

COMMONWEALTH OF THE BAHAMAS

2018/CLE/GEN/00264

IN THE SUPREME COURT

COMMON LAW & EQUITY SIDE

**IN THE MATTER OF THE GOVERNMENT OF THE BAHAMAS AND
THE MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY WITH
RESPECT TO SECTIONS 42, 44, 47, 50 AND 51 OF THE INDUSTRIAL
RELATIONS ACT.**

**IN THE MATTER OF THE GOVERNMENT OF THE BAHAMAS AND THE
MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY WITH
RESPECT TO Article 7 OF THE INDUSTRIAL AGREEMENT.**

BETWEEN:

**BAHAMAS EDUCATORS MANAGERIAL UNION
FIRST PLAINTIFF**

AND

**CHARLES WILDGOOSE – (PRESIDENT)
SECOND PLAINTIFF**

AND

**ABRAHAM STUBBS – (TRUSTEE)
THIRD PLAINTIFF**

AND

**BRIDGETTE SEYMOUR – (TRUSTEE)
FOURTH PLAINTIFF**

AND

**THE GOVERNMENT OF THE COMMONWEALTH
OF THE BAHAMAS**

FIRST DEFENDANT

AND

**THE MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY
SECOND DEFENDANT**

AND

**THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE
BAHAMAS**

THIRD DEFENDANT

Before: The Honourable Mr. Justice Keith H. Thompson

**Appearances: Mr. Obie Ferguson of Counsel for the Plaintiffs
Mr. Gary Francis and Mr. Aisdirio Sears of Counsel for the
Defendants.**

**Hearing Dates: June 24th, 2019
August 13th, 2019**

RULING

[1] This matter commenced by way of Originating Summons filed March 06th, 2018, supported by an affidavit by Zane Lightbourne, filed August 13th, 2019. The Originating Summons seeks the following relief:

- “1. A Declaration that pursuant to section 47(2) of the Industrial Relations Act Chapter 321, and in view of the fact that the Bargaining Union Members of the Bahamas Educators Managerial Union participated in the secret balloting process conducted by the Minister or designee, on or about October, 1986 and the fact that the Minister notified the Bahamas Government and the Bahamas Union of Teachers of the results of the Balloting on the date mentioned above declaring that the ballot disclosed the requisite number of employees pursuant to Section 47(2) agreed to the inclusion of section (1) (a) and (b) of the Industrial Relations Act, which forms part of the terms and conditions of members of the bargaining unit.**
- 2. A declaration that the Bahamas Union of Teachers Industrial Agreement was executed on the 18th day of April 2012, and covered the period 1st July, 2010 to 30th of June 2013, and forms the basis of the Collective Agreement for all members of the bargaining unit.**
- 3. A declaration that once the Industrial Agreement is registered, it is binding on the Employer, Employees i.e. Bargaining Unit and the Union and cannot be varied not even by the court.**
- 4. A declaration that pursuant to section 44(3) the agreement effective July 2010, to June 30th 2013, becomes the agreement applicable to the Bahamas Educators Managerial Union from 6th March, 2012 and the members continued to enjoy all the benefits i.e. salary increases, group health insurance, Agency Shop provisions and disciplinary procedures and all other benefits contained in the agreement.**
- 5. A declaration that the Industrial Agreement, pursuant to section 46 to 51 of the Industrial Relations Act, is indefeasibly binding**

on the Employer, the Employee i.e. Bargaining Unit and the Union.

6. **A declaration that the 1st and 2nd defendants were obligated to continue to deduct agency shop contributions as mandated under section 92 of the Industrial Agreement**
7. **A declaration that the 1st and 2nd defendants are in breach of Article 9.2 of the agreement which mandates that they deduct an amount equal to 90% of the dues monthly in agency shop fees.**
8. **A declaration that the Agency Shop dues not deducted from the bargaining unit members by the 1st and 2nd defendants as mandated by article 9.2 of the industrial agreement and section 44 (3) of the Industrial Relations Act be paid to the Bahamas Educators Managerial Union forthwith.**
9. **An order that the 1st and 2nd defendant be ordered to conduct an audit to determine the accurate amount due the Union from their failure to comply with Article 9.2 of the Industrial Agreement and section 44 (3) of the Industrial Relations Act, and the amount found due and owing to the union be paid within 30 days, with interest @ 10% from the 6th March, 2012.**
10. **An order that the Defendants pay the costs associated with and incidental to this Summons.**

[2] Sections 42, 44, 47, 50 and 51 of the Industrial Relations Act, Chapter 321 provide:

“42. (1) A trade union which seeks recognition by an employer as bargaining agent for employees employed by him, shall make its claim for such recognition in writing to the

employer specifying the bargaining unit, if any, in respect of which recognition is sought, and shall serve a copy of such claim on the Minister.

