

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: **Compass Group Canada (Health Services) Ltd. v. Hospital Employees' Union,**  
2006 BCSC 618

Date: 20060420  
Docket: L052880  
Registry: Vancouver

Between:

**Compass Group Canada (Health Services) Ltd. dba  
Crothall Services Canada and/or  
Morrison Healthcare Food Services and/or  
Morrison Management Specialists**

Petitioner

And

**Hospital Employees' Union and  
United Steelworkers of America, Local 1-3567**

Respondents

Before: The Honourable Madam Justice Wedge

**Reasons for Judgment**

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Date and Place of Trial/Hearing:

March 23 and 24, 2006  
Vancouver, B.C.

**I. INTRODUCTION**

[1] The petitioner, Compass Group Canada (Health Services) Ltd. ("Compass"), provides non-clinical support services such as housekeeping, laundry and food services to health care facilities

operated by public health authorities. The Hospital Employees' Union ("HEU") applied to the Labour Relations Board (the "Board") to represent employees of Compass who perform these services at facilities within the Provincial Health Services Authority (the "PHSA"). The question before the Board was whether a bargaining unit of housekeeping and food service workers employed by the same company and working together in the same health care facilities was appropriate for collective bargaining.

[2] All-employee units of non-clinical support service workers have, for several decades, been found by the Board to be appropriate for collective bargaining in the public health care sector. However, as a result of recent legislation permitting public health authorities to contract out the support services previously performed by their own employees, the Board has been called on to consider anew the question of appropriate bargaining units for these workers.

[3] Compass argued at the Board hearing that the bargaining unit proposed by HEU was not appropriate. The Vice-Chair hearing the application decided that the bargaining unit was appropriate and granted certification of the unit to HEU (BCLRB No. B200/2005, the "Original Decision"). Compass applied for reconsideration on the basis that the Vice-Chair had denied it a fair hearing by ignoring certain evidence concerning the issue of appropriateness. A panel of the Board, including the Board's Chair and Associate Chair, dismissed the reconsideration application (BCLRB No. B263/2005, the "Reconsideration Decision").

[4] Compass applies to have both the Original and Reconsideration Decision set aside, and asks that the matter be remitted to the Vice-Chair for adjudication based on all of the evidence admitted at the hearing of the certification application.

## II. ISSUE

[5] The narrow issue in this application for judicial review is whether the Board denied Compass a fair hearing, contrary to the rules of natural justice, by failing to consider certain evidence concerning bargaining unit appropriateness.

[6] The United Steelworkers of America, Local 1-3567 ("USWA"), supports the application of Compass and endorses its arguments.

[7] HEU says the Board did consider the evidence in question but, in the circumstances of the case, found it to be of no assistance in determining the appropriateness issue. HEU argues in the alternative that even if the Board overlooked the evidence in question, Compass was not denied a fair hearing.

[8] I have concluded that whether or not the Board considered the evidence in question, Compass was not denied a fair hearing.

## III. LEGAL FRAMEWORK

[9] It was common ground that the Board is protected by a full privative clause. The parties agreed that a decision of the Board on bargaining unit appropriateness warrants a high degree of curial deference and cannot be disturbed on judicial review unless it is patently unreasonable or, put another way, is clearly irrational (*Office & Professional Employees' International Union, Local 378 v. British Columbia (Labour Relations Board)* (2001), 158 B.C.A.C. 1, 2001 BCCA 433).

[10] It was also common ground that a refusal or failure to consider relevant evidence by a tribunal does not necessarily amount to the denial of a fair hearing in breach of the rules of natural justice. In *Université du Québec à Trois Rivières v. Larocque*, [1993] 1 S.C.R. 471 [*Larocque*], the Supreme Court of Canada, considering whether a refusal to admit relevant evidence by a labour arbitrator necessarily resulted in a breach of natural justice, answered the question in the negative. Writing for the majority in *Larocque* (L'Heureux-Dubé J. concurring for other reasons), Lamer C.J. said the following at p. 488:

The question before this Court is instead whether, in erroneously deciding to exclude

evidence relevant to the ground of dismissal which he has himself identified as being that which he must examine, the arbitrator necessarily commits an excess of jurisdiction. *In my view the answer to this question must in general be no. It will be yes, however, if by his erroneous decision the arbitrator was led to infringe the rules of natural justice.*

[Emphasis added]

[11] Chief Justice Lamer explained at p. 490 that tribunals granted wide autonomy by the legislature to determine disputes within their expertise must also have the latitude to determine what evidence is relevant to the issues they are empowered to decide:

The proposition that any refusal to admit relevant evidence is in the context of a grievance arbitration a breach of natural justice is one which could have serious consequences. It in effect means that the arbitrator does not have the power to decide in a final and exclusive way what evidence will be relevant to the issue presented to him. That may seem incompatible with the very wide measure of autonomy which the legislature intended to give grievance arbitrators in settling disputes within their jurisdiction and the attitude of restraint demonstrated by the courts toward the decisions of administrative bodies.

