

BRITISH COLUMBIA
LABOUR RELATIONS BOARD
FAX TRANSMITTAL SHEET

Re: Certain Employees -and- 1100 Burrard Holdings Ltd. -and- UNITE
HERE, Local 40
(Section 33(2) - Case No. 66000/13T)
(Sections 6, 9 and 33(6) – Case No. 66010/13)

DATE: November 7, 2013

SENDER: LABOUR RELATIONS BOARD

OPERATOR SENDING: Jayne Ottens, Senior Executive Assistant to
Ken Saunders, Vice-Chair and Registrar

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INTENDED RECEIVER:

FAX NUMBER:

To: Alexander, Holburn, Beaudin & Lang
Attention: Michael A. Watt

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To: McGrady & Company
Attention: Michael J. Prokosh

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To: A Representative of Certain Employees

By E-mail

NUMBER OF PAGES: 6 (including this page)

SPECIAL INSTRUCTIONS:

****NOTE: FACSIMILE OPERATOR, PLEASE CONTACT THE ABOVE INTENDED
RECEIVER AS SOON AS POSSIBLE. THANK-YOU**

BRITISH COLUMBIA
LABOUR RELATIONS BOARD

November 7, 2013

TO INTERESTED PARTIES

Dear Sirs/Mesdames:

Re: Certain Employees -and- 1100 Burrard Holdings Ltd. -and- UNITE
HERE, Local 40
(Section 33(2) - Case No. 66000/13T)
(Sections 6, 9 and 33(6) - Case No. 66010/13)

Enclosed is a copy of the Board's Consent Order dated November 7, 2013 rendered in connection with the above-noted matter.

Yours truly,

LABOUR RELATIONS BOARD



Jayne Ottens
Senior Executive Assistant to
Ken Saunders, Vice-Chair and Registrar

Interested Parties:

Alexander, Holburn, Beaudin & Lang
Barristers and Solicitors
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ATTENTION: Michael A. Watt

McGrady & Company
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1105 - 808 Nelson Street
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ATTENTION: Michael J. Prokosh

A Representative of Certain Employees (via email)

BRITISH COLUMBIA LABOUR RELATIONS BOARD

IN THE MATTER OF AN APPLICATION PURSUANT TO
THE *LABOUR RELATIONS CODE*, R.S.B.C. 1996, c.244

BETWEEN:

1100 BARRARD HOLDINGS LTD.

(the "Employer")

AND:

UNITE HERE, LOCAL 40

(the "Union")

AND:

CERTAIN EMPLOYEES

("Certain Employees")

BEFORE THE LABOUR)
RELATIONS BOARD)
KEN SAUNDERS, VICE-CHAIR AND)
REGISTRAR)

THURSDAY, THE 7th DAY
OF NOVEMBER, 2013

CONSENT ORDER

WHEREAS the Labour Relations Board (the "Board") received applications from the Union and Certain Employees pursuant to Sections 6, 9, 33(2) and 33(6) of the *Labour Relations Code* (the "Code");

AND WHEREAS the undersigned was established as a Panel of the Board pursuant to Section 117 of the Code to deal with this matter;

- 2 -

AND WHEREAS Certain Employees ("Certain Employees") filed an application on September 25, 2013 to cancel the certification dated February 7, 1980, held by UNITE HERE, Local 40 (the "Union"), for a unit employed by 1100 Burrard Holdings Ltd. (the "Employer"), composed of "employees at the Burrard Motor Inn, 1100 Burrard Street, Vancouver, B.C." (the "Decertification Application");

AND WHEREAS UNITE HERE, Local 40 (the "Union") objected to the Decertification Application on a number of grounds, as reflected in the Union's October 18, 2013 submission (the "Union's submission"), including but not limited to the ground that Maria Siblag should be included in the bargaining unit for the purposes of calculating threshold support and being eligible to vote;

AND WHEREAS in the Employer's October 24, 2013 submission (the "Employer's Submission"), it agreed that Maria Siblag is included in the bargaining unit for the purposes of the Decertification Application, and that as a result, the Certain Employees had failed to meet the required level of threshold support under Section 33(2) of the Code;

AND WHEREAS in the Employer's Submission, it also applied to dismiss the Decertification Application immediately and submitted that the Union's complaint regarding unfair labour practices and improper interference (also included in the Union's Submission), were unnecessary. The Union objected to this request, and argued, among other things, that one of the remedies that had been sought by the Union was a 10 month time bar on future applications for decertification;

AND WHEREAS on October 29, 2013, the Board ruled, among other things, that the Employer's application to immediately dismiss the Decertification Application was denied, since dismissing the Decertification Application at that juncture may prejudice the Union's right to access a time bar under Section 33 of the Code; and

- 3 -

AND WHEREAS the Employer and the Union and Certain Employees were able to settle their differences on a "with prejudice" basis, and based on the submissions of the parties, the Board is satisfied that the terms of the settlement are not contrary to the Code, a collective agreement or the Regulation, and the parties have requested the Board to issue the following Consent Order;

NOW THEREFORE, PURSUANT TO SECTION 133(3) OF THE *LABOUR RELATIONS CODE*, THE LABOUR RELATIONS BOARD MAKES THE FOLLOWING ORDER BY CONSENT:

- 1) On the date of the Decertification Application, Ms. Siblaga was an employee in the bargaining unit, with a sufficient continuing interest.
- 2) The application filed by Certain Employees is denied because they failed to meet the required level of threshold support under Section 33(2) of the Code.
- 3) The Union maintains its arguments regarding the issue which was summarized in point 1) of the introduction in the Union's October 18, 2013 submission (i.e. the HIR Bargaining Unit issue). However, in light of the fact that the parties have now agreed that Ms. Siblaga is in the bargaining unit and that the 45% threshold under Section 33(2) of the Code has therefore not been met by the Certain Employees regardless of whether the bargaining unit is the 16 person bargaining unit, or the HIR Bargaining Unit, the Union acknowledges and the Parties agree, and the Board finds on that basis, that it is unnecessary to decide the HIR Bargaining Unit issue in this case.

- 4 -

- 4) The Board refuses to cancel the certification of the Union as bargaining agent, without regard to the result of the representation vote, and further orders that there will be a 10 month time bar on future applications for decertification by any current/future employees of the Employer.

DATED AND EFFECTIVE at Vancouver, British Columbia, this 7th day of November, 2013.

LABOUR RELATIONS BOARD



KEN SAUNDERS
VICE-CHAIR AND REGISTRAR