- (2) Within fourteen days (or such longer period as the trade union and the employer may agree, a copy of which agreement shall be forwarded to the Minister) of the date of the receipt of such a claim, the employer shall give notice in writing to the union stating whether he accepts or rejects the claim and, where he rejects the claim, he shall state the reason for such rejection, and shall forward to the Minister a copy of the notice of acceptance or rejection at the time when the notice is given to the union.**
- (3) Where an employer fails to accept a claim for recognition within the period specified in subsection (2), he shall be deemed to have rejected the claim on the day following the expiry of that period.**
- (4) Where such a claim has been, or is deemed to have been, rejected, the union making the claim may, not later than fourteen days after the rejection or the receipt of notice of rejection of the claim, as the case may be, submit the matter to the Minister for determination.**
- (5) In the event of there being only one union claiming to have as members in good standing more than fifty per centum of the employees concerned, then the Minister shall determine, as soon as may be after the receipt of a submission under subsection (4), whether the union making the claim is entitled to recognition as the bargaining agent for the employees concerned, and for**

that purpose the Minister shall have the following powers, that is to say:-

- (a) to determine the appropriate bargaining unit;**
- (b) to require the employer to submit to the Minister within fourteen days of the date of the receipt of such request particulars, in such form as the Minister may specify, with respect to the names of all persons employed by him and the capacities in which such persons are employed;**
- (c) to determine whether more than fifty per centum of the employees concerned desire the union making the claim to be their bargaining agent; and, for the purpose of so determining, the Minister –**
 - (i) may require the union to submit the names of all the members of the union in good standing, employed by the employer concerned at the date of the union's application for recognition as a bargaining agent; and**
 - (ii) shall not be restricted to an examination of the written records of the union but may take such steps and make such other enquiries as are in**

his opinion appropriate for the purpose of satisfying himself that more than fifty per centum of the employees concerned desire the union to act as their bargaining agent;

(d) when considering any matter submitted under subsection (4), to take into account any change in the circumstances which in his opinion occurred since he received the matter and which is relevant to the determination being made.

(6) In the event of there being more than one union claiming to have as members in good standing more than fifty per centum of the employees concerned, then the Minister shall determine, as soon as may be after the receipt of a submission under subsection (4), whether the union making the claim or any other union is entitled to recognition as the bargaining agent for the employees concerned, and for that purpose the Minister shall have the following powers, that is to say –

(a) to determine the appropriate bargaining unit;

(b) to require the employer to submit to the Minister within fourteen days of

the date of the receipt of such request particulars, in such form as the Minister may specify, with respect to the names of all persons employed by him and the capacities in which such persons are employed.

(c) to determine whether more than fifty per centum of the employees concerned desire the union making the claim or any other union to be their bargaining agent; and, for the purpose of so determining, the Minister –

(i) many require the union to submit the names of all the members of the union in good standing, employed by the employer concerned at the date of the union's application for recognition as a bargaining agent; and

(ii) shall take a representational count by secret ballot in order to determine what union the employees desire to be their bargaining agent, and in the taking of such count the Minister may place on the ballot paper, in addition to the names of the unions making the claim;

**the name of the union
recognized as the bargaining
agent, if any;**

**(d) when considering any matter
submitted under subsection (4), to
take into account any change in the
circumstances which in his opinion
occurred since he received the matter
and which is relevant to the
determination being made.**

**(7) Subject to subsection (1) of section 43,
where the Minister has determined whether
any union (and, if so, which) is entitled to be
recognized as bargaining agent he shall
notify in writing the parties concerned of his
determination and such determination shall
be final and shall not be enquired into in any
court.**

**(8) Any employer who fails to comply with any
request of the Minister made pursuant to
subsection (5)(b) or subsection (6)(b) shall
be guilty of an offence and liable on
summary conviction to a fine not exceeding
one thousand dollars for each day on which
he fails to comply with the request.**

- “44 (1) Where there is no industrial agreement in force affecting employees employed by an employer and no union is recognized under the provisions of this Act as a bargaining agent, a claim for recognition as bargaining agent for such employees may be made at any time.**
- (2) Where a union is recognized as a bargaining agent under the provisions of this Act but there is no industrial agreement in force between the said union and the employer, a claim for recognition may not be made by another union until after the expiration of twelve months from the date when the said first-mentioned union was so recognized:**

Provided that, if recognition of a union was granted by the employer without the representative status of the union having been determined by the Minister under subsection (5) or (6) of section 42, a claim for recognition as bargaining agent may be made by another union at any time after such recognition.

- (3) Where an industrial agreement between an employer and a union is in force and registered under this Act, a claim for recognition as bargaining agent by another union may not be made by another union until after the expiration of two years from the date of the commencement of the said agreement;**

Provided that a union which succeeds in gaining recognition in place of the union which is a party to the agreement, shall be bound by that agreement during its currency, so however, that where the replaced union was recognized without its representative status having been determined by the Minister under subsection (5) or (6) of section 42, the union which last gained recognition shall be bound by that agreement for a period of not more than twelve months after it has gained recognition.