[12] The question, according to Lamer C.J., is not *per se* whether the tribunal rejected relevant evidence. Rather, the question is whether the failure of the tribunal to admit (or, as in the present case, to consider) relevant evidence has *such an impact* on the hearing's fairness as to satisfy a reviewing court that a breach of natural justice has occurred. As Chief Justice Lamer observed at p. 491:

...I am not prepared to say that the rejection of relevant evidence is automatically a breach of natural justice. A grievance arbitrator is in a privileged position to assess the relevance of evidence presented to him and I do not think it is desirable for the courts, in the guise of protecting the right of parties to be heard, to substitute their own assessment of the evidence for that of the grievance arbitrator. *It may happen, however, that the rejection of relevant evidence has such an impact on the fairness of the proceeding, leading unavoidably to the conclusion that there has been a breach of natural justice.*

[Emphasis added]

[13] The common law standards of judicial review applicable to decisions of tribunals such as the Board have been codified by legislation. Sections 58(1) and (2) of the **Administrative Tribunals Act**, S.B.C. 2004, c. 45, apply to the Board. Those provisions provide the following:

- (1) If the tribunal's enabling Act contains a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
- (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
  - (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable, [and]
  - (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, ...

[14] It follows that in order to determine whether a tribunal's failure to consider relevant evidence has resulted in the denial of a fair hearing, a reviewing court must consider the significance of the rejected evidence to the issues the tribunal was required to determine. In *Larocque*, for example, the Court was satisfied that in light of the issues before the arbitrator, the evidence in question was not merely significant but crucial. Thus the rejection of the evidence resulted in the denial of a fair hearing. The same analysis was undertaken by the Federal Court in *Burdziak v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1742 (T.D.) with a similar result.

#### IV. BACKGROUND

[15] Before 2002, employees of the public health authorities in this province performed non-clinical support services such as laundry, housekeeping, dietary and food services in hospitals and other health care facilities. In most of these facilities, all unionized workers performing support services were in one bargaining unit. HEU represented the majority of these employees. As a general rule, nurses and paramedical professionals were in separate bargaining units and were represented by other unions. The granting of a separate bargaining unit for each of the three groups of employees was a reflection of the Board's recognition that the employees in each unit shared a distinct community of interest.

[16] In 2002, the provincial government enacted the **Health and Social Services Delivery Improvement Act**, S.B.C. 2000, c. 2 (the "Act"), which overrode certain provisions in the collective agreements between the health authorities and the unions representing their employees. Hospitals and other public health care providers governed by collective agreements were no longer prohibited or restricted from contracting out the non-clinical support services. Companies in the business of supplying private support services were permitted to bid on contracts to provide these services to the health authorities.

[17] The contracts vary in their scope. In some cases, the work has been contracted to different companies by the health authority on a facility by facility basis. In other cases, the health authority has contracted with one company to provide support services to several of its facilities under one or more contracts.

[18] Compass is one of several companies providing these support services, and has been successful in obtaining numerous contracts to perform the work previously performed by employees of the health authorities. Compass carries on business through a number of divisions. Its "Morrison" division provides food services, or a combination of food, laundry and housekeeping services, to health care facilities. Its "Crothall" division provides housekeeping and laundry to health care and educational facilities.

[19] In the wake of the Act and the subsequent contracting out of support services, HEU, USWA and other unions began organizing employees of the contracting companies. The scope of the certifications for which the unions applied varied, but generally depended on the scope of the particular contract between the contractor and the health authority.

