



File No. 13-003

Decision No.

**IN THE MATTER OF AN APPLICATION FOR CERTIFICATION**

**BETWEEN:**

**CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 5140**

**APPLICANT**

**AND:**

**COMPASS GROUP CANADA LIMITED -  
CHARTWELLS EDUCATION DINING SERVICES**

**RESPONDENT**

**Stephen Carpenter**

**Counsel for the Respondent**

**Glen Gallant**

**Counsel for the Applicant**

**DECISION**

**Background**

On the 24<sup>th</sup> day of January, 2013, the Applicant, Canadian Union of Public Employees, Local 5140 (“CUPE”) filed an Application for Certification with the Labour Relations Board (“Board”) pursuant to the *Labour Act and Regulations*. The Respondent named in the Application was Compass Group Canada Limited - Chartwells Education Dining Services. The detailed description of the unit of employees was identified in paragraph 9 of Form 1 as:

*All people employed as general helpers and supervisors save and except those excluded by the Labour Act.*

The Applicant also filed Exhibit A to Form 1, described as a list of “*duly elected officers...*” and Exhibit B, with the names of the union members in good standing and copies of the signed cards.

By correspondence dated the 26<sup>th</sup> day of January, 2013, the Applicant requested that another employee be added to the list of employees and enclosed a signed card with the correspondence.

The Application for Certification (Application) was provided to the Respondent. Upon review, the Respondent requested clarification of the proposed unit. The Applicant filed additional material with the Board by way of a statutory declaration dated the 11<sup>th</sup> day of February, 2013, which was provided to the Respondent. Further clarification was sought and an additional statutory declaration was filed with the Board on the 14<sup>th</sup> day of February, 2013, and also provided to the Respondent.

By correspondence dated the 7<sup>th</sup> day of March, 2013, the Applicant requested that another employee be added to the list of employees and enclosed a signed card with the correspondence.

The Respondent filed its Reply in Form 5 on the 12<sup>th</sup> day of March, 2013. The Respondent states that the total number of employees on the payroll in respect of which the Application was made is twenty-eight (28) (paragraph 3 of Form 5); the number of employees in the unit described as appropriate by the Applicant for collective bargaining is twenty-four (24) (paragraph 4 of Form 5); and the number of employees in the unit claimed by the Respondent to be appropriate for collective bargaining is twenty (20) (paragraph 6 of Form 5). The Respondent states in paragraph 5 of the Reply as follows:

*The company agrees to recognize the Union as the bargaining agent for all employees of Compass Group Canada Ltd. Employees in the Cafeteria Operations at Chartwells Education Dining Services at Birchwood Intermediate School, Bluefield High School, Charlottetown Rural High School, East Wiltshire Intermediate School, Stonepark Intermediate School, Montague High School, Summerside Intermediate School and Holland College save and except office and clerical staff, site supervisors and unit supervisors and persons above the rank of unit supervisors.*

In paragraph 11 of the Reply, the Respondent states:

*The Respondent requests the Board to conduct a vote to ascertain the true wishes of the employees. The Respondent requests a hearing to determine the proper composition of the bargaining unit.*

The provisions of the *Labour Act* that govern an Application for Certification are as follows:

*12. (1) A trade union claiming that a majority of employees of an employer in a unit that is appropriate for collective bargaining wish that the trade union be certified as bargaining agent on their behalf may, subject to the rules of the board and in accordance with this section, apply to the board to be certified as bargaining agent of the employees in the unit.*

*13. (1) Where a trade union makes application for certification under this Part, the board shall determine whether the unit in respect of which the application is made is appropriate for collective bargaining.*

*(2) The board may, before certification, either to make the unit appropriate for collective bargaining or for other good reason, include additional employees in or exclude employees from the unit.*

*(3) For the purposes of subsections (1) and (2) and for the purpose of determining whether a majority of the employees in the unit wish the applicant trade union to be certified as bargaining agent of such employees, the board shall*

*(a) make, or cause to be made, such examination of records or other inquiries and hold such hearings as it considers necessary;*

