

Interpretation of Part II

92 In this Part,

(c) "construction industry" means the on-site constructing, erecting, altering, decorating, repairing or demolishing of buildings, structures, roads, sewers, water mains, pipe-lines, tunnels, shafts, bridges, wharfs, piers, canals or other works;

(i) "trade union" or "union" means a trade union that according to established trade union practices pertains to the construction industry;

Effect of accreditation

98 (1) Subject to subsection (6), upon accreditation, all bargaining rights and duties under this Act of employers for whom the accredited employers' organization is or becomes the bargaining agent pass to the accredited employers' organization.

(5) Notwithstanding anything contained in this Act, where the employees of an employer are certified in accordance with Section 24, the employer is not bound by any accreditation order.

Issues

[28] The issues for the Court to address are as follows:

1. What is the applicable standard of review?
2. Was the Board's decision reasonable?

(a) Was the Board's conclusion, that Unifor was not a union "pertaining to" a craft or skill pursuant to s. 24 of the *TUA* and it's conclusion that the bargaining unit applied for was not precluded by the *Craft Units Regulations* reasonable?

(b) Was the Board's decision that the bargaining unit applied for was appropriate for collective bargaining reasonable?

Positions of the Parties

PSH Position

[29] PSH acknowledges that the Board correctly identified the three issues to be determined. However, it says the Board did not properly address PSH's

arguments. On the s. 24 issue, PSH says the Board reached inconsistent conclusions. On the issue of the appropriateness of the bargaining unit and the issue of functional integration, PSH says the Board's entire analysis is comprised of three conclusory statements without any reference to PSH's evidence.

[30] PSH submits the AST-only unit is a craft unit pursuant to s. 24 of the *TUA* and is inappropriate for collective bargaining. It says the unit should have included a number of excluded positions that are (according to PSH) functionally integrated with the ASTs (specifically, five service advisors, one warranty administration clerk, one tower operator, one assistant tower operator/appointment coordinator, three Parts staff, four detailers, one shuttle van driver and one part-time shuttle van driver). PSH says the Board's interpretation of s. 24 and the *Craft Units Regulations* is unintelligible and unjustifiable. It argues that the *TUA* does not contemplate that a s. 24 application be restricted to a construction industry trade union.

[31] PSH says the Board adopted an unreasonable interpretation of s. 24 and the *Craft Units Regulations*. Specifically, PSH says the Board's interpretation is contrary to a purposive interpretation; the Board used internally inconsistent reasoning with respect to both parts of the s. 24 test and the Board restricted the application of s. 24 to a union where membership is restricted to a certain craft or technical skill or traditional construction union.

[32] PSH says the Board adopted internally inconsistent reasoning with respect to the first part of the s. 24 test -- whether the employees belong to a craft or group exercising technical skills -- because various paragraphs of the Board's decision contradict one another. With respect to part two of the test -- whether the majority of the group are members of one trade union pertaining to that craft or other skills -- PSH says the Board made several statements regarding the characteristics required for a s. 24 union, which are difficult to reconcile, resulting in an unintelligible test. It says paras. 16 - 18 of the decision indicate that s. 24 and the *Craft Units Regulations* apply both within and outside the construction industry as long as their membership is restricted to a certain craft or technical skill, whereas the rationale at para. 19 indicates s. 24 and the *Craft Units Regulations* only apply to construction industry unions.

[33] As to the Board's conclusion that the bargaining unit was appropriate, PSH says certification of an AST-only unit is inconsistent with ***Michelin*** (***United Rubber, Cork, Linoleum & Plastic Workers of America Local 1028 v. Michelin Tires (Canada) Ltd***., [1979] N.S.L.R.B.D. No. 2505, which suggests that

fragmented bargaining units, where a relatively small part of the employer's workplace is represented, are problematic. PSH says the Board's treatment of the critical issue of functional integration is limited to outlining the five relevant legal principles, without applying them to the facts of the case. PSH says the Board's reasoning with respect to the distinction between functional integration and functional relationship is unreasonable due to reliance on ***Can Am Produce, supra.*** It says the B.C. Board explicitly adopted different principles in ***IML/Dueck Chevrolet Oldsmobile Cadillac Limited***, 1993 CarswellBC 3610 (B.C.L.R.B.), indicating that the focus should be on how the employer has organized itself operationally, and that a continuous work process or team process requires a single bargaining unit. PSH argues that unchallenged evidence from the Burke Statutory Declaration indicates there was a continuous work or team process, and that the Board did not even engage in a cursory analysis of this evidence. It argues that the Board did not provide even a perfunctory analysis of the factors from ***Can Am, supra,*** and ***IML/Dueck Chevrolet, supra,*** in relation to the evidence in the Burke Statutory Declaration. PSH further submits that the Board completely ignored the automotive dealership authorities that were reasonably analogous. It argues the Board had a duty to address authorities from other provinces, relied upon by PSH, which suggest that a serious labour relations problem arises from reasonably analogous factual situations. PSH says this is particularly so because the Board has never issued a reasoned decision addressing bargaining unit appropriateness involving an AST-only unit.

[34] PSH says the Board did not address the central issues in dispute, and that such a failure amounts to a breach of procedural fairness requiring a standard of review of correctness. PSH says the Board's decision should be quashed and the matter remitted back to a different panel to determine whether s. 24 of the *TUA* and the *Craft Units Regulations* apply to the AST-only unit, and the appropriateness of such a unit for collective bargaining.

Unifor Position

[35] Unifor submits that it is clear from the Board's reasons that it was alive to the central issues, considered the relevant factors and understood the arguments advanced by the parties. It says the Board's reasons allow the Court to understand how it reached its decision. It argues the Board's reasoning path shows that it considered the facts of the case, the relevant provisions of the *TUA* and regulations, as informed by relevant jurisprudence, and the broader concerns related to fairness, public policy, the constitutional context, and what made labour relations sense. They say the Board's reasoning path is justifiable, intelligible and transparent and

that it followed a clear outline in reliance on its own jurisprudence and applied it to the facts. It says this exercise lies within the core area of the Board's specialized expertise. It says the Board's conclusions are well-supported by the law and evidence and its decision is within the range of possible and acceptable outcomes.

[36] Unifor says the Board considered the two requirements for s. 24: first, employees in the proposed unit "must belong to a craft or group exercising technical skills," and second, the union applying for certification must "pertain" to that craft or group of skilled employees. It says the Board found that the ASTs were a group of skilled employees. However, in relation to the second part of the s. 24 test, Unifor says the Board properly found that it was not a union pertaining to that craft or group of skilled employees. Unifor says it is not specialized in the automotive industry, and that it has no more specialized experience representing ASTs than it has in the innumerable other industries and occupations of employees it represents.