(4) Notwithstanding subsection (3), where an industrial agreement between an employer and a union is registered while a claim by another union for recognition by that employer as a bargaining agent is pending, that other union, if it succeeds in its claim for recognition, shall not be bound by that agreement.

(5) Where in pursuance of subsection (5) or (6) of section 42 the Minister determines that a union is not entitled to be recognized as the bargaining agent of the employees concerned, or where a union, having made a claim for recognition, withdraws its claim, such union may not make another claim for such recognition until after the expiration of twelve months after being informed of the Minister's determination or after the withdrawal of its claim, as the case may be.

47. (1) Notwithstanding anything in this Act contained, every industrial agreement shall, subject to the prior agreement

of not less than sixty per centum of the employees comprised in the bargaining unit to whom the agreement relates, also contain provisions -

- (a) for the payment by every employee in the employment of the employer with whom the agreement is made, and on whose behalf the agreement is made, comprised in the bargaining unit, of a contribution to the bargaining agent concerned;**
 - (b) Specifying the amount payable as contribution by an employee, which amount shall be agreed on between the employer and the bargaining agent but shall, in the case of an employee who is a member of the union recognized as bargaining agent, be equivalent to the dues payable from time to time by such member in respect of his membership,, and in the case of an employee who is not such a member ninety per centum of such dues, the times at which the contribution is payable by an employee, the procedure for the collection of the contribution from an employee and for the payment over of the contributions by the employer to the bargaining agent and for all other matters relating thereto.**
- (2) The Minister shall take a representational count by secret ballot in order to determine whether not less than sixty per centum of the employees concerned agree to the**

inclusion in the agreement of the provisions set out in subsection (1) and shall notify the result of the ballot to the employer and the bargaining agent.

- (3) Notwithstanding anything in this Act contained, where the provisions set out in subsection (1) have been included in the agreement, not less than twenty-five per centum of the employees concerned may make written application to the Minister for a representational count by secret ballot to determine whether the agreement should not be amended by the removal of the provisions.**

Provided that no application shall be made until after the expiration of twelve months from the date of the commencement of the agreement.

- (4) The Minister shall, on an application being made under subsection (3), take a representational count by secret ballot of employers comprised in the bargaining unit on the question whether the agreement should not be amended by the removal of the provisions.**
- (5) The Minister shall notify in writing the result of the ballot to the employees who made the application for a ballot, the employer and the bargaining agent.**
- (6) If, on a ballot taken under subsection (4), less than sixty per centum of the employees comprised in the bargaining unit vote in favour of the amendment of the agreement by the removal of the provisions, the Minister shall make an order accordingly and that order shall have effect on the last day of the month in which the ballot was taken.**

50. An industrial agreement under section 46 shall have effect only if it is registered by the Tribunal in accordance with section 49.

51. (1) Every industrial agreement so registered shall during its continuance be binding on –

(a) the bargaining agent and every employee in the bargaining unit for which the bargaining agent has been recognized;

(b) the employer who has entered into the industrial agreement;

(c) any person succeeding (whether by virtue of a sale or other disposition or by operation of law) to the ownership or control of the business for the purposes of which the employees in the bargaining unit are employed; and

(d) any trade union that has been recognized in accordance with the provisions of section 44 as bargaining agent in place of the bargaining agent referred to in paragraph (a) of this section.

(2) No action shall be brought so as to change the funds of any union or the goods or property of any member or officer of any union, in respect of any failure by such union to comply with an industrial agreement which is binding on such union by virtue of subsection (1), but the Tribunal shall have power to make a determination, if it thinks fit,

against such a union, on the application of any person interested, that such union failed to take all reasonable steps in its power, in any case where any member or members of such union, being bound by the industrial agreement, acted in breach of any of its provisions, to prevent such breach; and where any such determination is made the Registrar shall cancel the registration of the union under paragraph (b) of subsection (1) of section 15.”

CASE FOR THE PLAINTIFFS:

- [3] Mr. Charles Wildgoose, the President of the First Plaintiff swore an Affidavit which was filed March 06th, 2018 and a Supplemental Affidavit filed July 15th, 2019 both of which are set out below.

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law Equity Division

SUPREME COURT
779413

2015/CLB/gen/00264

IN THIS MATTER of the Government of the Bahamas and the Ministry of Education, Science and Technology with respect to sections 42, 44, 47, 50 and 51 of the Industrial Relations Act.

IN THE MATTER of the Government of the Bahamas and the Ministry of Education, Science and Technology with respect to article 7 of the Industrial Agreement.