*(b) take such other steps as it considers appropriate to determine the*

*wishes of the employees in the unit as to the selection of a bargaining agent to act on their behalf including, whenever the board considers it necessary, the taking of a representation vote of such employees.*

*(6) In determining what number of employees constitute a majority of the employees of a unit pursuant to subsection (5), the board may consider any increase in the number of employees in the bargaining unit after the application was made, and the board may consider any anticipated increase in the number of employees in the bargaining unit.*

*(7) If the board is not satisfied that the applicant trade union is entitled to be certified under this section, it shall dismiss the application and may designate the length of time that must elapse before the same applicant may make a new application.*

Several provisions of the *Labour Act Regulations* are also relevant:

*3. (1) An application by a trade union for certification as bargaining agent pursuant to the Act shall be made in Form 1.*

*(2) Subject to subsection (2.1), concurrently with the filing of an application for certification, the applicant trade union shall file with the Board the material upon which it relies to establish its right to certification and such material shall include*

*(a) a list of persons in the proposed bargaining unit who wish that the applicant trade union be certified as bargaining agent on their behalf;*

*(b) evidence that the persons in the list referred to in clause (a) wish that the applicant trade union be certified as bargaining agent on their behalf;*

*(c) a copy of its constitution, rules and bylaws, or other instruments or documents containing a full and complete statement of its objects and purposes;*

*(d) a list of its officers; ...*

*(4) A person shall be deemed by the Board to agree to the applicant trade union being certified as bargaining agent on the person's behalf if at the date of application*

*(a) the person was a member in good standing of the applicant trade union, and, had paid at least two dollars as union dues within three months preceding the date on which the application was filed; or*

*(b) the person has signed a document stating that the person wishes the applicant trade union to be certified as bargaining agent on the person's behalf and has within three months preceding the date on which the application was filed paid at least two dollars as union dues or fees.*

## Decision

The Board has reviewed the material filed by the Applicant with the Application for Certification. The Application identified the unit of employees in paragraph 9 of Form 1 as:

*All people employed as general helpers and supervisors save and except those excluded by the Labour Act.*

The Applicant filed Exhibit A to Form 1 required by the Regulations and Exhibit B to Form 1 with the Application on the 24<sup>th</sup> day of January, 2013. Exhibit B identified a list of employees containing thirteen (13) names. Minutes of the organizing meeting for the Applicant and the Constitution were also filed as is required by the section 3(2) of the Labour Act Regulations. The employee membership cards were filed with the Application and were also reviewed by the Board.

When the Applicant was asked to provide details on the geographic area for which the certification was sought, the Applicant filed a statutory declaration of the President of the Canadian Union of Public Employees, PEI Division, who declared in paragraph 4 of the Statutory Declaration dated the 11<sup>th</sup> day of February, 2013 as follows:

*4. With respect to paragraph 9 on Form 1, which was filed in support of the Application for Certification the subject application is applicable to the following geographic areas:*

- *Charlottetown*
- *Cornwall*
- *Hampshire*
- *Kensington*
- *Montague*
- *O'Leary*
- *Souris*
- *Summerside*

Upon request for further clarification, the Applicant filed an additional statutory declaration dated the 14<sup>th</sup> day of February, 2013, again under the signature of the President of the Canadian Union of Public Employees, PEI Division, who declared as follows:

*4. With respect to paragraph 9 on Form 1, which was filed in support of the Application for certification, the subject application is applicable to the following workplaces:*

<i>Birchwood Intermediate School</i>	<i>49 Longworth Avenue, Charlottetown PE C1A 5A6</i>
<i>Bluefield High School</i>	<i>924 Coville Road, Hampshire PE C0A 1Y0</i>
<i>Charlottetown Rural High School</i>	<i>100 Raiders Road, Charlottetown, PE C1E 1K6</i>
<i>East Wiltshire Intermediate School</i>	<i>100 Kingston Road, PO Box 160 Cornwall PE C0A 1H0</i>