[37] Unifor argues the Board's conclusion that s. 24 and the *Craft Unit Regulations* do not apply was reasonable. It says the Board followed its own 2012 decision in ***Egg Films, supra***, where it determined that s. 24 applied only to applications for certification brought in respect of single-craft units that are associated with the construction trades. Just as the Board found in ***Egg Films, supra,*** that s. 24 had never been applied to occupational units of film technicians, in this case, the Board found that it had also never applied s. 24 to groups of automotive service technicians.

[38] Unifor says the Board considered the relevant factors and determined, pursuant to s. 25(7) of the *TUA*, that the proposed unit was appropriate for collective bargaining. It says the Board appropriately considered community of interest, having before it evidence that the ASTs are paid on a flat rate or piece-work basis, that all other employees in the PSH service department are paid on an hourly basis, that ASTs have specific training distinct from that of other employees (namely Red Seal Certification), that no employees other than the ASTs are qualified to perform service, repair, and maintenance work on vehicles, and that, unlike other employees, the ASTs are required to provide their own tools and have their own locker room. It argues the Board balanced the necessary factors and concluded that the unit applied for was appropriate for collective bargaining. It further says the Board properly rejected PSH's argument that the ASTs were so functionally integrated with the 15 excluded employees that the proposed unit was not appropriate for collective bargaining. It says the Board appropriately concluded, in light of the various factors, that the relationships described between

the ASTs and the other employees at PSH, did not constitute functional integration of a nature that would render the unit inappropriate for collective bargaining. It says that, as in prior cases, there is little to no evidence of significant shared tasks between the ASTs and the other employees.

[39] Unifor also submits that the Board considered and properly dismissed PSH's argument that the certification of the proposed unit was contrary to the Board's longstanding policy against fragmentation of a workplace, and its general preference for larger units, as expressed in ***Michelin, supra***. It says that in many cases since ***Michelin, supra,*** the Board has found that, notwithstanding its preference for larger units, a smaller occupational or location-based unit is a unit appropriate for bargaining. It says that, where a proposed smaller unit is appropriate in an initial application for certification, the Board is hesitant to deny the application on the basis of speculative concerns about industrial instability, as the result would be to deny employees the fundamental right to bargain collectively. It says the Board's decision in this case is consistent with its decision in ***Paladin, supra.***

[40] Unifor submits that the Board was not required to discuss or follow Ontario or British Columbia cases provided by PSH. It further says the cases relied upon by PSH do not stand for the absolute principle that a mechanic-only bargaining unit in an automotive dealership is inappropriate. It further says those cases are distinguishable from the present case.

Analysis
Standard of Review

[41] The standard of review to be applied in assessing the decision of the Board is reasonableness. The Court must give deference to the decision-maker which, in this case, is the Nova Scotia Labour Board. The focus is whether there exists justification, transparency and intelligibility in the Board's decision-making process. The question for the Court is not whether it agrees with the decision, but whether the decision falls within a range of possible outcomes which are defensible in respect of the facts and the law.

[42] The parties agree the standard of review applicable when a Court is reviewing a decision of the Labor Relations Board, is reasonableness. PSH also submits the Board failed to address critical issues, which it says constitutes a breach of procedural fairness and attracts a correctness standard. I will address this argument under issue number 2(b) -- appropriateness of the bargaining unit.

[43] A majority of the Supreme Court of Canada defined "reasonableness" in ***Dunsmuir v. New Brunswick***, 2008 SCC 9:

> 47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.
>
> [Emphasis added]

The majority decision continued, at para. 49:

> 49 Deference in the context of the reasonableness standard therefore implies that courts will give due consideration to the determinations of decision makers. As Mullan explains, a policy of deference 'recognizes the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime': D. J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004), 17 C.J.A.L.P. 59, at p. 93. In short, deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system.
>
> [Emphasis added]

[44] The Nova Scotia Court of Appeal has determined that decisions of the Labour Board are to be reviewed on a reasonableness standard. In ***Egg Films Inc. v. Nova Scotia (Labour Board),*** 2014 NSCA 33, leave to appeal to Supreme Court of Canada dismissed, [2014] S.C.C.A. No. 242, Fichaud J.A. stated, for the majority:

> 24 The Court first determines whether the jurisprudence has established a standard: *New Brunswick (Board of Management) v. Dunsmuir*, [2008] 1 S.C.R. 190 (S.C.C.), para 62. This Court has said that reasonableness governs judicial review of the Labour Board's exercise of its core functions under the *Trade Union Act*, such as determining who is an

> "employee" for a certification application and whether a unit is appropriate for collective bargaining: *Granite Environmental Inc. v. Nova Scotia (Labour Relations Board)*, 2005 NSCA 141 (N.S. C.A.), para 22; *Maritime Paper Products Ltd. v. C.E.P., Local 1520*, 2009 NSCA 60 (N.S. C.A.), para 21; *Casino Nova Scotia/Casino Nouvelle Ecosse v. Nova Scotia (Labour Relations Board)*, 2009 NSCA 4 (N.S. C.A.), paras 24-28; *Cape Breton Island Building & Construction Trades Council v. Nova Scotia Power Inc.*, 2012 NSCA 111 (N.S. C.A.), para 36. That conclusion derives from an analysis of all *Dunsmuir*'s factors, not the least of which is the strong privative intent expressed in s. 19(1) of the *Trade Union Act*:
>
> > 19(1) If in any proceeding before the Board a question arises under this Act as to whether
> >
> > (a) a person is an employer or employee;
> >
> > . . .
> >
> > (g) a group of employees is a unit appropriate for collective bargaining;
> >
> > (h) an employee belongs to a craft or group exercising technical skills;
> >
> > . . .
> >
> > the Board shall decide the question and the decision or order of the Board is final and conclusive and not open to question, or review, but the Board may, if it considers it advisable to do so, reconsider any decision or order made by it under this Act, and may vary or revoke any decision or order made by it under this Act.
>
> [Emphasis added]

[45] In ***Casino Nova Scotia v. Nova Scotia (Labour Board)***, 2009 NSCA 4, [2009 N.S.J. No. 21] the Court of Appeal provided insight into the ***Dunsmuir, supra,*** wording that "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process." Fichaud, J.A. said, for the Court, at para. 30:

> Several of the Casinos submissions apparently assume that the 'intelligibility' and 'justification' attributed by ***Dunsmuir*** to the first step allow the reviewing court to analyse whether the tribunal's decision is wrong. I disagree with that assumption. 'Intelligibility' and 'justification' are not correctness stowaways crouching in the reasonableness standard. Justification, transparency and intelligibility relate to process ***(Dunsmuir).*** They mean that the reviewing court can understand why the tribunal made its decision, and that the tribunal's reasons afford the raw material

> for the reviewing court to perform its second function of assessing whether or not the Board's conclusion inhabits the range of acceptable outcomes. *Wolfson, Re*, 2008 NSCA120 (N.S.C.A.)
>
> [Emphasis added]

[46] In ***Cape Breton Island Building & Construction Trades Council v. Nova Scotia Power Inc***., 2012 NSCA 111 (N.S.C.A.), the Court of Appeal further discussed reasonableness:

> 38 Put simply, reasonableness is neither acclamation by rote nor a euphemism for the court to impose its own view. Rather the reviewing court respects the Legislature's designation of a decision maker by analysing that tribunal's reasons to determine whether the result, factually and legally, occupies the range of possible outcomes.
>
> 39 In determining whether the tribunal's decision occupies the range of possible outcomes:
>
> > The court then assesses the outcome's acceptability through the lens of deference to the tribunal's 'expertise or field sensitivity to the imperatives or nuances of the legislative regime'. This respects the legislators' decision to leave certain choices within the tribunal's ambit, constrained by the boundary of reasonableness. The reviewing court does not ask whether the tribunal's conclusion is right or preferred. Rather the court tracks the tribunal's reasoning path, and asks whether the tribunal's conclusion is one of what may be several acceptable outcomes. *Creelman v. Truro (Town),* 2010 NSCA 27 (N.S.C.A.), para 22, and authorities there cited.
>
> [Emphasis added]

[47] The Nova Scotia Court of Appeal has also emphasized the importance of deference to decisions of the Labour Relations Board. In ***Casino Nova Scotia, supra,*** the Court of Appeal stated:

> 26 ... The courts have emphasized the importance of deference to the decisions of Labour Relations Boards on core issues under industrial relations legislation, including the appropriateness of the unit and the definition of 'employee'...
>
> 27 … The Board is specialized in the field of labour relations. Its decisions are fact specific and informed by the Board's view of industrial relations policy. Issues of bargaining unit appropriateness and employee status are in the Board's core of expertise that the legislature intended to govern the certification process …

[48] In ***Egg Films, supra***, the Court of Appeal discussed the review process where the Board is interpreting its own statute:

> 32 Last is what Egg Films' factum terms the 'tautological ... vacuum' of introspective review. Nobody suggests that the reviewing judge should just ponder the internal circuitry of the tribunal's reasons, and disregard the statutory environment. To determine whether the tribunal unreasonably exercised its statutory authority, the reviewing judge tests the connection between the tribunal's conclusion and the statute's plain wording or ordinary meaning, context or scheme, and objectives, channelled under the accepted principles of legislative interpretation. While doing this, however, the judge doesn't drift into correctness review - *i.e.* the judge remains attentive to the range of reasonable interpretations, instead of focussing on the judge's preference among them…
>
> [Emphasis added]

Section 24 of the TUA

[49] PSH says the AST-only unit is a craft unit pursuant to s. 24 of the *TUA*. It says the Board reached inconsistent conclusions and that its interpretation of s. 24 and the *Craft Unit Regulations* is unintelligible and unjustifiable. It says the Board's statements regarding the characteristics required for a s. 24 union are difficult to reconcile, resulting in an unintelligible analysis.

[50] I disagree. The Board specifically addressed the issue of whether s. 24 of the *TUA* applied. It set out the section, it commented on the background of the *Craft Units Regulations*, noting they were enacted in 1973 in relation to a situation involving Michelin, and that they make it difficult for a union to obtain certification of a craft unit in an industrial setting. The Board identified the two requirements to trigger the operation of s. 24: (1) the unit of employees applied for must belong to a craft or group exercising technical skills; and (2) the union applying for the craft or technical unit must be a trade union "pertaining to that craft or other skills." In relation to part one of the test, the Board stated: "That is not in question here." Clearly, the Board concluded that the AST employees were a group who possessed technical skills. However, in relation to the second part of the test, it concluded: "Unifor is not a trade union pertaining to that craft or other skills."

[51] The Board specifically addressed PSH's argument that it should define "pertains to" to mean "related to" as per the *Canadian Oxford Dictionary* (Record, tab 43, PSH submission, November 16, 2018, page 5), and thereby conclude that Unifor was related to the group. The Board rejected this argument, stating, at paras. 17 and 18 of the decision:

> We do not accept the Respondent's interpretation that Unifor pertains to this group because it has organized and applied for this group. It urged us to adopt the dictionary definition of 'related to' and argued that Unifor is related to this group. In our reading of the section, the Respondent's interpretation would make the words 'pertaining to' superfluous. Any trade union that had members in and applied to certify a group would pertain to or relate to that group. In our view, the legislature intended that the section would only apply to groups of employees organized by craft or technical union.
>
> An underlying policy reason behind such an interpretation is obvious. Once a union with membership restricted to a certain craft is certified, this would forever build a "wall" around these employees. This would prevent, for example, further bargaining unit amendments or other re-configurations. As discussed further below, on a first application for certification the Board will try to facilitate collective bargaining as a primary focus, recognizing that if there are further applications we will need to be more focused on issues of fragmentation and industrial stability. Thus, an application involving a craft or technical union may involve additional considerations. Unifor is not such a union.
>
> (Record, tab 59, paras. 17 and 18)

[52] The Board applied s. 24 to the circumstances of the matter before it and concluded it did not apply. There were lengthy submissions filed with the Board by both parties. Each party specifically addressed their position regarding the application of s. 24. For example, Unifor's written submission to the Board states:

> First, the Union is not a union pertaining to Red Seal Automotive Service Technicians. Unifor represents both skilled and unskilled workers in a wide variety of sectors in Nova Scotia and across Canada. Contrary to the Employer's submission, the fact that the Union represents, *inter alia*, several units consisting of Service Technicians does not make it a 'trade union pertaining to that craft or other skills' within the meaning of section 24(1).
>
> (Record, tab 42, submission at page 13)

[53] The Murray Statutory Declaration indicates that Unifor does not exclusively represent ASTs in the automotive industry. It states:

> 37. In New Brunswick and Nova Scotia, the car dealership bargaining unit composition, of car dealerships represented by Unifor, vary in composition.
>
> 38. Some car dealership bargaining units include parts and service department employees along with the Service Technicians and Apprentices.

