BRITISH COLUMBIA LABOUR RELATIONS BOARD

UNIVERSITY OF BRITISH COLUMBIA

(the "Employer")

-and-

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 2950

("Local 2950")

-and-

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 116
(U.B.C. EMPLOYEES)

("Local 116")

-and-

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 2278

("Local 2278")

(Collectively, the "CUPE Locals")

-and-

B.C. GOVERNMENT AND SERVICE EMPLOYEES' UNION

("BCGEU")
I. NATURE OF THE APPLICATIONS

On October 27, 2004, Local 2950 applied under Sections 35 and 139 of the Labour Relations Code (the "Code") seeking a declaration that employees employed by UBC at the Okanagan campus ("UBCO") performing clerical, library and other related work covered by Local 2950's certification are covered by its certification and the UBC/Local 2950 collective agreement.

On January 4, 2005, Local 116 applied under Sections 35 and 139 of the Code seeking a declaration that employees of UBC performing clerical, technical and other related work at UBCO are covered by Local 116's certification and by the UBC/Local 116 collective agreement.

On January 7, 2005, Local 2278 applied under Sections 35 and 139 of the Code. Its arguments were essentially the same as the two other CUPE Locals.

The CUPE Locals disputed that there was a successorship. In the alternative, they argued that if the Board granted a successorship, another bargaining unit should not be created and that the existing CUPE collective agreements should apply to UBCO.
UBC and the BCGEU say that the bargaining unit that existed between the Okanagan University College ("OUC") and BCGEU should be maintained after the successorship. In or around December 2004 and January 2005, UBC and BCGEU negotiated a transfer agreement with respect to the support staff employees at what was to become UBCO.

In February, 2005, Local 2950 filed a complaint under Sections 6(1) and 27 of the Code asserting that UBC violated the Code when it "secretly pursued negotiations and concluded the Memorandum of Understanding with BCGEU, thereby unilaterally attempting to opt out of the Code and its bargaining relations with Local 2950". Local 2950 alleged that UBC's actions were tantamount to dictating to the Board, the Unions and employees, which union would represent the UBCO employees, and as such, UBC had interfered in the selection of a trade union. Local 2950 sought a variety of remedies, including a declaration that Local 2950 is the only Union that UBC can negotiate with in relation to its bargaining unit. Local 2278 filed a similar complaint in February, 2005.

On March 16, 2005, in BCLRB No. B71/2005, UBC was declared the successor employer to OUC for part of its business as of July 1, 2005.

With respect to the faculty at UBCO, UBC, UBCFA and OUCFA continued with informal discussions. On June 3, 2005, the Board issued a Consent Order involving UBC, OUC, OC, UBCFA and OUCFA. The Consent Order provided that, effective July 1, 2005 the UBCFA shall represent all Faculty Members, Librarians, and Program Directors in Continuing Studies, or equivalent positions of UBC as defined by the UBC/UBCFA Collective Agreement. The Collective Agreement between UBC and UBCFA applied subject to the adjudication of three outstanding matters related to the academic rank of certain individuals, a pension issue, and a general issue relating to salary placement. The first two issues were resolved by the parties; the third issue was decided by the Board in University of British Columbia, BCLRB No. B98/2006 (Upheld on Reconsideration in BCLRB No. B213/2006).

This left two outstanding matters involving CUPE Locals, the BCGEU and UBC. In BCLRB No. B14/2006, the Board dismissed the CUPE Locals' complaints regarding the transfer agreement between UBC and the BCGEU. The panel concluded:

In the case at hand, BCGEU had a longstanding collective bargaining relationship with Okanagan University College.

In the face of successorship applications from Locals 2950, 116 and 2278 and the Okanagan University College Faculty Association, UBC continued to deal with the BCGEU at the Kelowna campus. UBC continued the collective bargaining relationship that had existed for several years. In essence, the status quo was maintained.
By maintaining the status quo, UBC is not attempting to opt out of Code provisions. Nor are my deliberations on the future collective bargaining structure affected by UBC and BCGEU’s actions.

I am charged with the responsibility under Section 35 of the Code to determine the appropriate collective bargaining structure for the future. It may turn out that I agree with Local 2950, 116 and 2278’s position, in which case the UBC/BCGEU relationship would be severed.

Had UBC moved from the status quo and dealt with the CUPE Locals instead of BCGEU, I suspect BCGEU would have filed similar applications to CUPE.

In my view it makes more sense, and it is less disruptive, to sustain the status quo until the Board makes a final decision under Section 35. UBC and BCGEU continue to conduct their affairs under the previous regime until the Board’s decision is issued. The Memorandum of Understanding will have no impact on my deliberations with respect to the appropriate bargaining unit structure on a go forward basis.

For the foregoing reasons I conclude that the unfair labour practice complaints should be dismissed. (p. 5)

At the request of Local 2950, the Board consolidated the remaining applications. The outstanding issue that this decision addresses is the appropriateness of the bargaining unit structure at UBCO. Do the UBC employees in Kelowna continue to be represented by BCGEU or will Locals 2950, 2278 and 116 represent the employees as they do at the other UBC campuses?

The parties are at odds about the approach the Board should take in this case. For its part, the CUPE Locals argue that the Board is being asked to add an additional unit to a multiple bargaining unit structure that exists for UBC, and urges this Board to find that UBC and the BCGEU have not met the evidentiary burden of rebutting the presumption against the proliferation of bargaining units. They say the fact of functional integration is to be given little weight. Comparatively, BCGEU and UBC say that the issue of appropriateness arises in the context of a successorship and that special weight is to be given to the existing bargaining relationship.

II. PROCEDURAL MATTERS

An unusual issue arose with respect to document disclosure on this matter. Unbeknownst to some or all of the other parties, CUPE 2950 made a broad information request of UBC about the creation of UBCO pursuant to the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165 ("FOIPPA"). That request generated literally thousands of pages of documents (approximately 8,000), most of which were immaterial to these proceedings. These documents included vast amounts of planning
documents for UBCO. However, many of these planning documents did not reflect the reality of what was eventually implemented at UBC.

The parties were at odds with respect to how these documents should be managed in these proceedings. The other CUPE locals wanted an order from the Board that UBC be required to produce all of these documents to them. In the alternative, it was suggested that the Board should engage in a review of these voluminous documents to assess potential relevance, an approach that was firmly rejected by this panel as being a poor utilization of the Board's scarce resources and contrary to the Board's duty to promote conditions favourable to the orderly, constructive and expeditious settlement of disputes.

In order to avoid further adjournment applications, UBC was ordered to provide copies of the documents, at the expense of Locals 116 and 2278, to those same Locals. This order was by no means a determination of the potential relevance or admissibility of the documents, rather, it was driven by a desire to keep the process moving.

During the hearing, very few of these documents were introduced in evidence. Most of those documents that were introduced were of marginal relevance, and of little materiality to the matters in dispute. I was struck by the number of pre-hearing disputes and adjournments that were created through a party obtaining disclosure through FOIPPA and thereby complicating the normal Board process. In my view, using FOIPPA as a tool for document production related to litigation, rather than following the normal paths for disclosure is extremely problematic. It provides a method of obtaining documents which has none of the limiting safeguards that governs typical pre-hearing disclosure. It increases costs and creates unnecessary delays.

III. FACTS

UBC

UBC is a publicly funded university with thousands of employees.

UBC was founded in 1908. Over the years it has grown to become one of the largest and best teaching and research universities in Canada.

At the time of the hearing, UBC had 12 faculties, approximately 4,000 faculty-members, 32 undergraduate programs, and 29 masters programs. In Vancouver, UBC had approximately 35,000 undergraduate students and approximately 8,000 graduate students. UBC has approximately 4,000 international students from 120 countries and it has exchange agreements with more than 140 partner universities throughout the world.

UBC has four campuses: three in Vancouver (Point Grey, Robson Square and Great Northern Way) and since 2005, the UBCO campus in Kelowna.

UBC President Martha Piper's inauguration address of UBC's "Trek 2010" vision sets out UBC's strategic plan for the future. In referring to UBCO, Piper says that "this
may be the biggest initiative the university has undertaken in its history. UBC is no longer a place; it is a system - 
"

UBC is the third largest employer in the Lower Mainland of British Columbia. It employs approximately 14,000 employees, including faculty, management and professional employees and support staff (consisting of clerical or secretarial employees and trades/technical employees).

Prior to the creation of UBCO, there were seven collective bargaining relationships in place at UBC:

CUPE Local 2950 – representing approximately 1500 secretarial, clerical and library staff as well as 172 staff at the Chan Centre. Under the same certification and collective agreement, Local 2950 represents approximately 22 members at Robson Square, three members at Rick Hansen Institute, one member at Research Services at 828 West 10th Avenue in Vancouver and one member at the Industry Liaison Office. Local 2950 has approximately 200 members that work in UBC library systems alone.

CUPE Local 2278 – representing approximately 1900 teaching assistants and English Language Instructors employees;

CUPE Local 116 – representing approximately 1900 technical staff, trades, cleaning, food services, bookstore, lab technicians, as well as some clerical employees. Local 116 members work in locations throughout the province, and beyond, as some work in far reaching locations, such as on vessels in the Artic;

IUOE Local 882 – representing approximately 50 power plan employees;

BCGEU represents a group of child care employees;

The UBC Faculty Association represents the faculty;

In addition, the Association of Administrative and Professional Staff ("AAPS") represent over 2,000 management and professional employees, including employees at UBCO. AAPS is not a trade union and has no status under the Code.

UBC also employs approximately 780 non-union research assistants/technicians, 57 excluded clerical employees and 700 other non-union employees in various other employee groups.

CUPE 2950 members are located on the UBC Point Grey Campus, at the UBC Robson Square Campus and at other UBC locations in Maple Ridge, Prince George, Williams Lake and at several hospitals in the Lower Mainland. CUPE members of Locals 2950, 116 and 2278 work throughout the province under the same certification at various locations even outside of the campuses. For example, UBC has a bookstore at
Heather Pavilion at Vancouver General Hospital. Employees at the bookstore are represented by CUPE Local 116. They are covered by the same collective agreement and certification as Local 116 members at other UBC campuses.

**OUC**

The Okanagan Regional College was established in 1965. Okanagan Regional College changed to the OUC after 1995 when it was given the power to grant baccalaureate and honorary degrees. OUC was a public post-secondary institution with a full range of vocational, career and university transfer courses and programs.

OUC was a 'hybrid' university college. When OUC began it offered two year courses. Later, it was given the authority to become a four year university-college. UBC played a role in its launch as a university-college, but it continued to offer applied programs, such as trades, that fell within the college domain. Students at OUC had three streams they could take: one was to obtain a four year degree from OUC; the second was to attend OUC and transfer to a university, such as UBC after two years; the third was to enter the trades program offered by OUC.