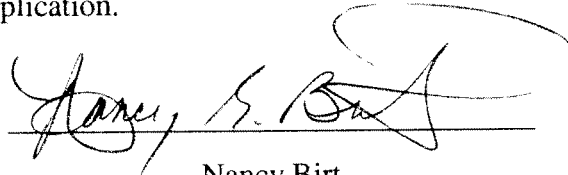
<i>Stonepark Intermediate School</i>	<i>50 Pope Avenue, Charlottetown, PE CIA 7P5</i>
<i>Montague Regional High School</i>	<i>274 Valleyfield Road Montague PE C0A 1R0</i>
<i>Summerside Intermediate</i>	<i>247 Central Street, Summerside PE CIN 3M5</i>
<i>Holland College Charlottetown Centre</i>	<i>140 Weymouth Street, Charlottetown, PE CIA 4Z1</i>

The Board has carefully reviewed all material filed by both parties. It is apparent that there are obvious discrepancies with the material, and the Applicant was aware of the problems with the Application as time went on, and requested permission to withdraw the Application.

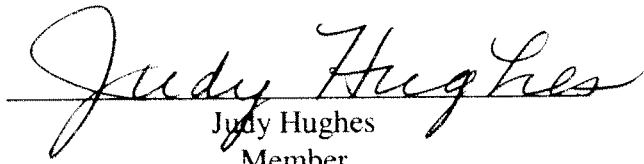
In summary, the Board notes the following specific issues:

- i.) Two employees were not included in the original numbers on the application. The Applicant filed one employee card on the 26<sup>th</sup> day of January, 2013, two days after the Application was filed, and the second card was filed on the 7<sup>th</sup> day of March, 2013, approximately six weeks later;
- ii.) The employee card filed on the 7<sup>th</sup> day of March, 2013 does not meet the provisions of section 3(4)(a) or (b) of the Regulations as the date on the membership card is the 5<sup>th</sup> day of March, 2013, which is clearly well after the date of the Application;
- iii.) The geographic area originally provided was insufficient, and even when the Applicant was permitted to explain the geographic area, the Applicant's information was still contradictory, and in particular, the material filed by way of statutory declaration on the 11<sup>th</sup> day of February, 2013, noted eight communities, but did not identify specific schools. When the specific schools were identified in the statutory declaration of the 14<sup>th</sup> day of February, 2013, the list of schools does not match the geographic areas set out in the statutory declaration dated February 11, 2013. In particular, the eight communities included Kensington, O'Leary and Souris, but no schools located in those communities were noted in the second statutory declaration of the 14<sup>th</sup> day of February, 2013.
- iv.) The cards filed with the Application, including the two filed late total fifteen (15) employees. However, upon a comparison of the names of employees who have signed cards, and the list of employees in the proposed unit as provided by the Respondent with the Reply, there are three (3) employees who have signed cards who are not part of the proposed bargaining unit as set out by the Respondent. The Board can only assume that perhaps these three (3) employees are employed at one of the schools not included in the Applicant's list.

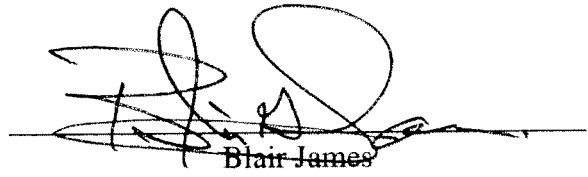
In any case, the material filed by the Applicant is insufficient for the Board to certify the proposed unit as requested. This is of concern to the Board, however, as it appears that there are a substantial number of employees who do wish to be represented. It is unfortunate that the interests of those employees are not being met. Nonetheless, the Board has no choice in this matter but to dismiss the application.



Nancy Birt  
Chair

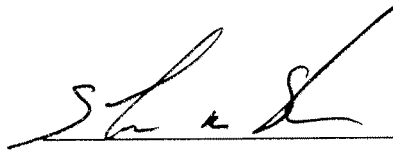


Judy Hughes  
Member



Blair James  
Member

This Decision made by the Prince Edward Island Labour Relations Board on the 12<sup>th</sup>  
day of December, 2013, and issued under the hand of its Chief Executive Officer on the 12<sup>th</sup>  
day of December, 2013.



Shawn M. Shea  
Chief Executive Officer