> 39. Other car dealership bargaining units are units of Service Technicians and Apprentices only.
>
> (Record, tab 42)

[54] In addition to the above, the Board's prior jurisprudence indicates that the s. 24 language of "pertains to" means a specialized union. In ***Nova Scotia Union of Public and Private Employees v. Dalhousie University,*** 2011 NSLB 95, the Board stated, at para. 19:

> The employer argues s. 24 is relevant because it specifically governs the creation of trade or craft units. The thrust of that section is that such a unit may be created where it is to be represented by a union that 'pertains' to that craft (i.e. is a specialized union) …

[55] The Board, in determining whether s. 24 was applicable in the circumstances before it, agreed with Unifor's submission, that it was not a trade union "pertaining to that craft or other skills." It further indicated that, as the Board had pointed out in ***Egg Films, supra,*** it had never applied s. 24 to occupational units such as stagehands, musicians, film technicians, and movie projectionists, and "has also never applied s. 24 to groups of automotive service technicians."

[56] Contrary to PSH's argument, I do not find the Board's reasoning to be inconsistent or unintelligible. I have no difficulty understanding why this tribunal reached its decision under s. 24. As set out above, its reasoning path was clear and transparent. The Board's conclusion is a reasonable interpretation of the legislation and I find that it reasonably exercised its statutory authority. The Board found Unifor was not a union "pertaining to that craft or other skills." Based on the record, submissions, and the Board's prior jurisprudence, the Board reached a conclusion I find to be reasonable. Its conclusion falls within a range of possible outcomes which are defensible in respect of the facts and the law.

[57] There is no need for me to address whether the Board's comment, that s. 24 and the *Craft Units Regulations* apply only to the certifications of small, single-craft units associated with the construction industry, is a reasonable interpretation. The Board found that Unifor did not meet the "pertains to" requirement in s. 24, based on the language of s. 24 and the evidence. Section 24 was not applicable because, the Board concluded, on the evidence, that Unifor was not a union "pertaining to." The Board's comment concerning applicability to the construction industry does not impact its decision that Unifor did not pass the hurdles in s. 24. It did not forego its analysis solely because it was dealing with an industry other than the construction industry. Once it had decided Unifor did not meet the

requirements found in s. 24, the Board concluded it was not precluded from certifying a group with technical skills under s. 23, as it had done on many occasions previously.

[58] The Board provided context for its decision regarding s. 24. It referred to its previous decision in ***Egg Films, supra,*** where it said that s. 24 and the *Craft Unit Regulations* only apply to the certifications of small, single-craft units associated with the construction industry. It also noted that it had never previously certified ASTs as craft units but had, however, certified them under s. 23. It was reasonable for the Board to refer to its prior decision, which was upheld by the Nova Scotia Court of Appeal, with leave to appeal to the Supreme Court of Canada dismissed. While the Court of Appeal did not specifically endorse the Board's interpretation that s. 24 has, as its purpose, the limitation of certifications of small, single-craft units associated with the construction trade, it did quote the paragraphs from the Board's decision where this is stated (paragraph 127 of the Court of Appeal decision, quoting from Paragraph 66 of the Board's decision).

[59] The Court of Appeal did not have to comment on the Board's position regarding the applicability of s. 24 to the construction industry because (as in the present case) the specific wording of s. 24 determined the Board's decision and the Court of Appeal found this to be reasonable. It said:

> 128 The Board's first basis (paras. 65-66) turns on a legal interpretation of s. 24. The Board interpreted these provisions as stemming from a situation in the construction industry where 'small numbers of employees in *individual* trades, *each* represented by different unions' brought the industry to a standstill. The Board said the Regulations 'are aimed at preventing a small number of employees in a *single* craft' from holding the employer's operations to ransom. Again, the Board said that s. 24's purpose is 'the limitation of certifications of small, *single craft* units'. [Emphasis added]
>
> 129 Section 24(1) says it applies to '*a group* of employees' who 'belong to *a craft or group*' with distinguishable skills, and the majority of '*the group* are members of *one trade union* pertaining to *that* craft or other skills' [Emphasis added]. Section 24(1) speaks in a singular voice. The Board's view that s. 24(1), and therefore Regulation 1(1), apply to the certification of 'single craft' units is a reasonable interpretation.
>
> 130 The unit approved for Egg Films is not a 'single craft' unit. It includes numerous classifications with varied specialties - key grips, costume designers, gaffers, lighting technicians, generator operators, sound specialists, props specialists, wardrobe specialists, hair and make-up artists, and 'craft' people…

> 131 Egg Films misapprehends a collection of classifications as 'a craft' within s. 24(1). The Board routinely defines a Part I unit to include a list of classifications. That each classification may involve a skill does not convert a multi-occupational unit into 'a craft unit' under s. 24(1). In my view, the Board's interpretation of s. 24(1), as applying to a 'single craft', is permissible, and the Board's conclusion that this was not such a craft unit was reasonable.
>
> [Emphasis added]

[60] While I find it unnecessary to embark on an analysis in relation to the Board's comments concerning the applicability of s. 24 to the construction industry, I do wish to comment on PSH's arguments briefly. PSH says that the Board's conclusion that a union must be associated with the construction industry is unreasonable. It says the Board did not address its statutory interpretation argument. It says the Board did not explain why the reference in s. 24 to "trade union" only refers to a construction trade union defined in s. 92(i) and not to a trade union defined in s. 2(w). It argues that, because the 1947 version of the *TUA* contained only one definition of trade union, the legislature would not have intended that the craft unit section of the *TUA* applied only to construction industry unions. It says that s. 24(1) does not restrict its application to a Part I union or Part II union. If that was the intent, PSH says the section would say so. It further says it is irrelevant that there were, and continue to be, 14 trade classifications in the construction industry because when the regulations were enacted the *TUA* had two definitions of "trade union" and s. 1(2) of the Regulations states, "this section shall not apply to the construction industry."

[61] There was no need for the Board to address each and every argument set out by PSH in its 22-page written submission and seven-page reply submission, nor each argument set out by Unifor in its 14-page written submission. PSH's submissions were before the Board. The Board clearly did consider the argument as it wrote to counsel for PSH on November 19, 2018, noting that the provisions of the 1947 *TUA* attached to the submission was missing s. 7. The Board requested either a copy of s. 7 or of the entire Act, and counsel provided the latter.