OUC had approximately 970 employees. Of those, 343 were engaged in support staff positions and were represented by the BCGEU. Of those, 81 were employed in connection with the degree-granting component of OUC. The BCGEU held the certification for OUC support staff since 1973. Since that time, the BCGEU and OUC successfully negotiated a series of collective agreements.

OUC had two main Kelowna campuses and some satellite campuses. One main campus was located in the South region of Kelowna, the second in the North, close to the Kelowna Airport.

In March 2004 the provincial government announced that OUC would no longer operate and two new institutions would be created out of OUC. These became Okanagan College ("OC") and UBCO. OUC had its final year of operation in 2005.

**UBCO**

UBCO is located in Kelowna, B.C. approximately 250 miles from the Point Grey campus on what was the North Campus of its predecessor, OUC.

UBCO upholds and promotes the vision and mission of UBC as set out in Trek 2010. It does so, however, in a distinct way, so as to reflect and serve the needs of the Okanagan Valley and its people.

UBCO shares a commitment with UBC to research and teaching excellence. However, the academic mandate, structure and governance of UBCO is different than that of UBC's other campuses, such as Point Grey. Point Grey is a large, research-intensive university. Comparatively, UBCO's immediate focus is excellence in undergraduate education delivered through a unique and small-scale learning environment that endeavours to reflect the Okanagan community.
There were approximately 3,000 students enrolled at UBCO for the 2006 academic year with a faculty of 219. UBCO has a target maximum enrolment of 7,500 by 2010. When UBCO reaches this goal, they will require approximately double the number of faculty. That in turn will impact the number of support staff required.

UBCO's geographic location and role in the community were important considerations in the development of the structure of UBCO, including its academic mandate and governance. What was established was not an extension of the UBC Point Grey campus, but a uniquely Okanagan-based university.

Support staff play an important role in delivering UBCO's unique and distinct academic plan. The small size of UBCO means that there is a smaller contingent of support staff. Support staff are more "generalist" in nature than those at larger institutions such as Point Grey.

Dr. Richard Tees testified for UBC regarding the process that led to the formation of UBCO and its current structure. At the time of the hearing, Tees was the Acting Deputy Vice Chancellor at UBCO. He is a professor Emeritus of Psychology. He has been at UBC for 41 years conducting research into various matters, including recovery after brain injury. Over the term of his distinguished career, he has chaired numerous committees, panels and councils. He is a fellow with the Canadian Psychological Association, the American Psychological Association and the American Psychological Society.

Tees served as head of the Department of Psychology at UBC from 1984 to 1994 and again from 1999-2004. He stepped down from that position in July 2004. He also served as a Vice Chancellor on the UBC Senate, and was Chair of the Academic Policy Committee, and a participant on other Senate committees, including the Campus Connectivity Project, the Senate Budget Committee and, most relevant, the Transition Management Committee (the "Committee") tasked with ensuring a smooth transition of operations, programs and assets to UBCO and OC from OUC.

Where there were differences in the evidence of Tees and Natalie Lisik, the elected President of Local 2950, I prefer the evidence of Tees. When asked what diligence she took in making her statements, Lisik explained that she had researched through the internet and from other sources. Lisik's evidence and statements made in her will say statement were based on second hand information, and her sources of information were not disclosed. Some of her assertions of fact were based on planning documents, and she candidly admitted that much of her evidence was based on her "belief" as opposed to actual knowledge. Comparatively, Tees' evidence was given based on his direct knowledge of what was implemented (as opposed to proposed or considered in planning) at UBCO.

Similarly, where there were differences between the evidence of Tees and Roger De Pieri, a member of Local 116 who sits on the executive, or Peter Lane, the Business Manager for CUPE Local 2278, I prefer the evidence of Tees as he had direct knowledge of the matters in issue.
In late June 2004 Tees was finishing his third term as the head of the Department of Psychology and was about to go on a leave of absence. Prior to taking his leave, he was asked to participate on the Transition Management Committee.

The Committee had two tasks. First, to establish the term of a Memorandum of Understanding between UBC and the Ministry of Advanced Education regarding a provincial plan that "UBC develop a Southern Interior research intensive university campus of UBC based in the Okanagan and a new Okanagan College be established through the amalgamation of the remaining campuses of Okanagan University College". One arm of the Committee was the "Integrated Transition Management Office". Tees was a member of that office, which was tasked with providing all of the recommendations to the public administrator, empowered to discharge the duties and functions of the board of OUC during the transition period. Tees and his Committee members were charged with the task of creating two viable institutions, one a campus of UBC and the other a new OC. The Committee made recommendations outlining: 1) how the programs should be divided between the two institutions, and the principles for how to do that; 2) how the full time students and faculty would be transitioned between the two institutions; and 3) how the staff would would be transitioned. The Committee's task in making recommendations for these aspects of the transition was completed by November of 2004.

The OUC had two four-year programs, a bachelor of business administration and degree in applied computer design. The participants in the transition ultimately agreed, and the Ministry of Advanced Education agreed, that these two programs would go to OC, and UBC would have the other four year programs.

The process of transition moved quickly. At the same time the team was working on the 'divorce' of OUC which involved UBC and OC, they were also facing various start up challenges. Simultaneously, the Committee was "pulling apart projects" and "trying to create a separate campus".

The North Campus of OUC came to be the location where UBCO is located. At the time of the hearing, some construction on the campus was underway. Future construction for the UBCO campus is planned and has been presented to the Board of Governors. The Building program includes $250 million worth of buildings to support teaching, learning and research at UBCO.

The Committee, while exploring various possibilities for structure of UBCO, determined that to succeed UBCO had to be distinct. They acknowledged that despite their desires that UBCO would grow to more than double its starting student population, UBCO was "never going to be huge", and they sought to take advantage of the smaller community. The Committee determined that to compete for students, faculty and research dollars, UBCO could not simply be "UBC Lite", but had to create a distinct signature.

To fulfill that vision, the Committee reviewed a wide range of examples of governance options and models. For example, they looked at the University of Toronto
which has a centralized model of governance for its various campuses with one senate. They rejected this model. What they proposed was a model based on the University of California, which has autonomous campuses. Tees says that everything that happened subsequently supported this original concept of an autonomous and independent campus. UBCO was created with its own Deputy Vice Chancellor, its own senate and its own deans and department heads.

Tees and the members of the Committee set about to create a structure that would support their interdisciplinary vision. The traditional academic boundaries that exist at UBC Point Grey were not replicated. Instead, UBCO was structured on a model of larger, multi-disciplinary education "clusters". Whereas there are a multitude of different academic departments/faculties at Point Grey, there are only six faculties at UBCO: arts and science; creative and critical studies; education; health, management; and applied science.

Another example of the unique approach of UBCO is the proposed engineering program. The desire in designing an engineering degree at UBCO was to do something different in the engineering field. Commonalities were identified between the various engineering disciplines, and UBCO created a more integrated engineering program than exists at UBC Point Grey. At UBCO, the first two years of the engineering program is highly integrated, with students from the different engineering streams (mechanical, etc.) going through the same courses. Specialization does not occur until the last two years of the program. Comparatively, at Point Grey specialization starts earlier. In Tees' view, the program contemplated for UBCO is a better one than that offered in Vancouver. A senior person from Saskatchewan was recruited to act as the Director of Engineering for UBCO.

By way of another example, for the Faculty of Management UBCO chose a different model from what existed at OUC and was transferred to OC and from that offered at the Sauder School at UBC Point Grey. The model chosen was based on a university in New Zealand. The clientele for graduates was seen as involving "small and medium businesses relating to the Valley". Based on the model from New Zealand, the UBCO Faculty of Management's program was designed deliberately to focus on the service industry and tourism. It is hoped that with this distinctive program UBCO could compete in the marketplace for students.

In terms of advertising to the student population to attract students, UBCO ran advertisements that stressed its unique approach. The general thrust of this campaign was that UBCO can provide students with a UBC degree, but will deliver a different experience, ie. 1/3 of classes at UBCO have 15 or fewer students. A unique scholarship program was offered at UBCO for students attaining certain averages. In a print advertisement, UBCO advertised as "The University of British Columbia – Okanagan – Canada's Biggest Small University".

UBCO has a separate Senate. The Senate is made up of the President of UBC and the Chancellor of UBC. All other participants are UBCO employees. The powers of the Senate include the approval of courses, setting the requirements for graduation, all
academic appeals, etc. The UBCO calendar, including the faculty and courses offered, are set by the Senate. The *University Act*, R.S.B.C. 1996, c. 468, Act specifically refers to the "Okanagan senate" of UBC, defining it as the senate responsible for academic governance and powers under section 37.

The Senate approves the list of everyone who will graduate. The Senate met for the first time in October, 2005, and at the time of the hearing, had met four or five times since.

For all of UBC, there remains on President, a single library system and a single student enrolment/registration process.

There is also a single Board of Governors for UBC. However, Tees confirmed that in his experience, he had never seen the Board of Governors do anything but rubber stamp the recommendations of the Senates. He also confirmed that the recommendations put forward by the UBCO Senate, as opposed to the Senate for the Point Grey campus, are dealt with separately by the Board of Governors. The Board of Governors is also responsible for confirming faculty appointments. However, how faculty are recruited and selected, who is interviewed, and who offers are made to, are all confirmed by the Deputy Vice Chancellor, the Deans and academics of UBCO. Rarely, if ever, does the Board of Governors not accept the recommendations made for faculty appointments.

In addition to the Board of Governors, there is a Council of Senates, established by Section 38.1 and 38.2 of the *University Act*. The President, the Board of Governors, the Vancouver Senate, the Okanagan Senate or the Council may direct that a matter that the Vancouver Senate or the Okanagan Senate might consider, is considering or has considered in the exercise of that senate's powers under section 37 be referred to the Council for consideration and disposition.

Tees' sense of the Council is that it is to have as little work as possible.

UBCO and OC have a unique relationship. For OC, the transfer from OUC has been successful. At the time of the hearing, OC had exceeded student targets by 4%. Both endeavours, UBCO and OC, were launched successfully. Both institutions have recognized that there are synergies between them that can be capitalized on and have developed a document setting out possible models for institutional partnerships. UBCO and OC have a single football team, basketball team and volleyball team. OC provides technical support to UBCO.

How the library would be divided between UBCO and OC was a difficult process. UBCO gained the building as it was located on the North campus. UBCO was also able to keep the core of the library collection. OC was given funding to buy books. OC students have access to the library and there is a courier service between the two institutions.
UBC expanded its library site licences to give UBCO access to their sites. Access is also available beyond UBC, such that the library can access other collections from Harvard, SFU, etc. Other colleges and universities similarly borrow from UBCO.