[20] The leading decision of the Board concerning bargaining unit appropriateness is **Island Medical Laboratories Ltd. and Health Sciences Association of British Columbia** (1993), 19 C.L.R.B.R. (2d) 161 [*J.M.L.*], in which the Board restated its jurisprudence concerning the issue. In its summary concerning appropriateness, the Board described six factors to be considered when determining appropriateness. To place those six factors in context, the Board said the following at p. 192-193:

1. There are two fundamental principles in the Code regarding the determination of appropriate bargaining units: access to collective bargaining and industrial stability. These principles are always present in any determination of appropriateness.
2. Community of interest is the test for determining an appropriate unit. An appropriate unit must have a rational and defensible boundary.
3. On an *initial* application for certification, community of interest is determined by the following factors:
  - (a) similarity in skills, interests, duties and working conditions;
  - (b) the physical and administrative structure of the employer;
  - (c) functional integration; and
  - (d) geography.

Access to collective bargaining is the most important principle in determining appropriateness on an initial application.

....

6. At the *second or additional stage* of certification (*i.e.*, where there is already at least one collective bargaining regime in place), the community-of-interest factors are expanded to include the following two (for a total of six factors):
- (a) the practice and history of the current collective bargaining scheme; and
  - (b) the practice and history of collective bargaining in the industry or sector.

Industrial stability is the most important principle in determining appropriateness at the second or additional stage of certification. There is a presumption against multiple bargaining units. This presumption markedly increases with the number of units.

...

[Emphasis in original]

[21] As observed by the Board in *I.M.L.*, the presumption against multiple bargaining units in a single employer structure, given its obvious potential to adversely impact on industrial stability, has existed in Board jurisprudence almost since its inception (*I.M.L.* at p. 170). Only where employees shared a distinct community of interest sufficient to override the presumption against multiple bargaining units did the Board permit more than one bargaining unit within a single employer. Thus, as noted earlier, the bargaining unit configuration in public health care has historically consisted of three units: non-clinical support workers, paramedical professionals and nurses.

[22] In the relatively brief period of time that has passed since health authorities have begun contracting out their non-clinical support services, the Board has had little opportunity to consider the appropriateness of bargaining units in the sector. For the most part, the unions have applied for certification of contract employees on a site by site basis, reflecting the site by site contracts entered into by the health authorities and the private contractors.

[23] The first case to come before the Board that squarely raised the issue of bargaining unit appropriateness subsequent to the passage of the Act involved the same parties as the case that is now the subject of this judicial review – those being Compass, HEU and USWA (BCLRB No. B194/2004). The facts of that case are as follows. HEU had previously been certified as bargaining agent for a unit of employees of Compass who provided food and housekeeping services to residents at the Renfrew Care Centre (“Renfrew”). There was a single contract governing the provision of services by Compass to Renfrew. HEU then applied to vary the Renfrew unit to include a group of Compass employees who provided housekeeping services at a number of locations pursuant to a single contract between Compass and the Vancouver Coastal Health Authority (the “VCHA”), most of whose locations were within the site of Vancouver General Hospital (“VGH”). Compass objected to the variance application. It did not object to a separate or “stand-alone” unit of VCHA employees working under the single contract at VGH, but objected to those employees being included in a unit with the Renfrew employees, who worked at a separate site for a separate employer.

[24] Shortly after HEU filed its application for variance, USWA applied for a stand-alone unit of VCHA employees working at the various VGH sites.

[25] In a decision dated June 4, 2004, a Vice-Chair of the Board dismissed HEU’s application to vary the Renfrew unit to include the VCHA employees of Compass (BCLRB No. B194/2004). In doing so, the Vice-Chair considered the six factors described in *I.M.L.*, including the fifth and sixth factors. She concluded that the practice and history of the bargaining structure between Compass and HEU (the fifth factor) was of little assistance. There was evidence of two applications by HEU to represent Compass employees, one which ended in decertification and another which ended when the contract was not renewed. Simply put, there was no bargaining history between the parties.

[26] On the sixth factor (practice and history in the industry or sector), the Vice-Chair took note of certifications of Compass employees held by various unions at various locations. There were 29

certifications listed, and all were location specific. That is to say, Compass held separate contracts at each location, and each location had been certified as a separate bargaining unit. Notably, most of the certifications listed do not involve health care employers or the health care sector. They involve a variety of entities contracting with Compass in a spectrum of industries, including Telus, B.C. Hydro, community colleges and correctional facilities. On the basis of these certifications, the Vice-Chair concluded that the practice or history in the "industry" (apparently referring to the business of Compass providing support services in a variety of industries or sectors) was "contract/location specific certifications" (B194/2004 at para. 34).

