



C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8
Édifice C.D. Howe, 240, rue Sparks, 4^e étage Ouest, Ottawa (Ont.) K1A 0X8

Reasons for decision

Canadian Union of Public Employees, Local 5114,

applicant,

and

Stock Transportation Ltd.,

employer.

Board File: 29466-C

Neutral Citation: 2013 CIRB **687**

June 24, 2013

The Canada Industrial Relations Board (the Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. Norman Rivard and Robert Monette, Members.

Parties' Representatives of Record

Mr. Glen S. Gallant, for the Canadian Union of Public Employees, Local 5114;

Mr. Malcom D. Boyle, for Stock Transportation Ltd.

These reasons for decision were written by Mr. Robert Monette, Member.

I–Nature of the Application and Issues

[1] On June 11, 2012, the Canadian Union of Public Employees, Local 5114 (the applicant or CUPE), filed a certification application for a unit of bus drivers based in Moncton, New Brunswick, employed by Stock Transportation Ltd. (the employer or Stock).

[2] In its application, CUPE described the general nature of the employer’s business as “[p]roviding bus services to Local School District transporting students to and from school as well as during extra curricular [*sic*] activities and operating buses in Charter Service”.

[3] In its June 22, 2012, response, Stock contested the Board’s jurisdiction, submitting that its business relates to education, which falls within provincial jurisdiction, and that the transportation it performs is essentially local and not interprovincial, except for a few sporadic charter trips. It submits that its business does not fall within federal jurisdiction.

[4] CUPE replied that the interprovincial charter trips performed by Stock are regular, continuous and significant enough to qualify the business as “connecting any province with any other province, or extending beyond the limits of a province”, hence falling under the legislative authority of Parliament as contemplated by section 2(*b*) of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*).

[5] The parties made complete submissions concerning the constitutional facts, on their own initiative as well as in response to the Board’s requests for additional relevant information. The parties also made full submissions regarding the legal consequences to be drawn from these constitutional facts such that, pursuant to section 16.1 of the *Code*, the Board is satisfied, after reviewing all of the material on file, that the documentation and submissions before it are sufficient for it to determine the matter without the need for an oral hearing.

II–Process

[6] The Board must satisfy itself, in each instance and regardless of the position of the respective parties, that it has jurisdiction to deal with any application that is brought before it. The Board does so by assessing the facts provided by the parties as part of its investigation.

[7] Following the original submissions by the parties, the Board requested that Stock provide it and the applicant with additional particulars concerning its operations. Stock did so by letter dated September 27, 2012. An Investigating Officer's Report summarizing the facts was transmitted to the parties on October 15, 2012, and a Case Management Teleconference (CMT) was held with the parties on December 10, 2012, as part of the process.

[8] During the CMT, Stock was asked by the Board to provide additional documentation in support of certain facts relied upon in its previous submissions. It was determined that CUPE would also be allowed to ask Stock for additional relevant information, if any, in relation to the Moncton, New Brunswick, bargaining unit applied for. The parties were asked to file submissions relative to the additional material in compliance with an established timeline for the exchange of documents ending in February 2013.

[9] The process for the exchange of documents was confirmed in *Stock Transportation Ltd.*, 2012 CIRB LD 2942, dated December 11, 2012. In that decision, the Board summarized the CMT and indicated the following on page 2:

It is crucial for the Board to ensure that its record contains the necessary constitutional facts and related documentation on which it will base its jurisdictional decision. The parties agreed that, rather than proceed to a formal oral hearing, it might be more efficient for them to exchange and file with the Board the documents in support of their submissions.

[10] By letter dated February 20, 2013, the parties were also invited by the Board to comment on the relevancy and applicability of a recent jurisdictional decision it issued in *TNT Express (Canada) Ltd.*, 2013 CIRB 670 (*TNT*). The parties exchanged their final submissions on March 11, 2013, at which time the record was complete.

III—Facts

[11] The constitutional facts on record can be summarized as follows:

[12] The primary activity of Stock at its Moncton, New Brunswick, facility is the local transportation of students by bus to and from schools of the New Brunswick School District 2,

pursuant to a Conveyance Agreement made on July 1, 2011. Stock employs approximately 40 drivers (part-time and casual) to operate its local fleet of some 37 school buses. It also maintains a garage facility for its fleet where maintenance is performed by mechanics not covered by this application. It employs a dispatcher, who is also not covered by this application, and who holds the additional title of Charter Coordinator.