All librarians at UBCO are in the UBCFA. The head librarian is Melody Burton. The vast number of librarians came from OUC to UBCO. The supervisor at UBCO library, Karen Hill, who is excluded from any bargaining units, sits on UBC library committees, including the circulation committee, reserve committee and over-dues committee.

Jane Shinn is a member of CUPE Local 2950 who works at Koerner library at Point Grey as a library assistant and as the circulation supervisor. UBC has approximately 15 libraries throughout its Point Grey campus and approximately 5 libraries outside of the Point Grey campus, which includes the library at UBCO.

Koerner library is the central library branch of all UBC libraries and the largest library in the system. With the exception of the BCGEU members at UBCO library, all library clerical staff are members of CUPE Local 2950.

Borrowers on both campuses have access to all holdings at Koerner. Borrowers anywhere in the system can place holds on books signed out to patrons. Other materials can be ordered free of charge through the Document Delivery System. Books are shipped between the two campuses on a daily basis. Staff at the UBCO library and staff at other library locations call the Koerner library if there are any queries about misdirected books.

Shinn thought that recall notices, overdue notices and fine statements are mailed by Koerner staff for all locations including the Okanagan. However, she did not dispute that Hill prints off and mails recall and overdue notices at UBCO. Shinn was fairly confident she had seen print notices going to the Okanagan from Koerner at the end of 2005, but conceded that she is not involved in printing of notices, nor involved in the mail.

Telephone fine payments for all locations are taken by Koerner staff and library charges originating in any branch can be paid at any branch that takes payment (including the UBCO site).

There is interaction between UBCO library support staff and support staff at other UBC libraries, including Koerner. The various units in Borrower Services continue to interact with UBCO support staff regarding questions in their area of expertise. Shinn agreed that the person at UBCO who would have the most contact with staff at Koerner is Penny Shillingford, a BCGEU member who works as a circulation assistant. Shinn said she had no information to disagree with the proposition that the percentage of her duties that Shillingford spends on interactions with staff at UBCO Point Grey is less than 1% of all of her duties. Contact with support staff at UBCO and support staff at Koerner does not happen every day. Shinn estimated that calls occur approximately 2–3 times a week on matters involving circulation, or users not picking up books at the right library.
location. In addition, she explained that there is occasional contact with staff regarding course reserves or copyright issues that need to be addressed.

Users have the same access to electronic databases for the UBC libraries, and all of the libraries have the same home page. All of the libraries share and use the same catalogue system. UBC Point Grey has assisted those at UBCO, by holding workshops for example, on how to apply for research funds. The level of research that was conducted at OUC was far less than that at UBCO.

In addition to access to books within the UBC system, faculty and students have access to books between various institutions, including institutions outside of Canada. The libraries borrow books outside of the UBC system on a regular basis. Shinn agreed that a daily (and growing) part of life at academic libraries involves "reaching out beyond borders and acquiring publications".

In June, August and December of 2005 Shinn, or one of her colleagues, went to the UBCO campus and trained BCGEU library support staff and librarians on the library operating system. Shinn again attended at UBCO in May of 2006 for a question and answer session with staff.

Training also takes place by vendors, which involves staff from other universities as well.

UBCO library staff have the same skills and duties as Koerner support staff. Although Shinn initially stated that the policies of the UBCO library are the same as with the other UBC libraries, she later conceded that there are differences between them. For example, fines are not levied at UBCO against faculty and staff, whereas they are at Koerner. Unlike UBC Vancouver which has a longer maximum loan time for faculty, UBCO has a four week maximum on loans for faculty. Another difference is that OC students are granted library privileges at UBCO.

Eleanor Wellwood is a CUPE Local 2950 member. She works at Access and Diversity for UBC at its Point Grey campus as a library assistant. Approximately 8 other Local 2950 members work at Access and Diversity. Point Grey provides alternate format material for students with print disabilities at UBCO. The material is produced and provided by Access and Diversity in the Crane Library and Production Facility by support staff, student assistants and volunteers at the Point Grey campus.

Students, faculty or staff who need disability services are required to register with Disability Resources at UBCO. Mary DeMarinis is the Director of Disability Resources at UBCO and is excluded from any bargaining unit. Individuals requesting these services are interviewed by UBCO staff to determine their needs for alternate format. The same procedure that staff follow at Point Grey is followed at UBCO. Once the needs of the students, faculty or staff have been identified, support staff at Point Grey are contacted to produce the needed materials which involves detailed communications between staff at UBCO and support staff at Point Grey. Support staff at Point Grey determine whether to borrow that material from outside of UBC or to produce it at Point
Grey. The borrowed materials are borrowed by the Crane Library at Point Grey for UBCO students. Audio material (at the time of hearing, the Facility had not prepared any large print or braille copies of materials) produced at UBC are delivered to UBCO using the intercampus mail delivery system. These materials are delivered to the UBCO library and distributed by staff as they would any other documents. Electronic text materials produced by student assistants at Point Grey are emailed directly to UBCO students.

UBCO students with print disabilities receive the same services as Point Grey or any other campus. There are email exchanges between Wellwood and support staff at UBCO, whenever necessary. The number of exchanges depends on the time of year, and Wellwood confirmed that months may go by with no emails from staff at UBCO. Wellwood said that the number of times that there has been direct email from the Facility to an UBCO student was no more than 3 – 5 times in the last year.

The materials generated by the Production Facility are loaned to other users, beyond UBC. For example, other university have access to these materials through inter-library loans. Moreover, the Facility has done some production for Simon Fraser University and the University of Victoria.

Under the title "System Function Okanagan Offices" there are a number of offices and services that have connections with UBC Vancouver. These include Human Rights and Equity Services, Financial Aid, Bookstore, Development, Supply Management, Treasury, Budget, Business operations, Government Affairs and Counsel. The vast majority of staff involved in these initiatives are members of AAPS.

For example, in Financial Aid, there are three individuals working who are all employees of UBCO and members of AAPS. Decisions on policy are made at UBC, while the application of those policies are conducted at UBCO. The Treasury, by way of another example, would have input from Tees, but the risk manager involved works in Vancouver conducting risk management for all campuses. In summary, Tees explained that many of these administrative 'modules' provide services to both campuses, with most management personnel being based in Vancouver. They seek advice, counsel and direction from UBCO on matters related to UBCO.

The UBCO Bookstore has a small complement of staff. Debbie Harvey is Director of the bookstore system and works at Point Grey. De Pieri stated that the bookstore employees at UBCO all report to Debbie Harvey at Point Grey. However, he confirmed that in making this statement, he did not interview any of the employees at the UBCO bookstore. The basis for his assertion was a review of the bookstore Website. He did not know who the manager was at UBCO or who reports to her. He also claimed that all ordering for UBCO was done at UBC Point Grey, but conceded that he had no direct knowledge of this, and had no basis to contradict a contrary assertion made by UBC that most ordering is done for UBCO by UBCO.

With respect to these shared core services, there is no minimal interaction, if any, with BCGEU members and their CUPE counterparts at the other UBC campuses.
Rather, more regular interaction occurs at the management level, with the limited exception of some training that was conducted during the transition period for UBCO.

For Finance, there is only one vice-president at Point Grey covering Vancouver and UBCO campuses.

Between UBCO and UBC Point Grey, a firewall has been built between the two budgets. This has been constructed in a fashion so that revenue coming in from government grants for students for UBCO, tuition, research grants for UBCO and donations made to UBC are 'silied' from UBC Point Grey funds. UBC also has its own fundraising arm. The UBCO budget is based on revenue derived from government. In 2005, $21 million came across with OUC students. For each student, the Government provides a grant of $10,000, plus UBCO charges tuition. For research grants, overhead charges, scholarships, financial aid, etc. this is the 'envelope' of money for UBCO that must pay for those costs. Tees said that if UBCO overspends, they have to pay the money back, as the UBCO budget is separate from the budget for UBC Vancouver. Tees explained that in 2006, the UBC Vancouver budget was set with a deficit, which required UBC Vancouver to make cuts so as to reduce costs. The budgets are not consolidated, which means that funds from UBCO are not used to help offset the deficit experienced by UBC Vancouver. All budgetary matters are ultimately in the control of the Board of Governors, however, the Board deals with UBCO separately from other campuses. All UBC campuses have the same internal auditor.

However raised, endowment funds are invested jointly. Thus, if UBCO receives an endowment, these funds are managed by the same professional management team as are the UBC Vancouver funds. However, these funds are disaggregated and interest earned on UBCO endowments flows back to UBCO.

As Tees explained, the separate financial treatment of UBCO to the rest of UBC was an aspect of UBCO's autonomy that was important to him. Tees is a UBC Faculty member, and did not want to see UBCO drawing money from UBC Point Grey, citing that he did not want to "harm what I cared about in Vancouver. This was an important feature of the existence of UBCO".

UBCO is connected to other institutions through BC Net, optical highspeed broadband internet between institutions, such as hospitals, universities, etc.

Most grant applications for UBCO are prepared by faculty at UBCO and signed off by the administration at UBCO. The only service provided by UBC Vancouver is a help workshop enterprise. The grant would come to UBC to be administered and signed off, but then the funds are transferred to the UBCO budget and then used by the researcher or group that were awarded the grant. The level of research that was conducted at OUC was far less than that at UBCO.

Of the 81 BCGEU members from OUC who were employed in connection with the degree-granting component of OUC, all were offered jobs with UBCO. Of those, 76
accepted positions. Of the full time staff engaged at OUC, 36% of them chose to work at UBCO. UBCO had a number of vacancies as opposed to actually obtaining staff.

As of April, 2007, there were approximately 120 BCGEU members employed at UBCO.

The job descriptions for staff at UBCO reflect the job descriptions that existed at OUC. Tees agreed that it was a fair assessment to say, in most instances, staff are doing the same work at UBCO that they did at OUC. The parties also agreed that the staff at UBCO perform roughly the same work that their CUPE counterparts perform at other UBC campuses.

For teaching assistants ("TA's"), UBCO decided to have a dean of a College of Graduate Studies. There were 18 graduate teaching assistants for the first academic year of UBCO. In addition, there are 25 part-time masters of education graduate students. There are 3 – 4 in PHD programs. The TA's have limited classroom lecturing, seminars or a lab under supervision. They mark and have office hours. They provide what assistance is needed, including lab set up, or demonstration in lectured class. At the time of hearing it was anticipated that the number of TA's would double to 50.

There are two masters degree programs currently offered at UBCO, one is nursing and the other is social work.

There were approximately 50-60 undergraduates receiving remuneration as undergrad TA's. The kind of work they do is similar to the graduate TA's, although their expertise is not in front of a class. Rather, they provide assistance to the Faculty by marking and providing advice, assisting with writing on text books, etc.