[62] In ***Construction Labour Relations Assn. (Alberta) v. Driver Iron Inc***., 2012 SCC 65, the Supreme Court of Canada stated its position on the importance of deference to labour boards, strongly emphasizing that administrative tribunals do not have to consider and comment upon every issue raised by the parties:

> 2 The appeal is well founded. The Board considered the relevant provisions of the *Code* and the facts presented to it by the parties. Its interpretation of the *Code* and its conclusions were reasonable. Its decision was entitled to deference.

> The Court of Appeal had no valid grounds to review and quash the decision. The court focused on an assertion that the Board had failed to give proper consideration to the interplay between ss. 176(1)(b) and 178 of the *Code* and to the different meanings that could be ascribed to these provisions and to s. 176(2).
>
> 3 The Board did not have to explicitly address all possible shades of meaning of these provisions. This Court has strongly emphasized that administrative tribunals do not have to consider and comment upon every issue raised by the parties in their reasons. For reviewing courts, the issue remains whether the decision, viewed as a whole in the context of the record, is reasonable (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708).
>
> [Emphasis added]

[63] Unifor argues there was no reason for the Board to address this statutory interpretation argument because s. 92(i) defines a: "trade union" or "union" as "a trade union that, according to established trade union practices, pertains to the construction industry." Therefore, the reference to "trade union" in the section refers the reader back to the s. 2(1)(w) definition of "trade union". Unifor submits, therefore, that unions pertaining to the construction industry must still meet the definition of union in s. 2(1)(w).

[64] I agree that there was no reason for the Board to specifically address the above argument. The definition of "trade union" in s. 2(1)(w) is logically included in s. 92(i). What 92(i) does is confirm that a trade union as defined in s. 2(1)(w) must pertain to the construction industry. This is further supported by s. 93, which indicates that, except where inconsistent with Part II, the provisions of Part I, with certain exceptions listed, apply to the construction industry. It states:

> **93** Except where inconsistent with Part II, the provisions of Part I, except clause (c) of subsection (3) of Section 30, subsection (3) of Section 38 and Sections 40A, 40B, 46A, 54A and 56A apply to the construction industry and all references therein to 'employer' and 'trade union' shall be taken to be references to 'employers' organization' and 'council of trade unions' where appropriate.

[65] Again, in the present circumstances, while there is no need for me to embark on a reasonableness analysis regarding the issue of whether the Board's interpretation of s. 24 and the *Craft Units Regulations* only applies to certifications of small, single-craft units associated with the construction industry, I do note that in ***Egg Films, supra,*** the Board provided historical background for its conclusion:

> 65 … the Nova Scotia rules arose in the context of the construction industry and the turmoil of the 1960's and 1970's related to the operation of construction

> craft unions. As noted earlier, Part II of the Act covering the Construction Industry was enacted to counter the chaotic economic problems of 'whip sawing' and 'leap-frogging' in the construction industry where small numbers of employees in individual trades, each represented by different unions were able to bring the construction industry to a standstill. In like measure, section 24(1) of the Act is addressed to situations where craft or technical employees '... are distinguished from the employees as a whole', and sub-section 1(1)(b) of the craft units regulations requires, before certification of such a craft or technical unit, that '... the continued *normal* [Board's italics] operation of the employer's production process is not dependent upon the performance of the assigned functions of the employees in the proposed unit'. In other words, the regulations are aimed at preventing a small number of employees in a single craft from striking and holding to ransom an employer whose 'employees as a whole' produce goods or provide services on a commercial basis' (Regulation 1(2)) and who 'as a whole' might not be in a position to strike, or desire to do so if they were. In other words, section 24 and its corollary regulations are about preventing the carving out of small craft units that can throw a spanner, as it were, into the larger industrial works of a firm and its 'employees as a whole'.

[66] There is also support in the legislation for the Board's comments concerning intent. For example, s. 1(2) of the *Craft Units Regulations* specifically excludes the construction industry from the restrictive provisions of the Regulations. Further, s. 24(3) states: "Where the employees of an employer are certified in accordance with this Section, the employer pursuant to subsection (5) of Section 98 is not bound by any accreditation order made pursuant to this Act." In ***Egg Films, supra,*** the Board, referred to s. 24(3), and stated at para. 66:

> 66 … Thus, section 24 has as its purpose the limitation of certifications of small, single craft units associated with the construction trade, as is confirmed by section 24(3) which exempts any craft units so certified under Part I from the effect of accreditation orders under Part II of the Act. The Board's conclusion is that section 24 and the Craft Unit Regulations, were never intended to apply to occupational units such as film technicians[,] movie projectionists, stage hands or musicians, voluntarily recognized or certified under Part I of the Act, and have never been applied in such circumstances in this Province. The Board so finds.

The Appropriateness of the Bargaining Unit

[67] PSH says the Board made only one passing reference to its argument concerning serious labour relations problems. It says, with regard to its argument on functional integration, that the Board provided no explanation as to why the evidence provided in the Burke Statutory Declaration did not satisfy the test. Further, the Board did not explain why PSH's concerns did not "tip the balance."

PSH says it submitted unchallenged evidence in the form of the Burke Statutory Declaration showing there was a continuous work process or team process.

[68] PSH further says the Board did not address the three, reasoned automotive dealership authorities upon which PSH relied. It says the Board had a duty to address authorities from other provinces, relied upon by PSH, which suggest that a serious labour relations problem arises from reasonably analogous factual situations. It says the Board has never considered the issue of bargaining unit appropriateness involving an AST-only unit, as the only decisions addressing automotive dealership bargaining units are confirmatory orders without reasons. PSH says, "It is difficult to overstate the unfairness and unreasonableness for the Board to rely upon paragraph 7.80 as authority supporting its dismissal of PSH's argument, but not to address PSH's submissions regarding one of the decisions upon which paragraph 7.80 is based."

[69] PSH also says that the Board relied upon ***United Steelworkers, Local 3172 and Eastern Mainland Housing Authority,*** Decision # LRB-6062 (October 13, 2006) for the proposition "that there are various means by which the Respondents' goal of a more comprehensive unit could be accomplished through established labour relations processes." PSH says this is an unreasonable conclusion because the labour relations processes of amendment, certification, and voluntary recognition all require that Unifor -- not PSH -- approach the excluded employees, and because the AST-only bargaining units that have been certified pursuant to confirmatory orders have not been made more comprehensive. In summary, PSH argues that there are so many inconsistencies in the decision that, taken together, it must be unreasonable.