[13] The Conveyance Agreement calls for Stock to perform some 99 school runs in the morning to transport the students to their respective elementary, secondary or high schools (33 runs each) of the District 2 network, with similar runs at the end of the day for the return home of the students. The school year comprises 181 days, which therefore means that Stock's fleet and drivers perform nearly 36,000 such runs every school year.

[14] Stock also operates charter services, that is, unscheduled, on demand trips, using the same fleet of buses and drivers. The record shows that Stock performed 779 intraprovincial charter trips in the 12 months ending September 2012, all within the province of New Brunswick, and nine extraprovincial charter trips from New Brunswick to Nova Scotia or Prince Edward Island during the same 12 months, with a return the same day to New Brunswick with the same passengers. The usual duration of an extraprovincial charter trip is two to three hours.

[15] While the groups using the charter services are often students taking part in extracurricular activities, others are various social groups. Stock advertises its general charter services on its Website, in the local Yellow Pages and in school magazines, but there is no specific publicity made for extraprovincial charter services.

[16] Stock was awarded the school Conveyance contract in 2011 after Laidlaw Transit Ltd. (Laidlaw) (later acquired by First Student Canada (First Student)) had been the school bus provider for New Brunswick School District 2 since 2004; it was then carrying on business as Laidlaw Education Services in Moncton and its employees were represented by Local 4694 of CUPE following a final certification order issued by this Board on January 25, 2005 (order no. 8788-U). Approximately half of the current Stock employees in Moncton are former employees of Laidlaw/First Student.

[17] The present record does not disclose precisely what type, frequency or significance of the extraprovincial activity Laidlaw was performing at the time of the certification, nor since. The CIRB's 2004–05 record shows that there was no dispute at that time regarding the federal nature of the business, but it does not disclose precisely what the extraprovincial activity was, nor its frequency and significance, other than one statement contained in the then Investigating Officer's Report to the effect that the employer "regularly does charter trips to other Canadian provinces", found at page 2 of the Report dated December 30, 2004.

[18] The Head Office of Stock is located in Barrie, Ontario, while its parent company, National Express Corporation, has its Head Office in Illinois, USA. Stock conducts other bus transportation activities in Ontario and in Nova Scotia, some of them covered by provincial labour certifications, and none by federal certifications. This record does not disclose precisely what these other Canadian activities might be.

[19] The Moncton operation maintained by Stock is separate and distinct from any of the other Canadian Stock operations; it is a stand-alone operation with the exception that it does however rely on human resources and accounting services and support provided by the Illinois office of the parent company such as the preparation and issuance of employees' paychecks. The Stock corporate organization chart indicates that its Moncton operation reports to the Regional Manager, Atlantic Canada, based in Nova Scotia.

[20] The record indicates that there is no operational reliance by the bus operation in Moncton on other Stock bus operations including the one in Nova Scotia. There is no interchange of equipment and no regular interchange of drivers, with the sole exception of a period during 2011 when some drivers from Nova Scotia were used in Moncton to ensure that mandatory service levels were met; the Nova Scotia drivers continued to be paid from the Nova Scotia operation during this temporary assignment.

[21] In Moncton, Stock does not maintain any permanent extraprovincial transportation licences for its charter services; it secures the necessary licences on an ad-hoc basis, each time it undertakes an extraprovincial charter trip.

[22] It is noted that the record contains a copy of a letter dated June 25, 2012, addressed to Stock, sent by a Government of Canada Inspector, pursuant to Part III of the *Code*, informing the employer that she had concluded her investigation regarding the applicable jurisdiction to the Stock Moncton operation and stating that: “based on information provided to me, I have determined that STOCK TRANSPORTATION LTD. is not subject to federal jurisdiction for the purposes of labour legislation”. However, there is no precise indication of the actual information that led the Inspector to make that determination.

[23] As part of the process for the exchange of documents and information described above, CUPE at first requested information relative mainly to the Moncton operation and its employees together with explanations of the Stock Dartmouth, Nova Scotia, operation as compared to the Moncton operation. On January 14, 2013, CUPE made an additional set of requests for information from Stock in the nature of an exploration of what is the National Express Corporation and the National Express Group, what are their activities and what relationship they have with Stock, how many school districts are presently served by Stock in Canada, who develops the applicable guidelines and policies, what is the role of Head Office in purchasing or leasing vehicles and securing diesel, what is the insurance coverage, how does billing work, as well as other information essentially of the same nature.