The work of TA's at all UBC campuses is essentially the same, with the same required skills and qualifications. Most TA's in Canada belong to CUPE. There are only three exceptions, namely, the Teaching Support Staff Union at SFU, the independent TA union at McGill and the Public Service Alliance of Canada TA union at Western.

With the exception of the BCGEU unit at UBCO, all unionized TA's in North America belong to separate unions made up of TAs, and not to unions made up of support staff in general. The recent Canadian Coalition of Graduate Employee Unions conference brought together TA unions from across Canada. The BCGEU was the only union not invited to the conference. Lane agreed that this decision would be revisited in the future and that, if the BCGEU unit at UBCO were found to be appropriate, an invitation would be extended to them to attend.

Lane explained that TA's do not generally communicate with each other in their work, but rather, their interaction is with the faculty with whom they work and their students.

Not including teaching and research assistants, there are approximately 58 staff working in the Barber School of Arts and Sciences. These individuals perform
secretarial and administrative work for faculty and staff. There is also a Live Specimen/Animal Care Technician. None of these individuals interact or intermingle with UBC employees at Point Grey or any other UBC campus. They do not have "team duties" outside of UBCO. If there is an issue of discipline, they are disciplined by the deans of the faculty, who in turn get human resources assistance from Jacqui Podger, the UBC Human Resources Director. Podger sits on the Deputy Vice Chancellor's Executive Committee, along with the deans and the other senior staff. She reports to Tees as the Deputy Vice Chancellor of UBCO. She attends at UBCO once every two weeks and is in email contact with the executive more frequently.

Podger is a good example of certain administrative services that have individuals who have "dual reporting" responsibilities. Podger reports to both Tees, and Lisa Castle, the Vice President of Human Resources of UBC. Tees emphasized that this is important in order to ensure that there is communication on both campuses. Other examples of 'dual reports' included management involved in IT, and management involved in budget, such as Ian Cull and Brian Sullivan. If a disagreement between the 'dual reports' occurred, i.e. if Tees and Castle could not agree on an issue, Tees said that this disagreement would likely be resolved through a discussion involving the President of UBC. In the last round of collective bargaining negotiations, Podger was at the table for UBCO. Castle oversaw all bargaining, and ultimately, it is the Board of Governors who typically ratify collective agreements.

In the Creative and Critical Studies Department there are seven staff members, not including Teaching/Research Assistants. Again, their duties include provision of secretarial and other administrative duties provided to the members of the faculty. Their focus is on UBCO. They are not intermingled or exchanged with other UBC campuses. The staff all report to persons at UBCO.

In some instances, UBC Point Grey staff were used to train the UBCO administrative staff. There were two reasons for this. First, at its infancy, UBCO did not have some of the managers they would normally have who would do training of this sort. Second, as set out above, some of the systems UBCO uses involve both campuses. On a daily basis, however, the BCGEU employees are not supervised by UBC Point Grey employees.

There are four BCGEU members working within the Faculty of Education. These individuals again work in support service roles, providing secretarial and administrative support to the faculty. They are not intermingled or exchanged with employees from other UBC campuses and they do not report to anyone at Point Grey. They do not work on 'shared projects' with UBC staff outside of UBCO and they are all supervised by UBCO employees.

In the Faculty of Health and Social Development, there are 10 BCGEU members, 5 working as secretaries and 5 as technicians. These individuals are not intermingled or exchanged with UBC employees from campuses outside of UBCO. They do not engage in "team projects of shared work" with employees from other campuses, nor are they supervised by anyone outside of UBCO.
In the Faculty of Applied Sciences, School of Engineering there is an Administrator, Tejia Wakeman who is a management and professional employee. Tees was unsure of how much Wakeman was intermingling with counterparts at UBC Point Grey. There is one BCGEU member, Karen Siddon, working in the school as an administrative assistant. She performs reception and filing duties and reports to Wakeman. While Wakeman has contact with the Point Grey campus, Siddon does not. Thus, any intermingling with UBC Point Grey takes place at a more senior level.

There are two BCGEU members working in UBCO Graduate Studies. One is a Clerk and the other a Secretary. Both report to the Dean of the program, Dr. Krank. There is no intermingling with staff at UBC Point Grey.

In UBCO Student Development and Advising, the AVP of Students, Ian Cull reports to the Deputy Vice Chancellor and the VP of Student Services. In other departments, there is ongoing interaction with UBC Point Grey at the more senior level. For example, with respect to International Recruiting, UBCO receives recommendations from counterparts at UBC Point Grey about what they should be doing. A UBC Point Grey employee has a seat on UBCO's advisory committee. However, in Tees' estimation, the most important 'tie' for international student development is a proposed initiative between OC and UBCO. At the time of the hearing, Tees anticipated that a deal would close in the next couple of months.

There are two offices for Student Financial Assistance and Awards ("SFAA") – one at Point Grey and another in UBCO. All applications for student financial assistance and awards are processed at UBC Point Grey. Susan Claybo, an employee in the Enrolment Services Department and a CUPE member, confirmed that the processing of student loans is not shared with UBCO, and that the administrative work is separate and only done in Vancouver. Barbara Crocker, the Associate Director of SFAA whose office is in Point Grey was on campus at UBCO approximately 20 times in 2006, in order to foster a "seamless" department. Crocker was responsible for having Emily Shuttleworth, a BCGEU member, trained at UBC Point Grey by CUPE members. CUPE members working in SFAA at UBC Point Grey receive questions from UBCO BCGEU members and the two offices have regular contact through email and by phone.

While the SFAA strives to achieve consistency across the campuses, with the exception of some training that was done with Shuttleworth, integration of employees takes place at the AAPS or excluded level, not at the BCGEU or CUPE level. Claybo confirmed that she had never attended at UBCO, never been in meetings with the teams up there, and that there is no intermingling or exchange between BCGEU and CUPE members. With the exception of her dealings with Shuttleworth in training, there was "no more face to face than that". Claybo was not even aware that Shuttleworth had left UBCO.

UBCO does not process admissions, with the exception of graduate study admissions. This is done at UBC Point Grey. Nonetheless, Tees explained that it is those responsible for UBCO that set their policies, and then direct those involved at UBC Point Grey to act on their behalf.
In the Career and Alumni department, only excluded managers are involved. Similarly, only AAPS members are involved in UBCO's Academic Advising office. There are no support staff engaged in the Aboriginal Programs office. Rather, these programs are overseen by the Executive and Lyle Mueller, the Director.

With respect to the Athletics and Recreation office, UBCO offers a variety of athletic programs which are tied in with the Campus Health and Wellness office. The departments are solely focussed on UBCO. The BCGEU staff are not intermingled with those at UBC Point Grey, and they have no 'team' responsibilities.

Food services are contracted out at UBCO. There is student housing on the campus. The management of the residences is done by those at UBCO. Rules around housing are derived on the basis of "best practices" between the campuses, and the UBCO staff are devising training plans. They do seek advice from the UBC Point Grey regarding housing matters, rules, etc. Tees said that in developing procedures and policies during the transition stage of OUC to UBCO, UBCO staff consulted with the Director of Housing at UBC. However, while there may be a sharing of information or advice between the campuses, the employees do not share responsibility for their respective campus housing. Employees of UBCO in housing work solely on UBCO matters.

In Disability Resources, there is a Director, but no BCGEU staff. Similarly, there are no BCGEU members involved in the office for International Student Services.

There are a number of BCGEU employees working in Enrolment Services. While admission processing is done at UBC Point Grey, student enrolment for classes is done through the internet as set out in UBCO's calendar. The Associate Registrar of Enrolment Services, a member of AAPS, reports to the Registrar and the AVP of Students.

The calendar is set by UBCO, and is campus specific. Some courses offered at UBCO are the same as courses at UBC Vancouver. Tees explained that this is no surprise, as if one were to look at the University of Alberta calendar, for example, you would see similar courses offered (for example, first year psychology). Another explanation for the replication of courses between the campuses was that UBC had a relationship with OUC which commenced when OUC changed from a 2 year to a 4 year college. As part of that arrangement, UBC faculty influenced courses at OUC. There is also a movement to work towards a common list of courses that will ease the transfer of students throughout the province. A transfer guide is being developed for the whole province.

Course timetables, scheduling of exams, etc. are all campus specific and there is no intermingling with support staff at UBCO with UBC Point Grey. Tees thought there may be some contact with the enrolment staff in Vancouver, but that those in Vancouver had no responsibility for the work done at UBCO and vice versa. He said that the management and excluded staff would have some contact, but beyond that level, the
support staff involved in Enrolment Services at UBCO are not intermingled or exchanged with Vancouver employees.

The one exception was the Graduate Support Assistant, a position that was vacant at the time of the hearing. During the transition period, Tees said there had been some contact with Vancouver to get advice about the first graduation. Tees explained that those involved at Point Grey are "expert" at planning these ceremonies. He said that UBCO had some transition issues while they became familiar with the process themselves, but that any contact with management personnel at Point Grey, and would, be in the nature of 'training'. On June 9, 2006 UBCO held its first student convocation.

For the Student Information and Services Departments, referred to as the "Welcome Centre" the entire department is staffed by BCGEU members. The position descriptions for the positions all originated from OUC. Tees indicated that they have no shared functions with staff in Vancouver, although he was unsure if they may have received some training from Vancouver staff.

UBCO IT Services is solely responsible for IT services at UBCO. There are two BCGEU members working in the department, one in the position of PC/LAN Hardware Specialist and the other in a clerical position as the IT Services Assistant. UBCO has its own central IT service. UBCO is working with UBC Point Grey, particularly during the initial phase until UBCO is able to support its own IT services. They also collaborate with OC, for backup of some services. Tees explained that with respect to IT, UBCO has made a deliberate attempt to do things differently than in Vancouver.

There are a number of BCGEU members working in AVP Operations. For example, in the areas of Facilities, Parking and Security, there are numerous Clerks, Facilities Services Assistants and other staff positions. They report to a member of AAPS. The BCGEU members have no shared responsibilities with their counterparts at UBC Point Grey.

No member of the BCGEU support staff at UBCO has been transferred to perform work at any of UBC's Vancouver campuses or operations. CUPE members at the other campuses similarly have not been transferred to perform work at UBCO with limited exceptions related to training. No member of the CUPE Locals has been laid off as a result of the commencement of operations at UBCO.

Some services are contracted out at UBCO, for example, snow removal, security, parking, garbage collection etc. The Commissionaires provide the parking and security functions at UBCO, whereas they are in-house at UBC Vancouver.