[70] In ***Newfoundland and Labrador Nurses Union v. Newfoundland and Labrador (Treasury Board***), 2011 SCC 62, Justice Abella, for the majority, said a decision-maker is not required to make an explicit finding on each constituent element or argument leading to its final conclusion. She further said that, if the reasons allow the reviewing court to understand why the tribunal made its decision and to determine whether the conclusion is within a range of acceptable outcomes, then the ***Dunsmuir, supra*** criteria are met:

> 16 Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*S.E.I.U., Local 333 v. Nipawin District Staff Nurses Assn.* (1973),

> [1975] 1 S.C.R. 382 (S.C.C.), at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.
>
> 17 The fact that there may be an alternative interpretation of the agreement to that provided by the arbitrator does not inevitably lead to the conclusion that the arbitrator's decision should be set aside if the decision itself is in the realm of reasonable outcomes. Reviewing judges should pay 'respectful attention' to the decision-maker's reasons, and be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fateful.
>
> [Emphasis added]

[71] Further, Justice Fichaud, writing for the unanimous Court of Appeal in ***Canadian Union of Public Employees, Local 3912 v. Nickerson***, 2017 NSCA 70, said, at para. 35:

> The reviewing judge's perspective is wide-angled, not microscopic. The judge appraises the reasonableness of the 'outcome', with reference to the tribunal's overall reasoning path in the context of the entire record. The judge does not isolate and parse each phrase of the tribunal's reasons, and then overturn because the judge would articulate one extract differently.
>
> [Emphasis added]

[72] The Board was not required to provide a detailed analysis of each and every point raised by PSH for its decision to be reasonable. It had the written submissions and the statutory declarations, and it indicated it had carefully considered, but rejected, PSH's arguments concerning functional integration. It clearly outlined its reasoning path in coming to a conclusion that the AST unit was appropriate for collective bargaining. The Board concluded that "the concerns raised here by the Respondent do not, in our view, 'tip the balance' in favour of a larger bargaining unit based on all of these factors."

[73] The Board considered the relevant factors, made findings of fact and determined, in accordance with its responsibility under s. 25(4) of the *TUA*, that the proposed unit was appropriate for collective bargaining. The Board clearly indicated that the fundamental question was whether the unit applied for was appropriate for collective bargaining, not whether there might be a more appropriate unit. The Board indicated this approach was in keeping with its long-standing approach to its responsibilities on a Part I certification, as outlined recently in ***Paladin, supra.***

[74] The Board began its analysis by reference to s. 25(14), where it is directed to have regard to community of interest among the employees. The Board noted that the considerations in s. 25(14) are not exhaustive, and said:

> … As we usually do, we also considered the eight 'Adams' factors, summarized by George Adams in his text, *Canadian Labour Law*. These eight Adams factors are: similarity in the scale and manner of determining earnings; in employment benefits, hours of work and other terms and conditions of employment; in the kind of work performed; and in the qualifications, skills and training of employees; the frequency of contact or interchange among employees and the geographic proximity of workplaces; continuity or integration of production processes; common supervision and determination of labour relations policy; relationship to the administrative organization of the employer; history of collective bargaining; desires of affected parties and employees; and extent of union organization.
>
> (Record, tab 59, paragraph 25 of the decision)

[75] The Board further indicated that its analysis included consideration of the labour relations implications of the certification. It then concluded:

> We have no hesitation in finding that there is a strong community of interest in the proposed bargaining unit based on these factors. We note that the automotive service technicians have a unique pay structure within the workplace and as they have specialized qualifications, there is no interchange of employees. While there may also be a community of interest with other employees, this does not mean the unit applied for is not an appropriate one.
>
> In our view, this bargaining unit is an appropriate and viable one for collective bargaining. The Union submitted copies of collective agreements it has negotiated with respect to five bargaining units of automotive service technicians in Nova Scotia. It pointed to the Statutory Declaration of Patrick Murray which supports it's position that 'the respondent's operations and work processes are the same processes used in every automotive dealership for which the union has bargaining rights.' It pointed out that these units have engaged in multiple rounds of collective bargaining with their respective employers and are viable and successful bargaining units.
>
> (Record, tab 59, paragraphs 27 and 28 of the decision)

[76] There was ample evidence in the Record for the Board's findings of fact. Unifor had argued that the employees in the proposed unit shared a community of interest pursuant to the factors set out in section 25(14) of the *TUA*: the AST's method of remuneration was distinct from all other employees at PSH; the ASTs were the only employees at PSH required to provide their own tools; the ASTs had specific training and Red Seal Certification; the ASTs were the only PSH

employees who perform service, repair and maintenance work on vehicles; and the ASTs had their own separate locker room at PSH.

[77] The Board also referred to the fact that there was evidence indicating that there were other viable service technician-only units that had successfully engaged in multiple rounds of collective bargaining with no evidence of serious labour relations problems arising in those various workplaces. Unifor had submitted copies of collective agreements it had negotiated with respect to five bargaining units of automotive service technicians in Nova Scotia. The Board did what it was expected to do. It considered the evidence and assigned weight as it deemed appropriate, in light of its experience, and concluded the unit was appropriate for collective bargaining.

[78] The Board went on to state that it had considered, but rejected, PSH's argument that the automotive service technicians in the proposed bargaining unit were so functionally-integrated with the 15 other employees that the proposed unit was not appropriate for collective bargaining. It referred to the principles concerning functional integration set out in ***Can Am Produce & Trading Ltd., supra,*** noting they were adopted by the Board as an adjunct to its own jurisprudence. It then summarized the relevant principles, including the principle that functional integration is different from a functional relationship, in that it refers to employee interchange, shared duties, integrated job duties, overlapping duties, team processes, and continuous work processes; and that not all levels of functional integration will result in a determination that a bargaining unit is inappropriate, etc. The Board then concluded:

> From the Board's perspective, a proper weighing of these factors in this case led us to the conclusion that this is an appropriate unit. As noted in *Paladin*, our primary concern on an initial application is to facilitate collective bargaining and give effect to employee wishes to unionize. As George Adams, in his text at 7.80, has commented, labour boards are more flexible in their assessment of the criteria on a first application for certification in a workplace and traditionally give more weight to access to collective bargaining in deference to employee wishes. In subsequent applications, employer concerns about fragmentation may be given more weight.
>
> The concerns raised here by the Respondent do not, in our view, 'tip the balance' in favour of a larger bargaining unit based on all of these factors. As this board in *United Steel Workers, Local 3172 and Eastern Mainline Housing Authority,* Decision # LRB-6062 commented, there are various means by which the Respondents goal of a more comprehensive unit could be accomplished through established labour relations processes.