[24] CUPE justified this set of additional requests by stating that the answers to be obtained might disclose the presence of a larger federal undertaking of which Stock might be an integral and vital part.

[25] Stock did not provide answers as it objected to the relevancy of CUPE’s additional requests for information because, in Stock’s view, there is no tendered evidence and no foundation on which to establish that the Stock Moncton operation might be a vital and integral part of a “larger” federal undertaking already in existence.

[26] The Board was not asked to determine if it should consider enforcing the disclosure of the requested information but will comment on this issue further in this decision.

IV–Positions of the Parties

A–Applicant

[27] CUPE submits that the charter activities together with the school transportation activities carried out by Stock in Moncton, New Brunswick, constitute an integrated transportation undertaking which extends beyond the province of New Brunswick and is thus subject to federal labour legislation.

[28] CUPE’s submission relies on the interprovincial charter trips performed by Stock, on the fact that a significant portion of Stock’s Website is devoted to the advertisement of its charter services and on the fact that the charter services are also advertised in the local Yellow Pages.

[29] CUPE stresses that the title “Charter Coordinator” assigned to the Dispatcher position is indicative of the importance of the charter activities of Stock. In pointing to the organization chart depicting the reporting line from the Moncton operation to the Regional Manager located in Nova Scotia, the applicant submits that this is a further indication that the activity extends to a province other than New Brunswick and thus should be federally regulated.

[30] CUPE submits that the decision in *Autocar Royal (9011-4216 Québec Inc.)*, 1999 CIRB 42, sets out the appropriate test to be applied in such circumstances, to determine if the extraprovincial aspect of the business is regular and continuous rather than merely casual or exceptional. CUPE stresses, as was mentioned in that decision, that the extraprovincial transportation does not need to be carried out in accordance with a predetermined schedule to be considered a federally regulated activity. It is sufficient to find that the business operator is ready and willing to provide the extraprovincial transportation, if and when customers request it. CUPE relies on the finding that the determination should not be based on a quantitative approach but rather on a qualitative one. CUPE submits that the evidence regarding the extraprovincial activity in this matter, while a small percentage of the overall operations of Stock, nevertheless is “regular and continuous” enough to cause the entire operation to fall within the federal sphere, as was also determined in *Re Ottawa-Carleton Regional Transit Commission and Amalgamated Transit Union, Local 279 et al.* (1983), 44 D.L.R. (4th) 452 (Ont.), amongst other similar cases.

[31] CUPE submits that, as evidenced by the advertising done by Stock, the employer shows itself to the public as ready, willing and able to provide transportation charter services outside of New Brunswick, whenever they are required by customers, such that the extraprovincial aspect of the employer's business is fully integrated with its whole operation and makes it a federal undertaking pursuant to section 2(b) of the *Code*.

[32] CUPE also relies on the fact that many current employees of Stock (more than half) were previously employed by Laidlaw/First Student and performed the same job functions then as they do now; CUPE states that because the previous employer was indeed found by the Board to operate a federal undertaking (order no. 8788-U), it follows that the same undertaking should continue to be found a federally regulated undertaking today, even if it is now operated by Stock.

[33] CUPE underlines the fact that many other federal labour certifications have been issued by the Board over the years covering school bus operations conducted by Laidlaw and First Student, namely in Windsor, Markham, Barrie, Amherst and Prince George, such that there are precedent decisions of school bus operations considered to be federally regulated on account of their respective extraprovincial activities.

[34] CUPE submits that the Inspector's letter of June 25, 2012, should not be given any weight in dealing with the present application, in accordance with the Board's decision in *Cargojet Canada Ltd.*, 2002 CIRB 197, wherein it was ruled that a similar jurisdictional determination made by Human Resources Development Canada was not binding on the Board and was of little assistance in the absence of the detailed factual basis that led to the said determination.

[35] In its final submission in the context of the process for the exchange of documents, CUPE identified an alternative position to its main contention: CUPE states that Stock's Moncton operation may also fall within federal jurisdiction if it were found to be operating in common with National Express Corporation as a single, indivisible, functionally integrated federal undertaking in the same manner as was contemplated in *Westcoast Energy v. Canada (National Energy Board)*, [1998] 1 S.C.R. 322, and submits that the information requested from Stock might establish a basis for this alternative position.

[36] Referring to the decision in *TNT, supra*, CUPE submits that the facts, the findings and the conclusions of that case, dealing as it did with a freight forwarding context, are entirely distinct and distinguishable from the present application and are of limited relevance and jurisprudential weight in assessing the facts and issues in the present matter.