BETWEEN

BAHAMAS EDUCATORS MANAGERIAL UNION First Plaintiff

AND

CHARLES WILDGOOSE
(PRESIDENT) Second Plaintiff

AND

ABRAHAM STUBBS
(Trustee) Third Plaintiff

AND

BRIDGETTE SFYMOIR
(Trustee) Fourth Plaintiff

AND

THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS First Defendant

AND

THE MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY Second Defendant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS Third Defendant

AFFIDAVIT OF CHARLES WILDGOOSE

I, **CHARLES WILDGOOSE** of the Eastern District of the Island of New Providence one of the Islands of the Commonwealth of the Bahamas make oath and say as follows:

1. That I am the duly elected President of the Bahamas Educators Managerial Union ("the Union"), and as such I am duly authorized to make this Application on behalf of the Plaintiff.
2. Unless otherwise stated I depose to the facts and matters herein from my own personal knowledge and from the knowledge acquired by me in my position as President.

3. That in so far as the content of this affidavit is within my personal knowledge it is true to the best of my knowledge, information and belief.
4. That on the 7th February, 2007 the Bahamas Educators Managerial Union was registered. **There is now produced and shown to me a copy of the registered industrial agreement marked exhibit "CW 1".**
5. That the managerial and supervisory employees of the Ministry of Education were governed by the collective bargaining agreement between the Government of the Commonwealth of the Bahamas and Bahamas Union of Teachers, the bargaining agents for the said workers. They were also governed by all of the terms of the Bahamas Union of Teachers. That the Minister of Labour insisted that those terms are the terms of the managerial and supervisory employees of the Ministry until the expiration of that agreement. **There is now produced and shown to me a copy of the registered industrial agreement of the Bahamas Union of Teachers marked exhibit "CW 2".**
6. That the managerial and supervisory employees participated and voted during the balloting to determine the agency shop poll which was conducted and supervised by the Ministry of Labour.
7. That by virtue of section 44 of the Industrial Relations Act, those terms became the terms of the new bargaining agent on the 6th March, 2012.
8. That on the 6th March, 2012 the Bahamas Educators Managerial Union became the bargaining agent for the specified managerial and supervisory employees of the Ministry of Education. **There is now produced and shown to me a copy of the determination certificate determining the union as the bargaining agent for the specified managerial and supervisory employees of the Ministry of Education pursuant to section 42 subsection 7 of the Industrial Relations (Amendment) Act Chapter 321 Statute Laws of the Bahamas marked exhibit "CW 3"**
9. That by letter dated April 10, 2012 the Bahamas Educators Managerial Union wrote a letter to Mrs. Elma Garroway reminding the defendants of their obligations to deduct the dues and pay it over to the Bahamas Educators Managerial Union. **There is now produced and shown to me a copy of the said letter marked exhibit "CW 4"**

10. That on July 1, 2013 the Bahamas Educators Managerial Union renegotiated the agreement of the 1st July, 2010 to the 30th June, 2013. See exhibit "CW5".
11. That by letter dated July 22, 2014 Bahamas Educators Managerial Union's attorney wrote to Mr. David Higgins of the Attorney General's Office advising of the need to settle the matter. There is now produced and shown to me a copy of the said letter marked exhibit "CW 6"
12. That by email dated February 15, 2018 Counsel for the union wrote to Kayla G. Green-Smith of the Attorney General and Ministry of Legal Affairs Office requesting a meeting to settle the agency shop matter, as time is of the essence. There is now produced and shown to me a copy of the said email marked exhibit "CW 7"
13. That this affidavit is made in support of the Originating Summons filed herein on March 6, A.D., 2018.

SWORN to at Nassau, Bahamas)

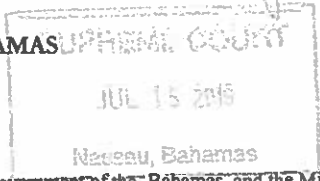
this 6th day of March, A.D. 2018, Charles Wildgoose

Before me


NOTARY PUBLIC

to be used at the trial scheduled for August 13, 2019 before Justice Keith Thompson.

COMMONWEALTH OF THE BAHAMAS SUPREME COURT 2018/CLE/gen/00264
IN THE SUPREME COURT
Common Law Equity Division



IN THE MATTER of the Government of the Bahamas and the Ministry of Education, Science and Technology with respect to sections 42, 44, 47, 50 and 51 of the Industrial Relations Act.

IN THE MATTER of the Government of the Bahamas and the Ministry of Education, Science and Technology with respect to article 7 of the Industrial Agreement.

