



## Reasons for decision

Canadian Airport Workers Union,

*applicant,*

*and*

Garda Security Screening Inc.,

*employer,*

*and*

International Association of Machinists and  
Aerospace Workers,

*certified bargaining agent.*

Board File: 30856-C

Neutral Citation: 2015 CIRB 764

March 5, 2015

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The Canada Industrial Relations Board (the Board) was composed of Ms. Ginette Brazeau, Chairperson, and Messrs. André Lecavalier and Norman Rivard, Members.

Section 16.1 of the *Canada Labour Code (Part I—Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this matter without an oral hearing.

### **Parties' Representatives of Record**

Mr. Denis W. Ellickson, for the Canadian Airport Workers Union;

Ms. Colleen Arnold, for Garda Security Screening Inc.;

Ms. Amanda Pask, for the International Association of Machinists and Aerospace Workers.

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## **I. Nature of the Application**

[1] The International Association of Machinists and Aerospace Workers (IAMAW) is the incumbent certified bargaining agent for a bargaining unit of employees of Garda Security Screening Inc. (Garda or the employer) who provide pre-board security screening services at Toronto Pearson International Airport, Toronto Buttonville Municipal Airport and Billy Bishop Toronto City Airport. On January 5, 2015, the Canadian Airport Workers Union (CAWU) filed a timely application for certification seeking to replace the IAMAW as the bargaining agent for the unit. The collective agreement in force between the IAMAW and Garda expires on March 31, 2015.

## **II. Positions of the Parties**

### **A. IAMAW**

[2] The IAMAW submits that CAWU does not have the support of a majority of employees in the unit such that it has not met the threshold necessary for the Board to order a representation vote. It indicates that a majority of employees have resigned any membership they may have applied for in the CAWU prior to the date of the application being filed with the Board. The IAMAW provided the Board with a large number of these revocations of support on December 29, 2014, prior to the date of filing of the certification application; it also provided the Board with another group of such revocations on January 6, 2015, one day after the application was filed with the Board. It explains that the delay in filing the second group of revocations was due to the holidays and closure of offices.

[3] The IAMAW also alleges that a significant number of employees who signed a CAWU membership card have not made the required payment of \$5.00. It argues that the non payment of the fee would amount to improprieties that taint all the membership evidence filed with the Board and that this is sufficient ground to dismiss the application.

### **B. CAWU**

[4] CAWU denies any improprieties in the membership evidence it submitted in support of its application. It also submits that the Board should not give weight to the revocations of support evidence that was submitted by the IAMAW as it was solicited by the IAMAW in the workplace during working hours. It also highlights that a large number of the revocations of support was for employees that had not signed a CAWU membership card or that in several cases, they were

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duplicates. CAWU also raises allegations of forged signatures on the revocation evidence that was submitted, and it separately provided the Board with statements from employees to support these allegations.

[5] It asks the Board not to consider any of the evidence submitted by the IAMAW and requests that the Board certify CAWU without a representation vote or, in the alternative, that the Board hold a vote to ascertain the wishes of the employees in the unit.

### **C. GARDA**

[6] The employer takes no position with respect to the application.

### **III. Analysis and Decision**

[7] It is a well established policy that in displacement applications, the Board will require that the applicant demonstrate majority support amongst the employees in the unit. If the applicant meets this threshold, the Board will, in almost every case, order a representation vote. The basis of this policy is based on the premise that once the Board has certified a trade union to represent the employees of a bargaining unit, it is presumed to have the continuing support of a majority of employees in the unit until this presumption is displaced by evidence to the contrary. The Board is also concerned with preserving industrial peace and, by adopting a policy requiring that the union seeking to displace another demonstrate support of 50% + 1, it ensures that the employees are serious about wanting a change of bargaining agent before the Board orders a vote (*Canadian Pacific Express and Transport* (1988), 73 di 183 (CLRB no. 682); and *Canadian Broadcasting Corporation* (1993), 91 di 165 (CLRB no. 1004) see page 172).

[8] The Board relies on membership evidence to establish the wishes of the employees in the proposed unit. This is set out in section 30 of the *Canada Industrial Relations Board Regulations, 2012* (the *Regulations*):

30. In any application relating to the certification of a bargaining agent

(a) the membership of an employee in a trade union is evidence that the employee wishes to be represented by the trade union as that employee's bargaining agent; and

(b) the membership in a trade union of a majority of employees in a unit appropriate for collective bargaining is evidence that the majority of the employees in the bargaining unit wish to be represented by the trade union as their bargaining agent.

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[9] The Board's requirement regarding the evidence of membership in a trade union is codified in section 31(1) of the *Regulations*:

31. (1) In any application relating to bargaining rights, the Board may accept as evidence of membership in a trade union evidence that a person

(a) has signed an application for membership in the trade union; and

(b) has paid at least five dollars to the trade union for or within the six-month period immediately before the date on which the application was filed.

[10] When seized with any application for certification, the Board must first determine if the applicant has valid and sufficient membership evidence to support its application. Where the Board proposes to certify a bargaining agent on the basis of signed membership cards, or before it will order a representation vote, it is critically important that the membership evidence on which the Board will rely to make its decision be accurate and reliable. The standard that the Board applies in the verification of the membership evidence submitted in support of a certification application is very high.