[37] CUPE invites the Board to find that it has jurisdiction over the activities of Stock in Moncton and to proceed with determining the merits of its application.

B–Employer

[38] Stock states that it is not a federal work, undertaking or business as defined in section 2 of the *Code*, that it is rather, “in pith and substance”, a company engaged in the transportation of school students within the province of New Brunswick and that the essential nature of its business relates to education and to local transportation that are matters of provincial jurisdiction.

[39] Stock submits that the few extraprovincial charter trips it performs occasionally are sporadic, infrequent, and are not a regular and continuous part of its activities, such that it cannot cause its local school bus undertaking to be a federal undertaking.

[40] Stock stresses that its advertisement does not specifically reference extraprovincial charter services, that it focuses on and expressly states “Proudly Serving Southeast New Brunswick” as an indication that it does not show itself to the public as an “extraprovincial” charter services provider.

[41] Stock relies on the Board’s decision in *The Gray Line of Victoria Ltd.* (1989), 77 di 169; and 5 CLRBR (2d) 226 (CLRB no. 741) (*Gray Line*) to qualify its extraprovincial trips as too few and sporadic to be considered “a regular and continuous” activity that might attract federal jurisdiction. It submits that when the nine extraprovincial charter trips performed by Stock during a twelve-month period are compared to the 35,838 local school trips performed by the same bus fleet and pool of drivers yearly, the true nature of Stock’s operation is evidently provincial.

[42] Stock also relies on the case of *Zinck’s Bus Co. v. R.* (1998), 46 C.L.R.B.R. (2d) 203 (*Zinck’s Bus*) as authority for the fact that Zinck’s 30 extraprovincial unscheduled bus trips over

a one-year period, which represent less than 1% of its charter traffic, constituted too low a volume of activity to result in the kind of “regular and continuous” activity that would attract federal legislation. Stock underlines that, like in *Zinck’s Bus, supra*, it does not do interlining activities with other transport providers and does not interchange its equipment with others including the Nova Scotia fleet operated also by Stock in Dartmouth.

[43] Relying on these precedents, Stock states that the low volume and limited frequency of its unscheduled extraprovincial trips indicate that the extraprovincial aspect of its overall business is exceptional, occasional and sporadic, rather than regular and continuous such that Stock is therefore not engaged in a federal work, undertaking or business as defined in section 2 of the *Code*.

[44] Stock submits that its Moncton operation is a stand-alone activity in the operational sense and that reliance on administrative assistance or guidance from the human resources or accounting departments of National Express Corporation is not indicative of a federal undertaking, no more so than a local Walmart outlet, for example, might be considered a federal undertaking by reason of the support it receives from the head office located in a different province or state. While its Atlantic Regional Manager is located in Nova Scotia, Stock submits that its Moncton operation is nevertheless independent.

[45] Stock argues that there is no foundation for the alternative argument made by the applicant, that is, that there might be a vast federal transportation activity conducted internationally and in Canada by National Express Corporation of which Stock’s Moncton operation would be an integral part. Stock states that there is no evidence to that effect that could possibly support and justify consideration of the argument.

[46] Referring to *TNT, supra*, Stock notes that, under section 92 of the *Constitution Act, 1867*, provincial jurisdiction is the norm and federal jurisdiction is the exception. It points out that the functional analysis of its daily regular habitual operations leads to the clear conclusion that Stock does not constitute a federal undertaking and that both quantitative and qualitative tests of the extraprovincial trips it performs must result in a finding that they are casual, occasional, irregular and exceptional and do not constitute a regular and continuous activity.

[47] Stock invites the Board to find that it does not have jurisdiction over its Moncton activities and to dismiss the application accordingly.

V–Analysis and Decision

[48] Counsel for both parties are to be commended for their able and helpful submissions on the factual and jurisdictional questions raised in this matter.

[49] The main issue to be resolved here, as debated between both parties, is whether the extraprovincial charter trips performed by Stock are of such “regular and continuous” character that it must attract the application of federal labour legislation to its entire undertaking, even if these charter trips represent a very small fraction of its overall activity otherwise accomplished entirely within a province.

[50] While precedent rulings and examples of similar situations decided in the past are useful guidelines in the determination that must be made by the Board presently, each case of this nature, including the present one, must be evaluated on the merits of its own set of contemporaneous facts and circumstances.