B E T W E E N

BAHAMAS EDUCATORS MANAGERIAL UNION First Plaintiff

AND

CHARLES WILDGOOSE (PRESIDENT) Second Plaintiff

AND

ABRAHAM STUBBS (Trustee) Third Plaintiff

AND

BRIDGETTE SEYMOUR (Trustee) Fourth Plaintiff

AND

THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS First Defendant

AND

THE MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY Second Defendant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS Third Defendant

SUPPLEMENTAL AFFIDAVIT OF CHARLES WILDGOOSE

I, **CHARLES WILDGOOSE** of the Eastern District of the Island of New Providence one of the Islands of the Commonwealth of the Bahamas make oath and say as follows:-

- 1. That I am the duly elected Past President of the Bahamas Educators Managerial Union ("The Union"), and as such I am duly authorized to make this Application on behalf of the Plaintiffs.

2. Unless otherwise stated I dispose to the facts and matters herein from my own personal knowledge and from the knowledge acquired by me in my position as Past President.
3. That in so far as the content of this affidavit is within my personal knowledge it is true to the best of my knowledge, information and belief.
4. That by letter dated the 11 April, 1989 the Permanent Secretary of the Ministry of Education wrote a letter questioning whether the Principals and the Vice Principals are indeed in the bargaining unit. **There is now produced and shown to me a copy of the said letter marked exhibit "CW 1".**
5. That by letter dated the 5 May, 1989 the Permanent Secretary answered the letter of the 11 April, 1989 and said that she was "advised that the Ministry has indicated that only Principals are to be excluded from the bargaining unit. **There is now produced and shown to me a copy of the said letter marked exhibit "CW 2".**
6. That by circular dated June 15, 1989 the Permanent Secretary sent out circular 45 and 46 to the Principals of the Ministry of Education schools, District Education Officers and Headquarters staff that, "the voting results of the 1985 Bahamas Union of Teachers elections determined the agreement to implement agency shop for teachers. The circular went on to say, "this implementation mandates that all members of the bargaining unit, whether members of the bargaining unit or not, teachers and Vice Principals must by salary deductions pay union dues of \$10.00 per month. **There is now produced and shown to me a copy of the said circular marked exhibit "CW 3".**
7. That letter dated March 28, 2012 the Permanent Secretary wrote to the President of the Bahamas Union of Teachers (B.U.T.) informing her that Bahamas Educators' Managerial Union (B.E.M.U.) was recognized as the bargaining agent for the specific managerial and supervisory employees in the Ministry of Education. **There is now produced and shown to me a copy of the said letter marked exhibit "CW 4".**

8. That by letter dated November 6, 2012 the Permanent Secretary wrote to the President of B.U.T. and copied the President of B.E.M.U. informing them, "that although B.E.M.U. gained recognition in 2012 they were still apart of the collective bargaining agreement. This position remains effective until B.E.M.U. executes a revised Collective Bargaining Agreement (CBA) for its members with the Government. The letter went on to say, "You are therefore kindly asked to facilitate as is necessary the full coverage of members of the B.E.M.U. who were members of the Bahamas Union of Teachers. **There is now produced and shown to me a copy of the said letter marked exhibit "CW 5"**


9. That by letter dated April 23, 2018 Attorney Gary L. Francis for the Attorney General wrote a letter to Counsel for the Plaintiffs seeking urgently Further and Better Particulars of the Originating Summons filed March 6, 2018. **There is now produced and shown to me a copy of the said letter marked exhibit "CW 6"**

10. That by letter dated August 30, 2018 Counsel for the Plaintiffs wrote to Counsel for the Defendants providing him with the particulars he requested. Despite complying with the request from Counsel for the Defendant, we have not heard from them. **There is now produced and shown to me a copy of the said letter marked exhibit "CW 7"**

11. That this supplemental affidavit is made in support of the Originating Summons filed herein on March 6, A.D., 2018.

SWORN to at Nassau, Bahamas)

this 15th day of July, A.D. 2019) Charles Kildgose

Before me

NOTARY PUBLIC

- (4) Mr. Zane Lightbourne the then duly elected secretary of the Bahamas Educator's Managerial Union also swore an Affidavit filed August 13th, 2019.

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law Equity Division

2018/CLE/gen/00264

IN THE MATTER of the Government of the Bahamas and the Ministry of Education,
Science and Technology with respect to sections 42, 44, 47, 50 and 51 of the Industrial
Relations Act.

IN THE MATTER of the Government of the Bahamas and the Ministry of Education,
Science and Technology with respect to article 7 of the Industrial Agreement.