> Our approach to this matter has been guided by the specific provisions of the Act, the preamble to the Act, and the current constitutional context in which we operate. In our view, having considered the circumstances of this case, including all of the factors in policy considerations discussed above, we decided to prove the Union's proposed unit.
>
> (Record, tab 59, paragraphs 31, 32 and 33 of the decision)

[79] PSH says, with regard to functional integration, that the Board did not explain why the evidence provided in the Burke Statutory Declaration did not satisfy the test, and therefore the Court is unable to understand the Board's reasoning on functional integration. There was no requirement for the Board to set out the specific evidence from the Burke Statutory Declaration in the decision. The Board indicated that it had carefully considered PSH's position on functional integration and had rejected it.

[80] The Burke Statutory Declaration sets out the steps in the vehicle-servicing process and the new vehicle/pre-owned vehicle sale process. The Board was clear about the principles that applied. It was open to the Board to find that these relationships did not constitute functional integration to an extent rendering the AST unit inappropriate. In the circumstances, it was not necessary for the Board to specifically address the various categories of excluded positions that are part of the service department and indicate for each position why it did not constitute functional integration to an extent rendering the AST unit inappropriate. The Board did find there was no interchange of employees, and did address work processes. It said:

> … We note that the automotive service technicians have a unique pay structure within the workplace and as they have specialized qualifications, there is no interchange of employees.
>
> … The Statutory Declaration of Patrick Murray which supports its position that 'the Respondent's operations and work processes are the same processes used in every automotive dealership for which the union has bargaining rights.' It pointed out that these units have engaged in multiple rounds of collective bargaining with their respective employers and are viable and successful bargaining units. (Record, tab 59, paragraphs 27 and 28)
>
> [Emphasis added]

[81] This conclusion is supported by the Record. The Murray Statutory Declaration says in part:

> 21. I have read the statutory declaration of Joseph Burke ("Burke") and make the following comment: …

> 23. Almost every dealership, for which Unifor has bargaining rights, has similar or comparable departments to the ones described in paragraph 4 of Mr. Burke's statutory declaration including sales, service and customer communication or customer care departments.
>
> …
>
> 26. I have reviewed the 'vehicle Servicing Process' (described in paragraphs 5 to 28 of the Burke Statutory Declaration) and the New Vehicle/Pre-owned Sale Process (described in paragraphs 29 to 37 of the Burke Statutory Declaration).
>
> 27. The two processes are, for the most part, the same processes used in every car dealership for which Unifor has bargaining rights. There is nothing unique or different in the way Portland describes its business from the way the other car dealerships carry on their business. (Record, tab 42)

In coming to its conclusion, the Board pointed to this evidence and emphasized that these other car dealerships have similar processes and are viable and successful bargaining units.

[82] As Unifor indicates, there was little to no evidence in the record of significant shared tasks between the ASTs and the other employees. There was evidence that the ASTs were the only employees at PSH who perform service, maintenance, and repairs on the vehicles, had specific training, etc. The Board set out a summary of the applicable principles concerning functional integration and applied them in concluding that the ASTs were not so functionally-integrated with the 15 other PSH employees as to render the unit inappropriate for collective bargaining.

[83] As set out above, the Board's reasoning path was clear. Its conclusion is supported by the Record and the law and is, therefore, reasonable. I see no reason to engage in the argument as to the current state of the law as to whether/when a Court can supplement the reasons of a tribunal, such as the Labour Board, as I find there to be a reasonable chain of analysis in the Board's decision. There is no need to consider supplementing these reasons, as I find them to be adequate. I can easily see the connection between the evidence in the Record, the reasoning of the Board and its conclusion. As Justice Fichaud said in ***Egg Films, supra***, the judge follows the tribunal's analytical path and decides whether the tribunal's outcome is reasonable, based on the Record:

> 30 Next, the judge's 'treasure hunting', 'zooming in', or 'tracking' of the Board's reasons. Reasonableness isn't the judge's quest for truth with a margin of tolerable error around the judge's ideal outcome. Instead, the judge follows the tribunal's analytical path and decides whether the tribunal's outcome is reasonable.

> *Ryan v. Law Society (New Brunswick), supra*, at paras 50-51. That itinerary requires a 'respectful attention' to the tribunal's reasons, as Justice Abella explained in the well-known passages from *N.L.N.U.*, paras 11-17.
>
> 31 In *Irving Pulp & Paper Ltd. v. CEP, Local 30*, 2013 SCC 34 (S.C.C.), Justice Abella for the majority reiterated:
>
> > [54] The board's decision should be approached as an organic whole, without a line-by-line treasure hunt for error (*Newfoundland Nurses*, at para. 14). In the absence of finding that the decision, based on the record, is outside the range of reasonable outcomes, the decision should not be disturbed ...
> >
> > [Emphasis added]

[84] As noted above, PSH takes issue with the Board's comment in the decision at para. 32 referring to its ***Eastern Mainland Housing Authority, supra,*** decision, saying, "there are various means by which the Respondent's goal of a more comprehensive unit could be accomplished through established labour relations processes." Contrary to PSH's position, I do not see anything in the Board's decision that would indicate that it certified an inappropriate unit that could be fixed later. The Board clearly said, in keeping with its jurisprudence, that the question was whether this unit was appropriate for collective bargaining, not whether there may be a more appropriate unit. The Board's reasoning is clear. It concluded the unit applied for was appropriate for collective bargaining. As Unifor points out, PSH remains free to challenge any future proposed certification or amendment application on the basis that, in light of the existence of the AST-only unit, it would give rise to an inappropriately-fragmented workplace.

[85] Contrary to PSH's position, the Board was not required to discuss or follow the Ontario and British Columbia cases it provided. PSH itself acknowledges that the Board is not bound by decisions of labour boards in other jurisdictions. PSH seems to argue that the cases it referenced from Ontario and B.C. stand for an absolute principle that a mechanics-only bargaining unit in an automotive dealership is inappropriate, and the Board should therefore have addressed them. Simply because these cases are referenced by Adams in relation to paragraph 7.80 (a paragraph which the Board referenced in its decision) does not mean that the Board must then provide reasons why it has or has not adopted the reasoning in the decisions Adams has footnoted to the paragraph. It was perfectly reasonable for the Board to refer to its decision in ***Paladin, supra,*** indicating that its primary concern on an initial application is to facilitate collective bargaining and give effect to employees' wishes to unionize, and, in that context, to also refer to paragraph 7.80, noting that Adams has commented that, "labour boards are more

flexible in their assessment of the criteria on a first application for certification in the workplace and traditionally give more weight to access to collective bargaining and deference to employee wishes. In subsequent applications, employer concerns about fragmentation may be given more weight."