[51] In this context, the applicant argues that the certification issued by the Board in 2005 (order no. 8788-U) covering the then school transportation provider Laidlaw should assist in convincing the Board that the current Stock operation should also be considered a federal undertaking. However, few facts are present in this record or in the Board file of 2004–05 that detail what extraprovincial activities carried out by Laidlaw at that time led to the conclusion that its undertaking was to be considered a federal one. The certification was not revisited since 2005 and there is no detailed evidence on the record that might be used to compare the 2005 activities with those of Stock in 2012–13, let alone the operational changes that might have occurred during the eight years since that certification and the intervening acquisition of the business by First Student.

[52] It is noted that Stock did not acquire the business of Laidlaw or of any other predecessor provider of school transportation; Stock became the new provider of the school transportation with a new Conveyance Agreement, operating its charter services according to its own business strategy and objectives. There is therefore in our view no precedent binding value resulting from

the 2005 certification of Laidlaw on the determination we must make of the present Stock operation and undertaking.

[53] In the same fashion, the various Board certifications identified by the applicant of school bus operators in Ontario do not disclose what extraprovincial activity in each case was found to warrant the application of the federal regime to their respective operations; the present record does not contain evidence of what the relevant activity might be. All these precedents are therefore noted as indicating that a school bus operation can be found to be a federal undertaking, but the Board must still look at the facts and circumstances of the present case to make an informed decision.

[54] In keeping with the teachings of the Supreme Court of Canada notably in *Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters*, 2009 SCC 53 (*Fastfrate*); and *NIL/TU, O Child and Family Service Society v. B.C. Government and Service Employees' Union*, 2010 SCC 45, the Board must conduct the “functional test”, which calls for an enquiry into the nature, habitual activities and daily operations of Stock in and out of Moncton to determine if it constitutes a federal undertaking, all the while taking into consideration that, in constitutional matters, provincial jurisdiction over labour relations is the rule and federal jurisdiction is the exception (*Fastfrate, supra*, at paragraphs 27–28).

[55] Based on the evidence, the Board finds that the daily, habitual activities of Stock are the transportation by bus of students to and from local schools and on excursions. The activities include the transportation of other persons by way of charter services. Every day of the school year, Stock’s buses and drivers perform almost 200 local trips transporting students from home to school and back. Over a period of 12 months, Stock also performs some 770 intraprovincial charter trips.

[56] All this transportation is accomplished within the province of New Brunswick, with the exception of nine excursion charter trips over a period of 12 months that extended outside of the province, to Nova Scotia and to Prince Edward Island. The evidence discloses that each such excursion takes between two to three hours of operation.

[57] While the employer submits that its business is one that is encompassed in the provincial notion of “education”, the Board finds that the nature of the business is more akin to that of transportation of passengers, albeit of students in a great proportion, but “transportation” nonetheless.

[58] The question the Board must now consider is whether the extraprovincial charter trips conducted by Stock make its undertaking subject to federal jurisdiction. In the instant case, nine such unscheduled charter trips were performed over a period of 12 months, amounting to slightly less than a total of 30 hours of operation time for all buses and drivers involved.

[59] As set out at paragraphs 54–56 in *TNT, supra*, the precedent cases are clear that we must rely on a qualitative approach to this question rather than merely on a quantitative perspective; we must determine if such extraprovincial excursions are a normal, habitual, regular continuous activity of Stock as opposed to a casual, occasional, sporadic or exceptional activity.

[60] The Ontario Court of Appeal found, in *Re Ottawa-Carleton Regional Transit Commission and Amalgamated Transit Union, Local 279 et al., supra*, that the municipal bus service, with 450 scheduled daily runs across the Ontario–Quebec border, fell within federal jurisdiction.

[61] However, the Canada Labour Relations Board (the CLRB) found, in *Ottawa Taxi Owners and Brokers Association* (1984), 56 di 73 (CLRB no. 464), that taxi trips across the same border, some on a daily basis, did not bring the undertaking within federal jurisdiction.

[62] In *Gray Line, supra*, the CLRB was considering the constitutional impact of extraprovincial trips on an undertaking otherwise operating a regular, scheduled, passenger bus service in and out of Victoria, to and from other points on Vancouver Island. There had been 29 cross-border trips of various kinds over 15 months, some for concerts in Seattle, some for Nevada excursions, some for school events, and some to deliver or pick up passengers of the catamaran Victoria Clipper in Seattle. In describing the situation, the CLRB had this to say on pages 178; and 235 “Can this be classed as regular and continuous extra-provincial operations? We think not.”