B E T W E E N

BAHAMAS EDUCATORS MANAGERIAL UNION

First Plaintiff

AND

CHARLES WILDGOOSE
(PRESIDENT)

Second Plaintiff

AND
ABRAHAM STUBBS
(Trustee)

Third Plaintiff

AND
BRIDGETTE SEYMOUR
(Trustee)

Fourth Plaintiff

AND

THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS

First Defendant

AND

THE MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY

Second Defendant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Third Defendant

SUPREME COURT

AUG 13 2019

Nassau, Bahamas

AFFIDAVIT OF ZANE LIGHTBOURNE

I, **ZANE LIGHTBOURNE** of the Eastern District of the Island of New Providence one of the
Islands of the Commonwealth of the Bahamas make oath and say as follows:-

1. That I am the duly elected Secretary General of the Bahamas Educators Managerial
Union ("The Union"), and as such I am duly authorized to make this affidavit on

2. Unless otherwise stated I dispose to the facts and matters herein from my own personal knowledge and from the knowledge acquired by me in my position as Secretary General.
3. That in so far as the content of this affidavit is within my personal knowledge it is true to the best of my knowledge, information and belief.
4. That by letter dated the 19th October, Melisa Wright of the Office of the Attorney General and Ministry of Legal Affairs advised the Permanent Secretary, Ministry of Education, Science & Technology that the Bahamas Educators Managerial Union (BEMU) is part of the collective bargaining agreement between the Government and BUT. There is now produced and shown to me a copy of the said letter marked exhibit "ZL 1".
5. That the agreement between the Bahamas Union of Teachers (BUT) and the Ministry of Education was entered into on the 1st July, 2010 – 30th June, 2013. There is now produced and shown to me a copy of the agreement marked exhibit "ZL 2".
6. That this affidavit is made in support of the Originating Summons filed herein on March 6, A.D., 2018.

SWORN to at Nassau, Bahamas)

this 13th day of August, A.D. 2019)



Before me



NOTARY PUBLIC

[5] As it relates to the Affidavit of Charles Wildgoose, I am of the view that the critical paragraphs are 4, 5, 6, 7, 8, 9 and 10. The critical paragraphs in the Supplemental Affidavit are 6, 7 and 8.

[6] In brief, the salient points are:

1. **BEMU – Registered on 7th February, 2007.**
2. **At the time it is alleged that the managerial and supervisory employees of the M.O.E were governed by the CA between the government and BUT -**

What is interesting is that in paragraph 5 of the first Affidavit, Mr. Wildgoose says:

“That the Minister of Labour insisted that those terms are the terms of the managerial and supervisory employees of the Ministry until the expiration of that agreement.” He then exhibits the registered Industrial Agreement of BUT. This makes no connection to the Minister insisting on anything.

3. **In paragraph 6 all he says is that the managerial and supervisory employees participated and voted during the balloting to determine the agency shop poll.**

- If they did, it took place because at the time they were members of BUT.

4. **In paragraph 8 it confirms that on the 6th March, 2012 BEMU became the bargaining agent for the specified managerial and**

supervisory employees of the MOE. In this regard, the determination certificate confirming such is exhibited.

- 5. Paragraph 9 states that the BEMU wrote to Mrs. Elma Garraway reminding the Ministry of their obligations to deduct dues for BEMU Members and pay it over to BEMU.**

[7] In this regard I take special note of Article 7.1 which provides:

“ARTICLE 7: AGENCY SHOP AND UNION DUES:

7.1 “Whenever the Union presents a Certificate of Agency Shop issued by the Minister of Labour under the provisions of The Industrial Relations Act, Part IV, Section 47, the following shall apply:

- a) The agency fee shall be equivalent to ninety percent (90%) of the amount paid by the Union members as Union dues and shall apply to all employees not being members of the Union.**
- b) The Employer shall submit all monies collected from employees affected by the Agency Shop in the same manner and at such time as Union members’ dues are submitted to the Union.”**

[8] The operative words here are:

“WHENEVER THE UNION PRESENTS A CERTIFICATE OF AGENCY SHOP ISSUED BY THE MINISTER SHALL APPLY.”

- [9] There is no paragraph in any of the affidavits sworn on behalf of the Plaintiff which speaks to or exhibits a certificate of agency shop for BEMU.
- [10] Paragraph 8 of the Supplemental Affidavit is particularly critical. It exhibits a letter dated November 6th, 2012 from the then Permanent Secretary to the President of B.U.T. which provided;

Mrs. Belinda Wilson
President
Bahamas Union of Teachers
Nassau, The Bahamas

Your
Reference

(Nau)

Our Reference EDU/A/894

Date 6th November, 2012

RE: THE BAHAMAS EDUCATORS AND MANAGERIAL UNION (BEMU)

Reference is made to the Group Health Insurance Plan for teachers that is managed by Colina Insurance Company.

Kindly note that the Ministry of Finance and the Attorney General's office have advised that current members of the Bahamas Educators and Managerial Union who were previously members of the Bahamas Union of Teachers (BUT) are entitled to participate in the BUT arrangement.

Additionally, kindly note that the BEMU cannot negotiate any medical benefits with Colina as the contract is only between the BUT, Colina and the Government.

Note further, that even though BEMU gained recognition in 2012, they are still a part of the Collective Bargaining Agreement (CBA) between the Government and BUT. This position remains effective until BEMU executes a new CBA for its members with the Government of The Bahamas.