Printing is done through an agreement with the OC, UBCO uses some of their facilities, and Tees described printing as a work-in-progress that would be in-house in the future.
Campus mail is centrally processed at UBC Vancouver, and then delivered to other campuses. Mail for UBCO is either sent by courier to UBCO, or sent directly to UBCO via Canada Post.

Bargaining

Wiho Papenbrock is a Regional Coordinator with the BCGEU and was the lead negotiator for bargaining in 2006. Papenbrock has represented the BCGEU support staff at OUC, and more recently, at UBCO, for about 30 years. He recalls that there was, at one point, a two day rotating strike, but to the best of his recollection there has been no labour disruption since 1989.

UBCO is the only support staff certification that the BCGEU has in the university sector with the exception of the childcare unit at UBC Point Grey.

Starting in mid-March 2006, Papenbrock had regular contact with CUPE advising them of the progress of BCGEU's negotiations at UBCO. He communicated with Lisik, Credico, Don Stanley, the Assistant Regional Director, BC for CUPE, and Leanne Dawson, the Prince George CUPE representative involved at UNBC. His main contact was with Credico. Papenbrock shared with her the general nature of the BCGEU proposals and agreements for the support staff including teaching assistants. Papenbrock was in daily contact with CUPE from March 20 until the conclusion of the agreement. BCGEU took these measures, as it wanted to ensure that nothing it did in bargaining undermined CUPE's bargaining and the BCGEU did not want to settle its collective agreement for "anything less than what CUPE" was able to negotiate. On or about the 27th of March, Papenbrock was advised that CUPE had a tentative deal. The BCGEU members at UBCO subsequently ratified their collective agreement by a vote of 100% in favour.

There are differences between the BCGEU and CUPE Local's collective agreements. Each Union asserted that their agreement was superior. I declined to inquire into which agreement was 'better', as in my view that would be a difficult and unhelpful task in the context of the proceedings.

David Vipond is the Director of Negotiations for the BCGEU. He participated in meetings and conference calls that the BC Federation of Labour coordinated for public sector bargaining for agreements that expired March 31, 2006. Stanley participated on behalf of CUPE in these meetings. Starting January 11, 2006 there were weekly meetings or conference calls which gradually became more frequent. In March the CUPE Locals were in mediation at the Board, trying to conclude some of the bargaining on which they had taken strike votes. All of the CUPE Locals were at the Board. Those involved in post secondary bargaining shared information in order to try to get best deal for their members. The BCGEU was watching how various groups were doing with the agreement 'bonus money' and annual increases. By mid-March the group was meeting/conferencing every second day; during the latter part of the month, calls would occur daily.
These meetings/conferences involved detailed discussions of bargaining proposals at different tables including the university sector and post secondary support tables. Vipond and the BCGEU were acutely aware of negotiations at UBC and a dozen other university units that CUPE was bargaining for at the various universities where they have certifications, many of which had taken strike votes and applied for mediation at the Board.

History and Practice in the Industry or Sector

Credico testified about the bargaining unit structure in the university sector. Among her other duties, Credico is the CUPE Sector Coordinator for universities in British Columbia. As a Sector Coordinator, Credico's duties involve coordinating bargaining strategy in the university sector or other issues of common interest between various CUPE locals at universities throughout British Columbia. Credico's duties include negotiating collective agreements for various locals, servicing the CUPE membership at various locals, and administering collective agreements at various locals.

UBC is the largest and most complex of the institutions in the university sector in B.C. No other institution is comparable to it in terms of its size and complexity. However, Simon Fraser University ("SFU") and the University of Victoria ("U Vic") share similarities with the bargaining structure at UBC. The University of Northern British Columbia ("UNBC") is also similar with respect to the structure of bargaining representation.

Traditionally, CUPE locals have represented support staff in the university sector throughout British Columbia.

Simon Fraser University currently operates at four different campus locations in the province of British Columbia. Three campuses, are located in Burnaby, Vancouver, and Surrey. For approximately a decade, SFU has also operated its fourth campus in Kamloops in partnership with the Secwepemc Cultural Education Society of the Shuswap Nation.


The Teaching Support Staff Union (the "TSSU") and CUPE Local 3338 are certified bargaining agents for units covering members working at all four SFU locations (under their same respective collective agreements). The scope of both certifications is listed as covering "Simon Fraser University". This has been interpreted to include SFU, wherever it may operate. CUPE Local 3338 membership consists of approximately 850 support staff employed in SFU's libraries, bookstores, computing services, offices, labs, gyms, and residences. The TSSU membership consists of all non-faculty teaching support staff; including teaching assistants, markers, sessional instructors and language instructors. Prior to January 1, 2005 clerical and administrative employees in Kamloops were provided by the Shuswap Nation but effective January 1, 2005 the clerical and
administrative employees are members of CUPE Local 3338 supervised by a SFU manager and included in the Local 3338 bargaining unit.

The Simon Fraser University Faculty Association's bargaining unit is comprised of all SFU’s faculty members. Its members can also be found working at all SFU locations. Additionally, the SFU Administrative and Professional Staff Association, although not certified, have a "Basic Agreement for Collective Bargaining and Consultation" and its members are found employed at a minimum at the three GVRD SFU locations.

At U Vic, the Education Employees Union, CUPE Local 4163 is the certified bargaining agent for teaching assistants, second language instructors, sessional instructors, lab instructors, music performance instructors, academic assistants, cultural assistants and others. Members mostly work at the main campus. However, there are also members in Cranbrook, British Columbia, at Langara, and many other areas throughout the province as part of the U Vic’s distance education program. Its members have also worked at U Vic's downtown site under the same collective agreement while subject to an identical scope of certification.

CUPE Local 951's certification covers secretarial, childcare and other technical workers at the "University of Victoria". The scope of this certification is interpreted to include any U Vic site, particularly, the main and downtown campuses.

CUPE Local 917’s certification covers electricians, plumbers, supervisors, grounds workers, janitors, painters, carpenters, housekeepers, lifeguards, utility drivers, food service staff, auditorium staff, security officers, house workers, cooks and mechanical trades workers. CUPE 917 members have also worked at the downtown site in addition to the main site.

The Professional Employees Association ("PEA") at U VIC is constituted of approximately 600 members, and is the certified exclusive bargaining agent for all "employees in British Columbia who are employed to perform Administrative and Academic Professional duties" including lab instructors, counsellors, administrative officers, advisors and admission officers. PEA members have worked at the main campus, downtown and at the Bamfield on occasion.

At the University of Northern British Columbia, CUPE Local 3799 is certified as the representative of library, clerical and secretarial support staff. Under the same collective agreement and certification, CUPE Local 3799 represents employees on the main campus in Prince George, British Columbia and other campuses of UNBC throughout British Columbia, including, UNBC’s Northwest Campus in Terrace, UNBC’s Peace River-Liard Campus in Fort St. John, and UNBC's South-Central Campus in Quesnel.

In 1992 UBC was struck for less than 2 weeks by CUPE Locals 116 and 2950. CUPE Local 2278 supported the strike.
During the 1999/2000 round of bargaining with UBC, CUPE Local 2950 and CUPE Local 116 served notice to UBC and went on strike in January of 2000. Although CUPE Local 2278 was in bargaining at the time, it did not serve any strike notice to UBC but it did support CUPE Locals 116 and 2950. CUPE Locals throughout the university sector in British Columbia supported the strike. The strike lasted only a short period, less then a couple of days in total for each unit. The CUPE Locals throughout the province (at SFU, U Vic and UNBC) wished to have provincial accords on benefits and pay equity, in addition to wage settlement. UBC and the other universities opposed, as they were resistant to dealing provincially on any issue. Ultimately, the CUPE Locals were able to achieve the accords on pay equity and benefits plus the wage settlement.

In 2003, UBC was struck again. In February 2003, CUPE Local 2278 commenced rotating strikes. On March 5, 2003, CUPE Local 2950 joined Local 2278 and commenced rotating strike action. CUPE Local 116 supported CUPE Local 2950 and Local 2278 picket lines.

The Unions in the university sector generally work closely together to coordinate collective bargaining on issues that are of common interest in order to have uniformity in the sector. This creates a more stable labour environment as it allows many issues to be dealt with at one time. It enables the entire university sector to be resolved efficiently, instead of multiple and lengthier strikes. Credico described the three CUPE Locals at UBC as a 'diverse group of locals'. This diverse group, along with CUPE Locals at other universities in the province, (such as Local 3799 at UNBC), and other unions, such as the Poly Party at SFU, the TSSU at SFU and the IUOE 882 at UBC, have developed a process for sharing information and coordinating bargaining. Over the years, a coordinated plan has evolved that has brought the various collective agreement expiry dates into a similar time frame. It is fair to say that the university sector, generally, is proliferated with a variety of different bargaining units, and that UBC as the largest and most complex, has the greatest number of bargaining units with seven collective bargaining relationships in place at UBC.

At the new Thompson Rivers University ("TRU") in British Columbia, BCGEU voluntarily surrendered its Open Learning Agency ("OLA") members to CUPE Local 900, when the OLA was taken over by TRU.

There have been work jurisdiction disputes between some of the Union's at UBC. For example, Local 116 had a dispute with the IUOE 882 about work jurisdiction with the trades. Historically the unions have been able to come to a resolve over these disputes.

IV. POSITIONS OF THE PARTIES

The CUPE Locals say that the employees in question employed at UBCO are not sufficiently distinct from their CUPE counterparts to justify drawing a rational and defensible line around them. The job duties of CUPE members and UBCO employees are the same. Their skills are the same. The CUPE Locals say the UBCO employees intermingle with CUPE members and work together as a team on a regular basis to
provide the best service for students. They say this is in keeping with the goals of UBC and its philosophy of "one great university".

They say the fact that UBCO is geographically distinct from the other UBC locations throughout the province is not supportive of a distinct community of interest, given the integrated systems and policies of UBC and the technology that exists that provides a 'seamless' environment for staff and students.

The CUPE Locals say that industrial stability is the most important principle for the Board to consider in deciding the appropriateness of the BCGEU bargaining unit at UBCO. They rely on the Board’s decision in Insurance Corporation of British Columbia, BCLRBN No. B157/97 ("ICBC") to support this principle. They say there is a 'heavy onus' on UBC and the BCGEU to rebut the presumption that industrial instability will not result with the addition of a bargaining unit and that clear and cogent evidence is required to rebut that presumption. They emphasize UBC's submissions regarding the Faculty Association wherein the university claimed that two bargaining units of faculty would give rise to whipsawing and leapfrogging and other collective bargaining tactics that give rise to unfair advantages. They say that competition between CUPE and the BCGEU will occur and they speculate that UBC may "attempt to centralize services at UBCO with a loss of CUPE jobs". They emphasize the Board’s longstanding policy against the proliferation of bargaining units, especially in the context of a public employer like a university, where labour disputes will have a great impact on the community and the public.