[27] The Vice-Chair concluded she could decide the case solely on the basis of the separate contracts at the two unrelated sites of Renfrew and VCHA, and that, accordingly, she was not required to address the issue of bargaining unit appropriateness in the sector generally (B194/2004 at para. 43). Instead, the Vice-Chair concluded that HEU's variance application was inappropriate in the circumstances of the case because it sought to combine separate business operations under distinct contracts at unrelated sites (B194/2004 at paras. 74 and 79).

### *The Original Decision*

[28] The Original Decision (BCLRB No. B200/2005), which is the first of the two decisions under review, has as its origins an application by HEU in March of 2004 to be certified for a bargaining unit of Compass employees working at four health care facilities operated by the PHSA and located in Vancouver. The four facilities were B.C. Women's Hospital, B.C. Children's Hospital, Sunny Hill Health Centre and the B.C. Cancer Agency. The PHSA had entered into two contracts with Compass, one through its Crothall division and the other through its Morrison division. The contracts covered all four facilities, with Compass employees under one contract providing food services and, under the other, providing laundry and housekeeping services.

[29] Compass objected to the proposed bargaining unit containing all of its employees under the two contracts with PHSA. It argued that the two divisions within Compass had separate contracts and, as a result, there ought to be separate bargaining units for the employees of each of the two divisions. USWA had entered into voluntary recognition agreements with Compass for separate bargaining units to reflect the separate contracts with the two divisions.

[30] At the hearing of the matter, the parties agreed that the Vice-Chair could rely on the facts outlined in the B194/2004 decision, including the evidence concerning the fifth and sixth *I.M.L.* factors (that is, the history of bargaining between the parties and the history and practice of collective bargaining in the industry or sector). Compass also advanced some additional evidence concerning the fifth and sixth factors that post-dated the hearing in B194/2004. It is this evidence Compass says the Vice-Chair ignored or overlooked when deciding the appropriateness of the unit proposed by HEU.

[31] The additional evidence concerning the fifth factor (the history of bargaining between Compass and HEU) consisted of correspondence by the Board reflecting the course of collective bargaining at a continuing care facility, Beacon Hill Lodge, where HEU was certified for a unit of Compass employees. Compass tendered this evidence to demonstrate that bargaining difficulties between Compass and HEU at Beacon Hill did not adversely affect the other two bargaining units of Compass employees certified to HEU.

[32] The additional evidence concerning the sixth factor (history of collective bargaining in the industry or sector) consisted of a number of certifications and pending applications for certification concerning Compass employees filed with the Board since the hearing of B194/2004. These certifications and applications for certification, like the 29 certifications listed in B194/2004, disclosed bargaining units whose scope tended to mirror that of the commercial contracts held by Compass.

[33] With respect to the fifth and sixth factors in *I.M.L.*, the Vice-Chair said the following at paras. 35 and 36 in the Original Decision:

The parties presented no new evidence in this case with respect to the fifth *IML* factor-- practice and history of collective bargaining between the parties -- and therefore I

similarly conclude that this factor continues to be of little assistance.

Likewise, the parties presented no new evidence with respect to the practice and history of collective bargaining in the industry-- the sixth *IML* factor -- and I again note that the industry practice and history appears to be one of a multi-bargaining unit design. However, the evidence with respect to the sixth *IML* factor is now dated and there has been many changes in the contract sector industry since the introduction of Bill 29. Consequently, I find that I am unable to draw any conclusion in this case regarding the practice and history of collective bargaining in the industry.

[34] The Vice-Chair went on to observe that the facts in the present case differed significantly from those in B194/2004. At para. 40 in the Original Decision, she noted the following:

In the earlier Compass case, the facilities in question – Renfrew and VGH – were geographically separate. More importantly, the two facilities in question were owned and operated by two different clients of Compass, one in the private sector and one in the public sector. As already noted, here the Morrison and Crothall division employees perform their respective services at the same sites and the sites are all operated by PHSA. Thus, although the employees in question perform services for different divisions of Compass, they are working at the same sites.

[35] Similarly, at para. 43 the Vice-Chair said:

In this case, the Morrison and Crothall division employees provide services at the same sites, (B.C. Women's Hospital, B.C. Children's Hospital, Sunny Hill Health Centre and the B.C. Cancer Agency), for the same employer (Compass), for the same client (PHSA). Consequently, I find that, unlike in the earlier Compass case, the commercial contracts in this case have a common purpose - they allow for the provision of services to the same people, at the same sites, for the same client.