You are therefore kindly asked to facilitate as is necessary the full coverage of members of the BEMU who were previously members of the Bahamas Union of Teachers.

Yours sincerely,

J. Knowles

(FOR) PERMANENT SECRETARY

**cc: Mr. Charles Wildgoose
President
The Bahamas Educators and Managerial Union**

[11] This letter gives sage advice to both BUT and BEMU.

THE LAW:

[12] The thrust of the Plaintiff's argument is as set out in the Skeleton Submissions which state;

"SKELETON SUBMISSIONS AND AUTHORITY

- 1. These Submissions are made in support of the relief prayed for in the Originating Summons supported by the affidavit of Wildgoose filed herein on March 6, 2018.**
- 2. The case of Commonwealth Union of Hotel Services and Allied Workers v. Hutchinson Lucaya Limited t/a Grand Lucayan Bahamas, No. 2013/CLE/gen/00435 is instructive on the relief the Plaintiffs prayed for in the Originating Summons. In para 3 of the decision of Sr. Justice Hartman Longley (as he then was) stated:**

"Item No. 5 relates to the decision of the defendant not to continue deducting the agency fees from the employees and pay them to the first plaintiff based on a letter written by the Minister of Labour. Counsel for the defendant now acknowledges and concedes that that was not the proper basis for the decision taken by the defendant and accordingly that declaration will be made with the consequential order that the deductions recommence

forthwith and that the payments be made to the first defendant.”

[TAB 1]

CONCLUSION:

- 3. We invite the Court to grant the relief with costs to be paid by the Defendant.**

Dated the 21st day of June, 2019.”

[13] The Plaintiff also produced Supplemental Submissions with an authority. In light of what lies at the crux of this application, it is only necessary to deal with the question of the payment of dues and agency shop to the Plaintiff at the expiration of the twelve (12) month period.

[14] Article 7.1 of the Collective Agreement (“C.A.”) between BEMU and the Government of the Commonwealth of the Bahamas provides.

ARTICLE 7: AGENCY SHOP AND UNION DUES:

“7.1 Whenever the Union presents a Certificate of Agency Shop issued by the Minister of Labour under the provisions of The Industrial Relations Act, Part 1V, Section 47, the following shall apply;

- a) **The agency fee shall be equivalent to ninety percent (90%) of the amount paid by the Union members as Union dues and shall apply to all employees not being members of the Union;**
- b) **The Employer shall submit all monies collected from employees affected by the Agency Shop in the same manner and at such time as Union members' dues are submitted to the Union."**

[15] The agreement between BEMU and the government was for the period 1st July, 2013 until 30th June, 2018. The BUT Agreement expired in 2013 and those individuals who were also members of BEMU were then free to fully engage all the benefits under the BEMU C.A. The claim is for outstanding dues and agency shop.

[16] Article 7.1 above is patently clear and makes it mandatory for the Plaintiff to "PRESENT A CERTIFICATE OF AGENCY SHOP" to trigger the deduction of dues and agency shop fees in the first instance and secondly to pay the same over to BEMU. Until such time as that agency certificate is presented, there is no obligation on any of the Defendants to make any deductions to be paid over to BEMU.

[17] The Plaintiff has not disclosed or exhibited any such certificate or even made reference to one.

[18] The CA between BUT and the government would have excluded BEMU on the basis of PRIVACY of contract alone. BEMU was not a party to that CA; thus the wait for twelve (12) months. What is critical is that upon the expiration of the 12 months, it was incumbent on BEMU to immediately apply for the agency shop

certificate to trigger Article 7.1 of the BEMU CA., which, based on the evidence they did not do.

[19] The agency shop certificate of BUT was and is of no use to BEMU as they were not a party to the BUT, CA and BEMU could not in any way rely on that certificate. BEMU has not presented any such Agency Shop Certificate or has refused to do so.

[20] Having read the case of **COMMONWEALTH UNION OF HOTEL SERVICES & ALLIED WORKERS ET.AL. V. HUTCHINSON LUCAYA LIMITED t/a GRAND LUCAYAN BAHAMAS 2013/CLE/gen/00435**. I find that paragraph 3 upon which the Plaintiff relies is not in the circumstances of this case applicable as the position set out in paragraph 3 is specific to the facts of that case.

[21] BEMU is suing as Plaintiff when it was not a party to the agreement between the BUT and the government. The case of **THE BAHAMAS BEVERAGE and WATER DISTRIBUTORS UNION V. KLG INVESTMENTS LIMITED [2009] 2 BHS J. No. 3** serves as good authority to support the legal position taken on behalf of the Defendants. Paragraphs 6 – 10 provide:

6. “I do not think that what is contended by Mr. Ferguson is what the learned judge said. It appears that he sought to give a background for construing section 50 of the Act and did indeed refer to *Ford Motor Company Ltd v. Amalgamated Union of Engineering and Foundary Workers et.al [1969] 2 ALL ER 481* in which the agreement did not have an express term stating that it was legally enforceable. The learned judge stated that the submission of the agreement under section 48 of the Act for

Minister of Labour that the matter has been dealt with as required by law.”