In addition to these arguments, Locals 116 and 2278 argue that allowing the one BCGEU bargaining unit at UBCO effectively adds "three new bargaining relationships to the previous bargaining structure, thus compounding the problem of industrial instability". They raise the spectre that UBC will move a faculty from Point Grey or elsewhere to UBCO, and say that they can take no "comfort from any assurances by the Employer that there is no plan to transfer work".

They say that in determining appropriateness, the Board must consider the six community of interest factors set out in Island Medical Laboratories Ltd., BCLRBN No. B308/93 ("IML"). Those are: similarity in skills, interests, duties and working conditions; the physical and administrative structure of the employer, functional integration, geography, the practice and history of the current collective bargaining scheme and the practice and history of collective bargaining in the industry or sector. They say all six are to be considered in the context of a successorship. They rely on the Board’s decision in The Board of School Trustees of School District No. 92 (Nechako Lakes), BCLRBN No. B480/98, and emphasize that there is no issue of access to collective bargaining, and as there exists a multiplicity of units, the issue of industrial instability must be considered.

With respect to onus, the CUPE Locals say that UBC and the BCGEU have failed to meet the onus that rests on them to rebut the presumption of industrial instability which increases "markedly" with the number of units. They rely on the following authorities to support their assertion that the BCGEU and UBC have a positive
obligation to lead evidence from which the Board can determine whether industrial stability is a concern when an additional bargaining unit is proposed: *Nechako Lakes School District, supra; Simon Fraser University, BCLR No. B274/2003; Sodexho MS Canada Limited, B23/2004* (upheld on reconsideration in B67/2004). They say that UBC and the BCGEU have not provided any evidence to rebut the presumption against proliferation.

The CUPE Locals also emphasize the nature of the 'business' at hand, namely, the public nature of the university and the impact industrial unrest would have if another bargaining unit was added. They say that labour disputes at UBC have a substantial impact on the university community and the general public. UBC is the third largest employer in the Lower Mainland of B.C. They say that principles of administrative advantage of single negotiations and lateral mobility, the desirability of standard terms and conditions of employment, the need to minimize the disruption of services not available elsewhere all reinforce a conclusion that a small, separate BCGEU unit at UBCO is not appropriate.

The CUPE Locals say that the weight to be given to the fact that there was an identifiable group of employees who chose a union which bargained successfully on their behalf is diminished in this case, as the majority of support staff went to OC. It says there is no longer an identifiable group of employees from the successor, as 75% of the support staff chose to be part of OC instead of UBCO. It relies on the Board’s decision in *E & N Railway Company (1998) Ltd., BCLR No. B319/99* to support its position that the weight to be given to an existing bargaining unit on successorship is diminished where there are differences in the size and role of the predecessor and successor enterprises.

Turning to the *IML* criteria, the CUPE Locals say that the support staff at UBCO have the same skills and duties as their CUPE counterparts at other UBC locations. For example, Local 2950 says that UBCO support staff require similar skills and perform similar duties as those of their counter-parts at other UBC campuses. They have the same interests and working conditions as well. They say UBCO is not all that different (apart from size) than UBC’s larger campus at Point Grey or UBC’s smaller campus at Robson Square, or other workplaces throughout the province where their members are employed by UBC.

They say the same concerns that were expressed by the Board in *ICBC, supra,* and *Coastal Ford Sales Ltd., BCLR No. B393/95* (upheld on reconsideration in B431/95) exist here. In *ICBC,* the Board commented:

> We note, however, that there are examples of employees such as secretaries, receptionists and information system employees performing the same type of work in the two proposed bargaining units. Having them included in two different bargaining units represented by two different unions, with two different collective agreements, would not be conducive to industrial stability. (para. 59)
With respect to the physical and administrative structure of UBCO, they say UBC is required to be cost effective in the provision of services by the terms of a Memorandum of Understanding between the Ministry of Advanced Education and UBC. They point to a variety of services that are centralized at the Point Grey campus of UBC to support their position that the physical and administrative structure of UBC militates against a separate bargaining unit at UBCO. The CUPE Locals also emphasize that, given the current computer system, the 5-digit telephone systems, email and campus mail, the administrative structure is 'seamless'.

Regarding functional integration, they say in the context of a second or additional unit this is not given great weight: Coast Laundry & Linen Supply Co. Inc., BCLRB No. B152/99 (upheld on reconsideration in B156/2000); Costco Wholesale Canada Ltd., BCLRB No. B167/98 (upheld on reconsideration in BCLRB No. B220/98). Nonetheless, they say there was evidence of functional integration between staff at UBC Point Grey and UBCO. The CUPE Locals say that the sharing of information and overlapping duties between CUPE members and BCGEU members, the regular interaction among the support staff and others at UBC Vancouver and UBCO, the team processes that are required to give the best services to students, all support a finding of functional integration.

With respect to geography, the CUPE Locals say that geography is a neutral factor and not relevant as technology "erases the distance between UBC's various locations". To support this principle, the CUPE Locals quoted at length from submissions made to the Board by UBC with respect to the Faculty Association. The CUPE Locals also rely on the Board's decision in Coastal Ford Sales Ltd, supra, and say that given this is an additional unit, the weight to be given to geography must be measured against industrial instability, and without more will not establish a defensible boundary.

With respect to the practice and history of collective bargaining, the CUPE Locals point to the uniqueness of the BCGEU unit, which covers all staff members at one location, versus the existing units of CUPE and other Union's which have members performing certain duties throughout the province. They also point out that both AAPS and the Faculty Association each have only one unit that represent UBC employees throughout the province. They say that the BCGEU unit is an anomaly in terms of the existing structure of UBC. They say that this eighth bargaining unit has a different character to the other units and it cuts across classification lines. They rely on the coordinated efforts of the three CUPE Locals in bargaining and stress its importance given that UBC's size dictates the bargaining for the entire university sector.

Regarding practice and history of collective bargaining in the industry or sector, they say that the existing bargaining structures at UBC, U Vic, and SFU support their view that university bargaining structures are characterized by multi-location layering according to occupational groups. Again, they emphasize the anomalous nature of the BCGEU unit.
The BCGEU and UBC say that the BCGEU unit should be preserved, unless it is no longer possible to draw a rational and defensible line around the existing unit. BCGEU says that that question is determined on the basis of whether collective bargaining and administration are viable under the existing structure. They say functional integration is a key consideration in making this determination. BCGEU says that if the Board were to replace one unit with the three CUPE Locals, the result would be potential jurisdictional disputes. For example, 27 clerks at UBCO could fit into either CUPE 2950 or CUPE 116.

The BCGEU point to five key facts that they say support their position that the BCGEU unit should be preserved. These are:

- No functional integration
- Significant geographical separation
- BCGEU has represented the support staff at OUC for over 30 years
- There has been viable collective bargaining under the current structure
- The potential for jurisdictional disputes and picketing if one BCGEU unit is replaced with three CUPE units

UBC similarly urges that the existing BCGEU unit should be preserved and that it remains an appropriate unit for support staff at UBCO. They rely on the Board's decision in Russel Metals Inc., BCLRB No. B122/2002, where the Board explained the distinction between applications for certification and the Board's approach under Section 35 as follows:

There is no doubt that the Board approaches successorship cases differently than certification applications with respect to the design of the bargaining unit and the ordering of a representation vote. As I noted in BCLRB No. B105/2002 at paragraph 27, with respect to the design of the bargaining unit, the Board does not apply the same appropriateness rules as compared to an initial certification application. Rather, the Board gives special weight to the fact that there is an identifiable group of employees who chose a specific union and has an established relationship with that union. The Board focuses on designing a bargaining unit structure which establishes a conducive framework for future collective bargaining which minimizes the disruptive effect of labour disputes. (para. 13)

UBC says that the CUPE Locals are trying to proliferate one unit by replacing it with three units. It says that the CUPE Locals, as applicants, bear the burden of demonstrating that the facts and circumstances that exist at UBCO demonstrate that it is no longer possible to draw a rational and defensible line around the BCGEU support staff bargaining unit.
Turning to the IML factors, they say that the factors of geography and administrative structure favour the preservation of the existing unit. They say there is no functional integration at the BCGEU/CUPE level. They say that at best, there exists a functional relationship in some instances between the support staff at the two campuses: Canadian Kenworth, Division of Paccar of Canada Ltd. [1979] 2 Can LRBR 64; Pan Fish Canada Ltd., BCLR No. B62/2005; Fleetwood Sausage, BCLR No. B364/2000 (upheld on reconsideration in BCLR No. B52/2001).

With respect to industrial instability, UBC says that the CUPE Locals are seeking to take what is essentially an all-employee unit at UBCO and split it into three units. It says this proliferation is contrary to the Board's preference for fewer and larger units. It points to the history of industrial stability for this unit. In addition, UBC references the last round of bargaining and says that, despite the pressures of the last round of bargaining, there was no leap-frogging or whip-sawing. Rather, there was "professionalism among trade unions, which resulted in co-ordinated collective bargaining including between the BCGEU and CUPE". They say the evidence of Papenbrock regarding the coordinated approach to bargaining that took place in 2006 is compelling evidence that the BCGEU bargaining unit should be maintained to promote industrial stability.

Regarding the practice and history in the sector, UBC says that if the sector is defined as post-secondary, then BCGEU is well recognized and present in that sector. Even if it is more narrowly defined as "universities", the BCGEU also has a presence in that sector, at UBCO, but also on the Point Grey campus.

V. ANALYSIS AND DECISION

As set out at the beginning, the parties were at odds on the issue of onus. In my view, given that these applications were brought under Section 35(3), neither party bears the onus of proof. Section 35(3) of the Code requires the Board to determine what rights, privileges and duties have been acquired or are retained once a finding of successorship has been declared. Pursuant to Section 35(3), the Board has broad powers to "make inquiries or direct that representation votes be taken as it considers necessary or advisable". After making an inquiry, or directing a vote, the Board may, among other things, determine whether the employees constitute one or more units appropriate for collective bargaining and/or determine which trade union is to be the bargaining agent for the employees in each unit.