[36] After considering the various factors concerning appropriateness, the Vice-Chair concluded at para. 49 in the Original Decision that the unit proposed by HEU was appropriate for collective bargaining:

As set out above, I have concluded that in this case, *IML* factors five and six are of no assistance, *IML* factors two and three are neutral, and *IML* factors one and four favour a finding of appropriateness. I note that the ultimate conclusion on appropriateness comes down to a matter of judgment and weight. However taking into consideration all of the *IML* factors, the relative importance of the factors, and the weight of my findings on each factor, I conclude that [the] unit sought in the primary application is an appropriate bargaining unit.

### *The Reconsideration Decision*

[37] Compass applied for reconsideration of the Original Decision on the basis that the Vice-Chair had denied it a fair hearing by overlooking or ignoring the additional evidence it had tendered at the hearing concerning the fifth and sixth *I.M.L.* factors. In the Reconsideration Decision (BCLRB No. B263/2005) a three person panel of the Board, including the Board Chair and Associate Chair, dismissed the application. The panel said the following at paras. 31 and 33-34:

We are not persuaded the original panel breached natural justice or fair hearing requirements.

...

In this case, Compass essentially challenges the panel's weighing of the evidence and of the *IML* factors. The Board is particularly reluctant to interfere with the weighing of evidence absent a palpable and overriding error, which we do not find.

We further find the panel made a judgment applying the *IML* factors to the facts and reached a conclusion that was reasonably open to it. That decision reflects the particular

facts of the case. We find the original panel clearly and sufficiently distinguished the specific facts before her in B200/2005 from the specific facts in BCLRB No. B194/2004.

## V. DISCUSSION

[38] Whether the Vice-Chair failed to consider the additional evidence led by Compass concerning the fifth and sixth *I.M.L.* factors was a matter of considerable debate in the hearing of the petition. The reasons of the Vice-Chair are not without ambiguity on that issue. For purposes of this judicial review, I am prepared to accept the position of Compass that the Vice-Chair did not consider the evidence. The issue, however, is whether the failure to consider the evidence affected the fairness of the hearing. I am satisfied that it did not.

[39] As observed in *Larocque* at p. 491, a reviewing court must be satisfied that the failure of the tribunal to consider the evidence has had "such an impact on the fairness of the proceeding" as to lead "unavoidably to the conclusion that there has been a breach of natural justice".

[40] In my view, the evidence in question was of marginal relevance. Compass was not denied a fair hearing even if the evidence was overlooked. On the facts of this case, it was open to the Vice-Chair to conclude, as she did, that neither of the two factors provided assistance with respect to the appropriateness issue.

[41] It is not surprising that consideration of the fifth *I.M.L.* factor (the history of bargaining between the parties) could not assist the Vice-Chair in determining the appropriateness of the bargaining unit proposed by HEU. At the time of the hearing that resulted in B194/2004, HEU held only two certifications with Compass, one at Berwick and another at Renfrew. By the time of the hearing that resulted in the Original Decision, the Renfrew unit had no employees and the Berwick unit had decertified. The additional evidence of Compass concerned a third, recently acquired certification at Beacon Hill, which was apparently advanced by Compass to illustrate that a separate unit at Beacon Hill did not negatively affect labour relations at the Berwick and Renfrew units. Given the state of the latter two units, the fact of a separate unit at Beacon Hill was of little -- if any -- probative value.

[42] In any event, it is questionable that a handful of recently acquired certifications could constitute a "history" of the bargaining relationship between the parties. There is as yet no history between these parties to speak of.

[43] The sixth *I.M.L.* factor concerns the practice and history of collective bargaining in the industry or sector. Compass relied on the 29 contract specific certifications that had been entered in evidence at the hearing resulting in the B194/2004 decision. In addition, Compass provided a list of certifications and applications for certification that were not yet in existence at the time of the B194/2004 decision. This additional evidence was designed to demonstrate that nothing had changed since the decision in B194/2004; that is, bargaining units granted by the Board or applied for by unions continued to mirror the scope of the contracts between Compass and the contracting entity.

[44] Whether or not the Vice-Chair overlooked the additional evidence, it was tendered for a proposition that was not disputed. It was common ground that these certifications have generally reflected the scope of the contract between companies supplying support services and their clients. The Vice-Chair made that finding in the Original Decision at para. 36: "[A]nd I again note that the industry practice and history appears to be one of a multi-bargaining unit design."