[63] The CLRB concluded at pages 179; and 236:

Taking the overall view of Gray Line's operations, we are satisfied that its normal and habitual activities are intra-provincial and that its extra-provincial activities are no more than intermittent and casual in nature. We therefore decline jurisdiction.

[64] Also of interest is the precedent where the Federal Court examined a similar set of facts in *Zinck's Bus, supra*, a case involving a charter bus operator challenging the applicability of the federal labour legislation (section 251 of the *Code*) to its undertaking. Justice Wetston for the Court stated:

[26] In this case, there was evidence that the Applicant stood ready to provide interprovincial charter service, subject to equipment availability and price. However, while it may have stood ready to provide such services, it did so only 30 times over a one-year period, representing less than 1% of all the Applicant's charter traffic.

[27] The only other evidence with respect to the Applicant's charter business is a single "Yellow Pages" advertisement which does not even mention that the Applicant was engaged in the interprovincial bus business...

[28] In my opinion, the low volume and limited frequency of the Applicant's unscheduled, interprovincial trips indicates that the "interprovincial" portion of the Applicant's business was exceptional, rather than "normal or habitual" or "regular and continuous". Evidence that the Applicant has not engaged in "interlining", as have larger carriers, also suggests that its bus business was not interprovincial in scope.

[65] The Court concluded that the business was a local transportation undertaking not governed by federal labour legislation.

[66] There are strong similarities between the activities as described in *Gray Line, supra*, and in *Zinck's Bus, supra*, with the present set of circumstances: while Gray Line and Zinck's Bus, as well as Stock, stand ready to accommodate a demand for an extraprovincial trip, the Board is of the view, as in these precedent cases, that the occurrence of such actual trips is too infrequent, sporadic, limited and sparse compared to Stock's habitual local regular activity to cause the entire undertaking to fall under federal jurisdiction. Accomplishing merely 30 hours of extraprovincial operation in the course of a year is clearly insufficient in the Board's view to attract the applicability of federal legislation to what is otherwise an everyday local transportation undertaking requiring most of Stock's operation time and resources.

[67] As in *Zinck's Bus, supra*, the Board finds that there is no specific publicity made to the public by Stock of extraprovincial travel and that Stock does not maintain any permanent extraprovincial permits or licences for this type of charter service, and that it does not engage in

“interlining” with others, all compelling corroboration that the activity is intermittent, not regular and not extraprovincial in scope.

[68] Turning to the alternative position advanced by the applicant, the Board finds, as it did in *TNT, supra*, that there is no significant concrete evidence on record to show that there might exist some national or international undertaking, conceivably headed by National Express Corporation, involved in cross-border transportation of passengers, from province to province or internationally. The January 14, 2013 additional request for information made by CUPE to Stock was in the nature of an exploration of the possible thesis, not as a supporting corroboration of a set of substantial allegations and facts already on record.

[69] The Board is of the view that there must be a modicum of appropriate relevant allegations of facts in an application to properly justify a request for information and documents intended to establish, corroborate or support such allegations.

[70] In the present matter, the application under consideration is limited to a bargaining unit based in Moncton, New Brunswick. The additional questions asked by CUPE of Stock are in the nature of an exploration and do not on their own constitute allegations of facts, such that the Board is of the view that the expanded request of January 14, 2013 by CUPE was not relevant to the facts pleaded; there are no allegations from CUPE that other operations in other geographic areas are in any way connected operationally with what Stock’s buses and drivers do in New Brunswick.

[71] Information about the administrative support and operations of an American or Canadian head office in Illinois or in Barrie does not impact the regular and continuous border crossing test. The Board fails to see the relevance of the explorative request for such information and would not have enforced it if it had been called upon to do so.

[72] As a result, the Board finds that there are no proper factual allegations made about Stock forming a vital and integral part of a potential wider interprovincial transportation undertaking. The Board accordingly determines that the alternative position advanced by the applicant is without merit.

VI–Conclusion

[73] Based on the evidence, the Board is satisfied that Stock is “in pith and substance” a local bus transportation business and that the current 30 hours per year of interprovincial charter services activity can only be described as a sporadic activity, infrequent and quite insufficient to attract the applicability of federal labour legislation to what is otherwise, every day, a local transportation business. Accordingly, the Board dismisses the application for lack of jurisdiction.

[74] This is a unanimous decision of the Board.

Graham J. Clarke
Vice-Chairperson

Norman Rivard
Member

Robert Monette
Member