I see this process as similar to the Board's approach in other cases, for example, essential services, where matters are not decided on the basis of onus. In an essential services matter brought under Section 72 of the Code, and involving UBC, the Board made the following comments:

The parties spent some time in argument debating the principle of onus. In most applications under the Code, which are adversarial in nature, onus may very well be an important principle that the Board may have to decide in a case.
However, I conclude that such a technical argument is not helpful under Section 72. The Board is responsible for the designation of essential services and the monitoring of any facilities, productions or services deemed essential during a labour dispute. This type of responsibility is not found in other Sections of the Code. This responsibility must be taken seriously for obvious reasons. The determination of essential service levels will not be decided on the basis of which party has satisfied what onus. Thus, if the Board considers it necessary to order the production of documents or any other evidence in order to ensure that it has the appropriate information to make a determination, the Board may exercise its discretion to do so regardless of which party arguably bears the onus. (University of British Columbia, BCLR No. B505/99 at paras. 20 & 21)

Similarly, how the Board exercises its discretion pursuant to Section 35(3) of the Code is not a matter that will be decided on the basis of which party has satisfied what onus. Rather, it is the responsibility of the Board to weigh the competing policies and exercise its powers under Section 35 in a manner which best serves all of the objectives of the Code, and which applies a pragmatic approach reflecting the existing labour relations realities. The Board must exercise its discretion consistent with these principles, regardless of which party arguably bears the onus. As stated by the Board in Boston Bar Lumber, BCLR No. B23/76.

...it is the responsibility of the Board, which is charged with the task of administering the Code as a whole, to weigh the competing policies and exercise its powers under Sections 53(2) and 53(3) in a manner which best serves all of the objectives of the Code.

For completeness, I have recited the lengthy evidence that was presented in these proceedings. On review, many if not most of the pertinent facts were not in dispute. Ultimately, this case does not turn on any issue of credibility or significant difference between the parties regarding, for instance, whether the skills of the employees in question are the same, or to any real degree, whether there is intermingling of employees. Rather, the crux of this dispute turns on whether the appropriateness issue is viewed through the lens of Section 35, or is more akin to an application under section 142 or section 18. It is not unusual in cases of this kind that the parties are at odds on which lens the Board should approach its task. In Justice Institute of B.C., BCLR No. B446/95, for example, the Board noted that:

It is not disputed that as of July 4, 1994 the JI became the successor employer of the employees in the MTFA's bargaining unit employed at the STC in Maple Ridge. At issue is whether the Board should preserve the MTFA's bargaining unit under Section 35(3). In this regard, the Panel sought the parties' views on the apparent tension in the application between the competing interests of the preservation of existing and long-standing bargaining rights on the one hand, and the appropriateness of the bargaining unit for collective bargaining on the other. Not surprisingly, the MTFA
I agree with the consistent approach taken by the Board in cases involving a determination of appropriateness in the context of section 35, including the panel in *Justice Institute*, *supra*, and more recently in *Russel Metals*, *supra*. In cases pursuant to Section 35(3), the Board is *guided* by appropriateness principles developed in original certification cases but is *not bound* by such principles. Special weight will be given to existing collective bargaining relationships. Nonetheless, the unit or units must remain appropriate for collective bargaining. It must be possible to draw a rational and defensible line around the unit which is to be preserved: *Kelly Douglas and Company Limited, et al.*, BCLRB No. 8/74, [1974] 1 Can LRBR 77.

Moreover, I do not agree with the CUPE Locals that, on the facts in this case, little weight should be given to the pre-existing collective bargaining relationships. The CUPE Locals argued that little weight should be given to the pre-existing unit, as the majority of support staff went to OC, and given the substantial differences in the size and role of the predecessor and successor enterprises. The CUPE Locals argued that as only 36% of the full-time staff at OUC chose to go to UBCO, little weight should be given to the preservation of the unit, and to the wishes of employees.

I find that the facts in this case are markedly different than was the case in, for example, *E & N Railway Company*, *supra*, a decision relied on by the CUPE Locals to support their assertion that little weight should be given to the pre-existing representational rights. In that case, the unions were asking the Board to preserve four bargaining units, in the context of what was found to be an "integrated enterprise".

Similarly, I find the facts in this case unlike those in *Insurance Corporation of British Columbia*, BCLRB No. B157/97. In that case ICBC applied for a successorship declaration to the Government of B.C. employees from the Motor Vehicle Branch ("MVB"). Some 3500 ICBC employees were represented by the OPEIU, 450-500 MVB employees were represented by the BCGEU and two employees were represented by PEA. The Board found that under section 35(3)(a), the employees constituted one bargaining unit appropriate for bargaining and under section 35(3)(b), OPEIU would be the bargaining agent. In reaching that decision, the Board determined that approximately one-third of the former MVB employees were integrated into ICBC's organizational structure and that there would be functional integration of some of the employees. In addition, the Board was swayed by the fact that ICBC is a public sector employer *with an existing all employee bargaining unit*. The Board relied on a previous decision involving the same employer, *Insurance Corporation of British Columbia*, BCLRB No. 63/74, [1974] 1 Can LRBR 403, a case which dealt with the bargaining unit structure at the employer. In this earlier decision, the Board held there should be a presumption of an all employee unit in the case of a public employer where there is no history of collective bargaining with a different format. The existence of an all-employee bargaining unit was of particular importance to the Board.
The facts in this case are also different than those in *The Board of School Trustees of School District No. 91 (Nechako Lakes)*, BCLRB No. B480/98. In that case, the Board considered whether it was appropriate to consolidate two locals of CUPE, Locals 3757 and 4177, into a single bargaining unit of all support staff. The Union agreed that successorship had occurred, but opposed the consolidation of the two bargaining units. The Board found the administrative structure had been centralized and that "despite two separate collective agreements with distinct seniority lists and other provisions" there was a "degree of functional integration". Moreover, they found that a multi-unit structure was unique in the industry, and that with only one exception, "the pattern within the portion of the education sector affected by the mergers favours a single bargaining unit". In that case, the Board determined that the weight to be given to the existing relationships did not outweigh the IML factors that, on balance, favoured consolidation. The Board ordered the consolidation of the two bargaining units certified to CUPE.

In this case, if one evaluates the number of BCGEU members from OUC who were employed in connection with the degree-granting component of OUC, i.e. the predecessor to UBCO, all were offered jobs with UBCO. Of those, 76, or approximately 94%, accepted positions at UBCO. Thus, the vast majority of those that worked in the part of the business that was transferred to UBCO accepted positions at UBCO.

Moreover, given my conclusions below regarding, for example, geography, functional integration and intermingling, I find the appropriate way to view the UBCO enterprise is as separate and distinct from other UBC campuses.

Further, and as will be explored in more detail below, this is not an employer, nor an industry, where all employee units are the norm. Just the converse, UBC and the sector as a whole has evolved into multi-unit structures. An example of this multi-unit structure is CUPE themselves, who have three different Locals representing three different bargaining units at UBC. Indeed, the facts in this case are unique to other cases considering appropriateness in the context of section 35, as is the BCGEU unit at UBCO unique compared with the rest of UBC. The unit that the BCGEU and UBC seek to preserve most closely resembles an 'all employee' unit of support staff, and appears more rational in its scope than the three support staff bargaining units that exist at UBC Point Grey.

In short, I find that special weight ought to be afforded to the existing BCGEU unit on the facts in this case. I turn then to review each of the IML factors, which serve as a guide in determining whether the existing collective bargaining unit remains appropriate and in particular, in answering whether a rational and defensible line can be drawn around the existing unit.

**Similarities in skills, interests, duties and working conditions**

There is little dispute between the parties that the support staff at UBCO perform the same or similar duties, possess the same skills and have similar interests. The job descriptions for staff, even though they were derived from OUC, substantially mirror
those at UBC. In most instances, staff are doing the same or similar work at UBCO as staff perform at other UBC campuses.

There are differences in working conditions, given that the staff at UBCO service a much smaller university community. The relative size of the UBCO campus, compared with the Point Grey campus, is very different, as are the number of students at those campuses. UBCO’s small size means that there are fewer staff. Support staff are more "generalist" in nature. The way the faculties have been designed, to encourage interdisciplinary fertilization and a multidisciplinary approach, is also unique to UBCO.

Nonetheless, the fact remains that despite the differences in working conditions, the support staff at UBCO do essentially the same work, under similar conditions, to their counterparts elsewhere within the UBC system. On balance, I find this factor supports a conclusion that a separate BCGEU unit is not appropriate.

The physical and administrative structure of the employer

There are some shared systems and services between UBCO and the other UBC campuses, and in particular, with Point Grey. However, UBCO has been structured generally to operate as an autonomous, independent campus, particularly at the BCGEU level. Many services are decentralized. Certainly at the BCGEU level, UBCO has autonomy over much if not all of its daily business. UBCO has many of its own services, where those involved operate independently of their counterparts at UBC Point Grey. UBCO has a separate Senate whose powers include the approval of courses, setting the requirements for graduation, and all academic appeals, etc. The UBCO calendar, including the faculty and courses offered, are set by the Senate. The UBCO Senate is responsible for academic governance pursuant to the University Act, R.S.B.C. 1996, c. 468. UBCO has its own development office. UBCO has its own office of the Registrar, Student Recruitment, Financial Aid, and International Recruitment. Similarly, it has its own Human Rights & Equity Services office and Bookstore.

Nonetheless, for all of UBC, there remains a President, a single Board of Governors, a single library system and a single student enrolment/registration process. The Board of Governors typically ratify collective agreements. There is only one Vice President of Finance responsible for all of UBC, including UBCO. Any degree awarded by UBCO or any other campus is a UBC degree. There exist administrative 'modules' that provide services to both campuses, with most management personnel being based in Vancouver. Those involved are generally excluded or AAPS members, and the Point Grey staff who provide these services generally seek advice, counsel and direction from UBCO on matters related to UBCO. One specific example of this is with respect to the provision of human resources services, where Podger has a specific role at UBCO where she reports to Tees, but as part of her 'dual report' she also had direct reporting responsibilities to Castle at UBC Point Grey.
The marketing documents aptly describe the relationship between UBC and UBCO. For example, in the course calendar for UBC the logo "One Great University, Two Great Campuses" is noted. In another marketing document, the logo reads "The University of British Columbia Okanagan — Canada's Biggest Small University". While there remains one University of British Columbia, UBCO is distinct from Point Grey. In summary, parts of the administrative structure of UBC remain centralized, while others are independent and autonomous at UBCO. On balance, and considering all of the evidence, I find that this factor neutral on the issue of appropriateness.