[45] Moreover, reading the Original Decision as a whole, it is my view that the Vice-Chair concluded the sixth *I.M.L.* factor could provide little, if any, assistance on the issue of bargaining unit appropriateness in the instant case because the unit applied for by HEU consisted of Compass employees working side by side in the same facilities providing support services to the same patients. The appropriateness of such a bargaining unit had not arisen since the passage of the Act opened the door to the contracting out of support services in the health sector.

[46] As with the fifth *I.M.L.* factor, it is not apparent how the evidence advanced by Compass concerning the sixth factor could be of any assistance to the Vice-Chair in her determination of the appropriateness of the unit in question. The contracting out of non-clinical support services is a recent

phenomenon in the public health care sector. Contractors such as Compass may have some history of providing food, laundry and housekeeping services to clients in other sectors, but until the passage of the Act, they had no presence in facilities operated by the public health authorities.

[47] The issue now facing the Board, in the wake of the Act, is industrial stability in health care facilities in light of the ability of health authorities to contract out the services it provides to its patients. Now, employees of more than one employer, and employees of the same contractor working under different contracts, are working together in the same health care facilities. Evidence of bargaining between private contractors such as Compass and entities in other industries or sectors could be of little assistance in determining the appropriateness of units of Compass employees in the health sector.

[48] The additional evidence advanced by Compass consisted of certifications and certification applications concerning continuing care and acute care facilities post-dating the hearing that resulted in B194/2004. As noted earlier, this evidence was advanced by Compass to establish that the "pattern" continues to be one that mirrors the commercial contracts. None of the certifications or applications involved multiple bargaining units of Compass employees performing support services in the same workplace. In light of the facts in the instant case, that evidence could have been of little assistance.

[49] As the Board has stated on many occasions, the cornerstones of appropriateness are community of interest and industrial stability. Those cornerstones, as they are applied in initial applications for certification and subsequent applications, were described by the Board at p. 187 of the *I.M.L.* decision:

[A]t the initial stage of certification, the design of the bargaining unit must ensure the viability of collective bargaining. The Board would not put into a single bargaining unit employees whose communities of interest directly conflict; further, no bargaining unit would be created that cuts across a particular classification, where all members are in the same physical location, resulting in half of the employees in that classification in the bargaining unit and the other half out of the bargaining unit. Both these situations would not be conducive to the settlement of collective bargaining disputes.

Industrial stability, however, has different facets, depending upon whether one is at the *initial* stage of certification or at the *second or additional* stage of certification. At the initial stage of certification, the concern with industrial stability is with the design of the bargaining unit. The focus is on a single unit – one union, one employer. However, at the second or additional stage of certification the concern is threefold: first, the design of the bargaining unit; second, the proliferation of bargaining units; and third, the relationship not just between the second or additional units and the employer but between the units themselves. As the number of units increases, so does the potential for industrial instability.

[Emphasis in original]

[50] The Board in *I.M.L.* went on to describe certain factors whose application would assist in testing the presence or absence of community of interest and industrial stability in any certification application. That is the context in which the oft-cited six factors were articulated. As the Board has observed in decisions it has rendered since *I.M.L.*, those factors are not ends in themselves. They must be applied in a pragmatic way bearing in mind the widely varying contexts in which bargaining unit appropriateness falls to be determined.

[51] In the Original Decision, the Vice-Chair observed more than once that unlike other certification applications filed since the passage of the Act, the unit proposed by HEU in this case consisted of employees of the same employer (albeit under two contracts) performing food, cleaning and laundry services -- all non-clinical support services -- in the same facilities. In those circumstances, the fact that bargaining units in other facilities are contract specific was of little assistance. As noted by a panel of the Board in a subsequent decision rendered on facts almost identical to those underlying the Original Decision, to create separate bargaining units of employees in these circumstances would run counter to the Board's stated preference for large, employer-wide bargaining units (*Compass Group Canada (Health Services) Ltd. v. Hospital Employees' Union and United Steelworkers of America, Local 1-3567*, BCLRB No. B6/2006 at para.137, aff'd on reconsideration, BCLRB No. B71/2006).

**VI. SUMMARY**

[52] Assuming the Vice-Chair failed to consider the additional evidence concerning the fifth and sixth factors in *I.M.L.*, that failure did not result in the denial of a fair hearing to Compass. It follows that both the Original Decision and the Reconsideration Decision must stand.

[53] The application for judicial review brought by Compass is dismissed with costs to HEU.

"C.A. Wedge, J."  
The Honourable Madam Justice C. A. Wedge