[86] While not necessary for the Board or this Court to comment on the decisions referenced by PSH, I do not see those cases as standing for an absolute principle. For example, in ***Sears v. I.B.E.F., Local 213***, 2000 CarswellBC 3078, the B.C. Labour Relations' Board considered ***IML/Dueck Chevrolet Oldsmobile Cadillac Ltd., supra,*** and pointed out that, in that case, the union was seeking to represent only one of the classifications of employees who performed automotive repairs, excluding body shop employees who also did repairs. It further highlighted the fact that there was evidence of tasks being shared between excluded and included employees. In certifying a service technician-only unit, the B.C. Board said ***Dueck Chevrolet Oldsmobile Cadillac Ltd., supra,*** was distinguishable from the situation before it, because the union was applying for a mechanics-only unit consisting of all employees who performed appliance repairs. In distinguishing ***Dueck Chevrolet Oldsmobile Cadillac Ltd., supra***, it said:

> We accept that the original panel in ***Dueck Chevrolet Oldsmobile Cadillac Ltd.*** was in error in effectively certifying one classification of employees within the employer's operations where there was some evidence of functional integration with employees in another classification. The ***Dueck Chevrolet Oldsmobile Cadillac Ltd.*** case is distinguishable as there the union was seeking to represent only one of the classifications of employees performing repairs, but not the body shop employees who also did repairs, but of a different nature. Here the Union is applying for all of those that do repairs. On our reading of the original decision in ***Dueck Chevrolet Oldsmobile Cadillac Ltd.***, one ground for reconsideration was the original panel's reliance on the craft distinction between mechanics and parts persons is decisive. However, there was also evidence of shared tasks that rendered the unit inappropriate, evidence that is not found in this case. (para. 121)
>
> [Emphasis added]

[87] PSH alleges procedural unfairness, saying the Board did not address critical issues, thus requiring a correctness standard of review. In ***Newfoundland Nurses***, ***supra***, the Supreme Court of Canada stated that where reasons are provided by a tribunal, any challenge to the reasoning or result of the decision is made within the reasonableness analysis:

> 20 Procedural fairness was not raised either before the reviewing judge or the Court of Appeal and it can be easily disposed of here. *Baker* stands for the proposition that 'in certain circumstances', the duty of procedural fairness will require "some form of reasons" for a decision (para. 43). It did not say that reasons were *always* required, and it did not say that the *quality* of those reasons is a question of procedural fairness. In fact, after finding that reasons were required in the circumstances, the Court in *Baker* concluded that the mere notes of an immigration officer were sufficient to fulfil the duty of fairness (para. 44).
>
> 21 It strikes me as an unhelpful elaboration on *Baker* to suggest that alleged deficiencies or flaws in the reasons fall under the category of a breach of the duty of procedural fairness and that they are subject to a correctness review. As Professor Philip Bryden has warned, 'courts must be careful not to confuse a finding that a tribunal's reasoning process is inadequately revealed with disagreement over the conclusions reached by the tribunal on the evidence before it' ('Standards of Review and Sufficiency of Reasons: Some Practical Considerations' (2006), 19 *C.J.A.L.P.* 191, at p. 217; see also Grant Huscroft, 'The Duty of Fairness: From Nicholson to Baker and Beyond', in Colleen M. Flood and Lorne Sossin, eds., *Administrative Law in Context* (2008), 115, at p. 136).
>
> 22 It is true that the breach of a duty of procedural fairness is an error in law. Where there are no reasons in circumstances where they are required, there is nothing to review. But where, as here, there *are* reasons, there is no such breach. Any challenge to the reasoning/result of the decision should therefore be made within the reasonableness analysis.
>
> 23 The arbitrator in this case was called upon to engage in a simple interpretive exercise: Were casual employees entitled, *under the collective agreement*, to accumulate time towards vacation entitlements? This is classic fare for labour arbitrators. They are not writing for the courts, they are writing for the parties who have to live together for the duration of the agreement. Though not always easily realizable, the goal is to be as expeditious as possible.
>
> [Emphasis added]

[88] This is not a situation where the Board failed to address a critical or central issue. While the Board did not provide detailed reasons on all issues raised, it did adequately address the central issues. There is no question in my mind that the Board was alive to the central issues and understood the arguments being advanced by each party. The Board set out the critical or central issues. The Board analysed whether the proposed unit was appropriate for collective bargaining, in light of such considerations as alleged functional integration with other employees, that could give rise to serious labour relations problems. It analysed whether Unifor's application was precluded by s. 24 and the *Craft Unit Regulations.* It addressed the central issues. The Board's decision follows a clear reasoning path and, when read

in light of the Record, I have no difficulty concluding the Board's decision is reasonable, falling within a range of acceptable outcomes.

[89] If the Board was required to address each and every argument, statutory interpretation and case referenced in what are often very lengthy submissions by the parties, it could not fulfill its mandate to apply its expertise expeditiously. Its function would become bogged down in unnecessary, detailed exercises in justification. The Board issued a decision comprised of 35 paragraphs. It is concise; it sets out the three main issues; it addresses the two central issues which are the subject of this judicial review, being whether s. 24 and the *Craft Units Regulations* apply and, whether the bargaining unit applied for is appropriate for collective bargaining.

[90] If the Board's decision allows the Court to understand why the Board made its decision, and determine whether the conclusion falls within the range of acceptable outcomes, then the reasonableness criteria is met. The Board, in reaching its conclusion, applied its particular expertise to the difficult issues raised by the parties. In exercising its particular expertise, within its legislative mandate, the Board arrived at various conclusions. It found s. 24 was not applicable and it found the bargaining unit restricted to ASTs to be appropriate for collective bargaining. I find that the Board's reasons provide more than ample explanation for the basis of its decision. I was easily able to understand why the Board reached its conclusion that s. 24 was not applicable and that, pursuant to the Part I provisions, the bargaining unit was appropriate for collective bargaining. I find the Record provides a rational basis for the Board's decision. The decision was clearly written and I had no difficulty understanding the reasoning path. The reasoning path on the two central issues is coherent and intelligible. The Board's conclusions on the central issues fall within a range of possible outcomes which are defensible in respect of the facts and the law.

[91] The Board has expertise in the area of the issues that were before it for determination in this matter. This Court should defer to the decision of the Board.

Conclusion

[92] The Application for Judicial Review is dismissed with costs. If the parties cannot agree on costs, I will receive their written submissions within 30 days from the date of this decision.

Jamieson, J.