Functional integration

The BCGEU argues that functional integration is a key factor in a case of this kind, where the consideration of appropriateness arises in the context of a successorship. I agree. Moreover, I agree with both UBC and the BCGEU that there is no significant integration between the support staff at UBCO and the support staff at UBC’s other campuses. The facts in this case are similar to those in Justice Institute, supra, where the Board determined:

The most notable difference between this case and all others previously before the Board under Section 35(3) (or 53(3)) is the lack of any significant employee intermingling in the successor’s operations. Here, the only significant "intermingling", as that term is defined in IML, involves the MTFA instructors and the adjuncts (we include Klassen in this group) at the STC. Without rendering a definitive determination of the adjuncts' status for the purposes of the Code, we must agree with the MTFA that they appear to be independent contractors with whom the MTFA instructors share little community of interest. This lack of employee intermingling is a significant feature of this case because it was a critical factor in all of the other cases under Section 35(3) where the Board merged the predecessor's employees and the successor's employees into one bargaining unit. Such mergers have generally involved representation votes to choose between two incumbent unions. (emphasis added: at para. 88)

In this case, the BCGEU employees are integrated with the staff that work at UBCO. That is where their community of interest lies. Thus, with respect to the TA’s at UBCO, while the work they do is essentially the same as TA’s working at Point Grey (and other universities across Canada), with the same required skills and qualifications, there was no evidence of functional integration between the TA’s at UBCO and elsewhere at UBC. As Lane explained, TA’s do not generally communicate with each other in their work, but rather, their interaction is with the faculty with whom they work and their students.

For other support staff, for example, secretaries and administrative assistants working within the faculties, the work they perform is for the faculty and staff at UBCO. These individuals do not interact regularly or intermingle with UBC employees at Point
Grey or any other UBC campus. The practical reality is that they do not have "team duties" outside of UBCO.

There is interaction between certain BCGEU library staff at the UBCO library and CUPE 2950 members working at Koerner. That interaction is minimal, and does not amount to functional integration as that term has been defined by the Board. The Board in *IML* explained what is meant by the term functional integration and differentiated it from a functional relationship:

> The third factor is functional integration. This was first identified by Chair Munroe in *Canadian Kenworth, supra*. A distinction was made between functional *relationships* between *departments* and functional *integration* of employees (p. 68; italics in original). Any employer concerned with productivity and efficiency will, of course, try to achieve as much functional integration, coherence or relationship as possible. In that sense these terms tend to overlap, but for the purposes of defining community of interest Chair Munroe's distinction is helpful. A functional relationship between departments is to be expected in any business and would in itself not prevent a community of interest being found in any single department. (And of course it goes without saying that it would not prevent a finding of a larger community of interest). However, the functional integration of employees in several departments - employee interchange, shared duties, etc. - would require all such departments within one unit. This functional integration - employee interchange, job duties integrated - must be on a day to day basis, reflecting a consistent managerial policy of functional integration, and not simply amount to holiday relief or the replacement of sick employees. There are also the integrated work processes that go beyond a functional relationship between departments. A continuous work process (e.g., assembly line), overlapping and shared duties, team processes, all require a single bargaining unit. The focus of this criterion is therefore upon how the employer has organized itself operationally. (p. 29)

The person at the UBCO library who has the most contact with staff at Koerner is Shillingford, who works as a circulation assistant. Her telephone interactions with staff at Koerner can be characterized as minimal when compared to her total duties (Shinn did not dispute the assertion that Shillingford's interactions with staff at UBC Point Grey is less than 1% of all of her duties). Overall, contact with support staff at UBCO and support staff at Koerner is not a daily occurrence. Contact occurs by phone, approximately 2 – 3 times a week on matters involving circulation, or users not picking up books at the right library location, or occasionally for course reserves or copyright issues that need to be addressed. This type of minimal involvement does not disrupt the rational and defensible line which can be drawn around the BCGEU unit at UBCO.

There was also evidence that CUPE staff trained various UBCO staff. For example in SFAA, then UBCO employee and BCGEU member Shuttleworth was trained
at Point Grey by CUPE members. However, as was the case for training that was done by CUPE members at UBCO for the library, the interaction between employees was irregular, minimal and does not amount to integration on a day-to-day basis, reflecting a consistent managerial policy of functional integration. The Board's concern in making an assessment of integration is on the long-term structure, not with respect to transitional short-term interaction, such as start-up training.

In summary, the evidence presented does not compel a finding that employee intermingling between the CUPE staff at the other UBC campuses and the BCGEU support staff at UBCO has or will occur to such a degree that maintaining the BCGEU unit at UBCO is not appropriate.

Geography

The CUPE Locals say that technology renders the geographic distance between the two campuses nonexistent. In making this submission, they rely on UBC's submissions regarding the UBCFA. I agree that in some cases, modern technology of email, video conferencing, etc. will effectively render geographic separation nonexistent. Indeed, that may well be the case with faculty. However, with respect to the support staff, there was little evidence of technology bridging the distance between staff, and even where such evidence did exist, the evidence demonstrated minimal and irregular contact.

Moreover, I note that the UBCFA structure was reached by agreement, not adjudication. When parties agree to a structure under section 35 the Board is not likely to go behind that agreement and exercise its discretion to unravel it.

The distance between the campuses, the different communities they serve, the unique academic programs offered and structure implemented, lack of integration or mobility between the campuses for support staff, together with the Employer's structure of a 'team' approach of support staff at UBCO versus a team approach across campuses, all support a conclusion that the employees in question do have a unique community of interest separate from UBC as a whole. Accordingly, I find geography is a factor that favours the preservation of the BCGEU unit at UBCO.

The Practice and History of the Current Collective Bargaining Scheme & The Practice and History of collective bargaining in the Sector

As set out above, a key distinguishing factor between this case and ICBC, supra, City of Williams Lake, BCIRC No. C24/92 and Cariboo Regional District, BCLR No. B197/95 is that this public employer has an existing multi-bargaining unit structure. The university sector is proliferated with a variety of different bargaining units. UBC is the largest and most complex. It has the greatest number of bargaining relationships in place.

As noted earlier in this decision, a compelling example of this proliferation at UBC in particular relates to the CUPE Locals themselves. Three different CUPE Locals
representing three different support staff bargaining units all work at the Point Grey campus of UBC.

The unions in the sector, which involve a diverse group of representatives, work closely together to coordinate collective bargaining on issues that are of common interest in order to have uniformity in the sector. As Credico confirmed, this coordinated approach creates a more stable labour environment as it allows many issues to be dealt with at one time. It enables the entire university sector to be resolved efficiently, instead of generating multiple and lengthy strikes.

Credico emphasized the ease with which the CUPE Locals can coordinate bargaining. However, she described the three CUPE Locals at UBC as a "diverse group of locals". Certainly, the Board's experience with various CUPE Locals has accorded with this description. In Nechako Lakes School District, supra, the Board described the CUPE structure as being made up of autonomous CUPE locals:

The Union has characterized CUPE as a federation of autonomous locals and argued that consolidation would mean the loss of independent rights. I agree that CUPE is a highly decentralized organization by comparison to certain other unions within the public sector. (para. 42)

The CUPE Locals say that having an anomalous and additional bargaining agent/unit at UBCO may lead to substandard collective agreements and more industrial instability at UBC and throughout the province at other universities.

This assertion ignores the history and practice of collective bargaining at UBC and generally throughout the sector. The diverse group of CUPE Locals at UBC, namely, Local 2950, Local 116 and Local 2278, along with CUPE Locals at other universities in the province, (such as Local 3799 at UNBC), and other unions, such as the Poly Party at SFU, the TSSU at SFU, the IUOE 882 at UBC and the BCGEU at UBC, have developed a process for sharing information and coordinating bargaining. Over the years, a coordinated plan has evolved that has brought the various collective agreement expiry dates into similar time frames. There is no reason to believe that this coordinated plan will not continue in the future.

Traditionally, CUPE locals have represented support staff in the university sector throughout British Columbia. Nonetheless, the BCGEU has had a presence at UBC with its certification of child care workers. Moreover, the BCGEU has a history of representing support staff, which included staff involved in the 'university sector', i.e. the degree granting portion of UBC, at that institution. That history was marked by stability. Only one short strike took place over a period of decades. More recently, the BCGEU has successfully negotiated two collective agreements with UBC for UBCO.

While the CUPE Locals argued that the existence of the BCGEU unit at UBCO, representing employees of the employer doing the same positions as their members at the other UBC campuses would lead to whipsawing and leapfrogging, the coordinated approach to bargaining that has evolved diminishes those concerns. I see no reason
why this coordinated approach, organized by the BC Federation of Labour, would not continue in the future. Indeed, it proved to be successful during the round of bargaining in 2006 when the BCGEU was at the bargaining table with UBC for the support staff at UBCO.

Work jurisdiction disputes have arisen between some of the unions at UBC. Historically the unions have been able to come to a resolve over these disputes. On the facts presented to me, I foresee no serious risk of jurisdictional disputes between the CUPE Locals and the BCGEU, given the lack of integration, lack of mobility between the campuses for support staff and the substantial geographic separation of 250 miles. Indeed, I agree with the BCGEU that to change the one unit at UBCO to three units represented by the CUPE Locals has a greater likelihood of creating work jurisdiction issues than the present structure.

Moreover, I agree with both UBC and the BCGEU that with respect to industrial stability generally, the proliferation of what can currently be viewed as an "all employee" support staff unit at the UBCO campus, through the imposition of three support staff bargaining units at that one campus, runs counter to a common sense and practical approach to stability.

I agree with the CUPE Locals that the issue of industrial stability is of great importance in determining appropriateness at the second or additional stage of certifications. As a general presumption applicable in certification cases, as the number of units increases, so does the potential for industrial instability. This presumption increases with the number of units.

This general presumption was applied by the Board in a recent decision involving the university sector in Simon Fraser University, supra. In that case, the Board declined to certify an additional unit of professional employees. However, the facts in the case before me are very different to those in Simon Fraser University. That case did not involve a separate campus, where the staff in question had no functional integration with other bargaining unit members. Moreover, it was not a case brought pursuant to Section 35. And finally, what was being proposed was not the replacement of one unit with three separate bargaining units.

The facts in this case are unique, as is the context in which the question of appropriateness is being raised. In exercising my discretion to determine the appropriateness of the unit in question under section 35, I am guided by IML, and "will not necessarily follow the same precedents used in original applications for certification" (Kelly Douglas & Company Ltd., supra).

In this unique case, I am satisfied that while preserving the BCGEU unit at UBCO will add an additional unit to the bargaining structure of UBC as a whole, for the reasons set out above, industrial stability is best achieved by the preservation of the existing single support staff unit at UBCO, rather than its division into three separate units.
VI. CONCLUSION

Under section 35 special weight ought to be afforded to the existing BCGEU unit in this case. On balance, the IMI factors support a finding that a rational and defensible line can be drawn around the existing BCGEU unit and thus, that this unit remains appropriate for collective bargaining. Accordingly, I decline to exercise my discretion pursuant to Section 35 of the Code to alter or restructure the existing collective bargaining structure at UBCO and apply the existing CUPE collective agreements. The CUPE Locals' applications are dismissed.

LABOUR RELATIONS BOARD

LISA SOUTHERN
VICE-CHAIR AND REGISTRAR