56.03 “If at the expiration date of this contract a new contract is not consummated the terms and conditions of this contract would remain in effect until the new contract is negotiated up to the maximum provided by law.”

56.04 “Where there is change in Ownership of the Company and an Employee continues to be employed after the change in Ownership without interruption, the new Owner shall be the company of that Employee and the Employee’s legally recognized Bargaining Agent (Union) shall continue to be recognized as such. The employment shall be deemed to be continuous notwithstanding the change of Ownership.”

56.05 “This agreement shall be binding on any successor to the Ownership or control of the company for the purposes of which the members of the Bargaining Unit and employed.”

57.02 “The parties to this Agreement agree that the said agreement is to be legally binding on the company, the employees and the Union.”

56.02 “The provisions of section 51(1) (c) of the Industrial Relations Act shall have effect in relation to change of ownership...”

8. **The defendant states that pursuant to an agreement made the 24 May 2006, KLG purchased the assets of Aquapure which was placed into liquidation on 14 December 2006. As such, KLG is not a party to the Agreement. Furthermore, the Agreement expired on 28 February 2006 and no new industrial agreement has been negotiated or entered into by Aquapure, and none by KLG.**
9. **Having regard to the doctrine of privity of contract, since KLG was not a party to the Agreement, at common law it cannot be sued to carry out any obligations under it. Such obligations would have to be voluntarily assumed or imposed by statute. Section 51(1) (c) of the Act modifies the effect of the privity doctrine by the following provision:**

“51(1) (c) Every industrial agreement so registered [under section 49 of the Act] shall; during its continuance be binding on –

(c) any person succeeding (whether by virtue of a sale or other disposition or by operation of law) to the ownership or control of the business for the purposes of which the employees in the bargaining agent are employed;”

Although section 51(1) (c) is incorporated in clauses 56.02 of the Agreement, the section repeats the requirement of section 50 that in order for it to take effect the agreement must be registered.

10. **The same principle applies to the agency shop provision as it relates to the non-union employees. At common law under the privity of contract doctrine parties to an agreement cannot confer rights or impose burdens or obligations on third parties who are not parties to the agreement. The way I understand Mr.**

Knowles' argument is that an agency shop arrangement imposes an obligation or burden upon non-union members to pay 90% of dues to the union and the non-members by definition are not parties to the membership contract between the union and its members. The employer is also given the burden of collecting those dues. As KLG is not a party to the Agreement or the membership contract between the union and its members the obligation is not enforceable at common law. Only the registration of the Agreement can make the agency shop provision legally enforceable against KLG as the successor employer and on the employee. This is by virtue of Sections 50 and 51(1) (c) of the Act."

[22] Section 47(1), (a) and (b) of the Industrial Relations Act Chapter 321 provides:

- 47. (1) Notwithstanding anything in this Act contained, every industrial agreement shall, subject to the prior agreement of not less than sixty per centum of the employees comprised in the bargaining unit to whom the agreement relates, also contain provisions –**
- (a) for the payment by every employee in the employment of the employer with whom the agreement is made, and on whose behalf the agreement is made, comprised in the bargaining unit, of a contribution to the bargaining agent concerned;**
 - (b) specifying the amount payable as contribution by an employee, which amount shall be agreed on between the employer and the bargaining agent**

but shall, in the case of an employee who is a member of the union recognised as bargaining agent, be equivalent to the dues payable from time to time by such member in respect of his membership, and in the case of an employee who is not such a member ninety per centum of such dues, the times at which the contribution is payable by an employee, the procedure for the collection of the contribution from an employee and for the payment over of the contributions by the employer to the bargaining agent and for all other matters relating thereto.”

- [23] Article 7.1 of the CA between BEMU and the government is one such clause referred to in Section 47. It being a clause in the BEMU agreement, the Plaintiff cannot bypass its agreement to seek to pressure the Defendants to do something that is contrary to clause 7.1.
- [24] The Plaintiff has sought many reliefs in its Originating Summons in the form of declarations. However, for the reasons above, it is the view of the Court that it cannot accede to any of the reliefs sought. The Plaintiff, in order to succeed on the claim for the handing over of dues and agency shop fees, must necessarily comply with Article 7.1, failing which the claim fails.
- [25] For the reasons set out above therefore, I refuse the declarations and the consequential relief sought and hereby dismiss the Originating Summons.

[26] Costs to follow the event to the Defendants to be taxed if not agreed.

I so order.

Dated this 19th day of April A.D., 2021.

A handwritten signature in blue ink, appearing to read "Keith H. Thompson". The signature is stylized and cursive, with a large initial "K" and "T".

Keith H. Thompson

Justice