[11] The key question for the Board in this matter is whether the application is accompanied by sufficient and valid membership evidence, as required by sections 30 and 31 of the *Regulations*, to establish that a majority of the employees in the unit wish to be represented by the applicant.

[12] In order to satisfy itself, pursuant to section 28(c) of the *Code*, that the applicant has met the threshold required for a certification or for a representation vote, the Board has put in place a process by which it delegates its investigation powers to the Board's industrial relations officers (IROs) so they may verify and test the membership evidence that is submitted in support of a certification application.

[13] When allegations are made as to the validity of the membership evidence filed by an applicant, the IRO will investigate those allegations by way of confidential interviews with individual employees, taking into consideration all the information submitted by either party to the application. The IRO reports the findings of the investigation to the Board through a confidential report in order to protect the confidentiality of the employee wishes in accordance with section 35 of the *Regulations*. This process is well established and has been reviewed in previous decisions of the Board (see *IMS Marine Surveyors Ltd.*, 2001 CIRB 135 at paragraph 16; *TD Canada Trust in the City of Greater Sudbury, Ontario*, 2006 CIRB 363; and upheld on judicial review: *TD Canada Trust v. United Steel, Paper and Forestry, Rubber,*

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*Manufacturing, Energy, Allied Industrial and Service Workers International Union*, 2007 FCA 285).

[14] The courts have consistently protected this process and the need to keep the results of the investigation confidential given the sensitive nature of employee wishes as protected by section 35 of the *Regulations* (see *Maritime-Ontario Freight Lines Ltd. v. Teamsters Local Union 938*, 2001 FCA 252).

[15] As part of her investigation in the present application, the IRO designated by the Board contacted a significant number of employees and tested the information contained on the membership cards through a series of questions. The IRO conducted this investigation having full knowledge of the allegations raised by both the CAWU and the IAMAW and taking into consideration the specific confidential information submitted to the Board. A number of the employees who were interviewed by the officer and for whom a signed membership card had been submitted confirmed that they had not paid the required \$5.00 fee or that they had not signed a membership card.

[16] The Board takes the requirements regarding membership evidence seriously and has consistently held that non-compliance with the requirements of the *Code* and the *Regulations* are a substantive deficiency rather than merely a technical breach. This is particularly important because the Board relies on the membership evidence to decide whether to grant a certification or to order a representation vote, thereby giving to the applicant access to fundamental rights and privileges under the *Code*. This Board and its predecessor, the Canada Labour Relations Board (CLRB), have consistently applied a high standard when scrutinizing the membership evidence submitted by an applicant union.

[17] In *American Airlines Incorporated* (1981), 43 di 114; and [1981] 3 Can LRBR 90 (CLRB no. 301), the CLRB made a clear statement regarding this type of impropriety in membership evidence and its consequences:

The Board again wishes to stress, as referred to in *City and Country Radio Ltd.*, *supra*, and *Canadian Imperial Bank of Commerce, Sioux Lookout, Ontario*, *supra*, that, in dealing with certification, it has developed a procedure to impress on the employee signing a card and on the union applying for certification the importance of their action. Concurrently with the important changes enacted by Parliament in 1978, which clearly indicated its preference in establishing the union's majority by documentary evidence, the Board raised from \$2 to \$5 the minimum required fee for an employee to join a union. We feel that an employee who has to disburse \$5 to join a union will consider the seriousness of his action before disbursing the money. **The union must then certify to the Board that the money was personally paid by the employee who signed a membership card. If there is any**

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**impropriety in these procedures, the Board will dismiss the application for certification on that sole basis.**

(emphasis added; pages 129–130)

[18] It went further in *K.D. Marine Transport Ltd.* (1982), 51 di 130; and 83 CLLC 16,009 (CLRB no. 400), when it indicated that consequences would be swift and severe in cases of this nature:

The Board is fully cognizant of the importance of proof of union membership and the great weight and reliance placed upon the authenticity of such documentary evidence of employee wishes. Any fraud or tampering with membership cards or records such as signatures, backdated or updated cards, or falsehood in the method of payment of the required initiation fee, will result in swift and severe consequences. ...

(pages 144; and 16,076)

[19] In the present matter, the Board finds, on the basis of the results of the investigation by the IRO, that there were numerous improprieties in the membership evidence filed in support of the certification application. In the Board's view, the nature and the extent of the improprieties that were found have the effect of tainting all the membership evidence submitted in support of the application to the extent where the Board is not prepared to accept its veracity and to rely on it to order a representation vote.

[20] It is also important to note that the Board requires the applicant to submit a Certificate of Accuracy in support of an application for certification. Paragraph 4 of the Certificate of Accuracy states as follows:

4. That the amounts shown as having been paid as union dues and / or initiation fees were actually paid by the employees concerned on their own behalf and on the dates indicated.

[21] In this case, the Certificate of Accuracy was signed by a representative of the applicant on January 9, 2015, and submitted to the Board. However, contrary to the statement contained in the certificate, the Board did find that there were improprieties in the collection of the \$5.00 membership fee and with the signatures on some membership cards which amount to a substantive defect in the membership evidence submitted in support of the application. The Board therefore dismisses the application.

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[22] Given that the application is not supported by valid and reliable membership evidence, the Board does not have to consider the evidence of revocations of CAWU membership submitted by the IAMAW.

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

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Ginette Brazeau  
Chairperson

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André Lecavalier  
Member

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Norman Rivard  
Member