Canada Industrial Relations Board Conseil canadien des relations industrielles

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

# Reasons for decision

United Food and Commercial Workers International Union, Local 175,

*applicant,*

*and*

Northern Air Solutions Inc.

*employer.*

Board File: 30810-C
Neutral Citation: 2015 CIRB **773**
April 23, 2015

The Canada Industrial Relations Board (the Board) was composed of Ms. Ginette Brazeau, Chairperson, and Messrs. Gaétan Ménard and Robert Monette, Members.

**Counsel of Record**

Ms. Sarah Molyneaux, for the United Food and Commercial Workers International Union, Local 175;

Mr. Doug MacLeod and Ms. Katelyn Weller, for Northern Air Solutions Inc.

These reasons for decision were written by Ms. Ginette Brazeau, Chairperson.

## I. Background and Facts:

[1] On December 9, 2014, the United Food and Commercial Workers International Union, Local 175 (UFCW or the union) filed an application for certification of the following bargaining unit at Northern Air Solutions Inc. (Northern Air or the employer):

> All Employees of Northern Air Solutions Inc. working in the Province of Ontario excluding office, clerical, photographer, bookkeeper, accounting, manager of medical operations, maintenance shop manager, chief pilot, operating manager, accountable executive medical director, office manager and all persons above the rank of office manager.

[2] On February 10, 2015, the Board issued Order no. 10733-U certifying the UFCW as the bargaining agent for the following unit at Northern Air:

> all employees of Northern Air Solutions Inc. working in the province of Ontario, **excluding** the President/Accountable Executive, the Operations Manager, the Person Responsible for Maintenance, the Chief Pilot, the Controller, the Manager of Medical Operations, administrative and office staff and on-call advanced care paramedics.

[3] These are the Board's reasons for finding that the air ambulance service operated by Northern Air falls within federal jurisdiction as well as its decision to include the paramedics, with the exception of the on-call advanced care paramedics, in the bargaining unit.

[4] Northern Air operates an airline offering both charter and air ambulance services to the public. Northern Air also has a contract with Ornge to provide it with air ambulance services on an on-call basis.

[5] To provide these services, Northern Air employs pilots, co-pilots, paramedics, maintenance workers as well as office staff.

[6] The employer objects to the Board's jurisdiction over its air ambulance business and to the inclusion of the paramedics in the bargaining unit. It takes the position that its air ambulance services are a distinct business and that the paramedics working in connection with it are subject to provincial regulation.

**II. Position of the Parties:**

**A. The Union**

[7] The union asserts that the employer operates one interprovincial airline business that provides two or more services to clients. It states that "Northern Air Solutions Inc." is the only corporate entity and that it holds itself out publicly as a single airline offering a variety of services, including air ambulance services. The union also indicates that the company manages its employees as a single entity.

[8] The union states that while the employer provides air ambulance and chartered flight services to Ornge, it also provides these services to insurance companies and private individuals. The union argues that the bulk of the employer's business is generated by its air ambulance activities, including: services it provides to Ornge; charter flights for insurers, health

care providers and individual patients; and the transportation of patients, health professionals and medical and biomedical products.

[9] With regard to the Board's constitutional jurisdiction, the union takes the position that Northern Air is an airline and that it operates as such in all aspects of its business, including the provision of air ambulance services. It submits that these air ambulance services are the core of the employer's business. The union submits that the employer owns and operates two planes, both of which are permanently equipped to serve as air ambulances rather than as freight or passenger aircraft, and a jet, which was used only for medivac purposes until it fell out of commission in the winter of 2014.

[10] It further argues that the operation of an airline is a core federal undertaking and the presumption in favour of provincial jurisdiction over Northern Air's labour relations is rebutted. It states that while the province may govern certain aspects of conduct of a class of professionals, such as the paramedics Northern Air employs, that does not determine whether an employer is a federal undertaking for the purposes of the *Code*. The union argues that this question is determined only by looking at the nature of the work or undertaking at an organizational level and not at the level of the work performed by any individual employee or group of employees.

[11] The union argues that the employer's proposed application of the *Northern Telecom Limited* v. *Communications Workers of Canada et al.*, [1980] 1 S.C.R. 115 *(Northern Telecom no. 1*) test is not correct. The union submits that the Board should only apply the *Northern Telecom no. 1* test if it concludes that the employer is in fact operating two distinct businesses, which it submits it is not. If the Board does find it appropriate to apply this test, the union submits that air ambulance services, and therefore the services of the paramedics, form a necessary incidental part of the employer's federal undertaking as an operator of an airline.

[12] The union submits that the constitutional jurisdiction analysis requires the Board to look at the nature of the activities carried on by the employer as a going concern and not at the work of individual employees.

[13] The union also submits that provincial legislation and regulations are not determinative of the question of the Board's constitutional jurisdiction over the employer and its employees.

[14] The union takes the position that an all employee unit is appropriate. In support of this, it argues that community of interest is only one factor for the Board to consider in determining an appropriate unit for collective bargaining. It states that the Board also considers the viability of

the bargaining unit, employee wishes and the territorial scope of the employer's operations. It states that the Board's policy is to prefer all employee units, particularly at a smaller employer.

[15] The union asserts that the advanced care paramedics are either employees or dependent contractors within the meaning of the *Code* and should be included in the bargaining unit as such.

[16] The union asks for a declaration from the Board that the employees at issue are federally regulated and to certify the proposed bargaining on the basis of membership evidence in the appropriate bargaining unit or in the alternative, on the basis of a representational vote.

**B. The Employer**

[17] With regard to the Board's jurisdiction, Northern Air admits that its airline business is federally regulated. However, it asserts that its air ambulance services are separate and distinct from what it describes as its charter airline business. In support of this, it argues that its paramedics are functionally separate from its airline business and specifically that they do not perform any functions which are necessary to the operation of a flight. It argues that when it is providing air ambulance services to Ornge, it is acting as a healthcare provider and that its paramedics are regulated by the Ontario Government. In support of this, the employer cites various pieces of legislation from Ontario as well as decisions from the Ontario Labour Relations Board.

[18] Northern Air submits that the following bargaining unit is appropriate:

> All employees of Northern Air Solutions Inc. working in the Province of Ontario excluding Accountable Executive, Operations Manager, Chief Pilot, Manager of Medical Operations, Person Responsible for Maintenance, Controller, and Paramedics.

[19] The employer further argues that the correct test for determining whether the Board has constitutional jurisdiction over its air ambulance services is the *Northern Telecom no. 1* test. It argues that the Board should examine its relationship with Ornge through this test and conclude that its air ambulance services and its paramedics do not fall under federal jurisdiction.

[20] Northern Air admits that, at the time of filing its response, it employs three full-time and two part-time primary care paramedics and one advanced care paramedic, all of whom work on its planes. However, the employer takes the position that the paramedics are not employed on or in connection with the operation of any federal work, undertaking or business as contemplated by the *Code*.

Alternatively, the employer argues that if the Board does find the paramedics to be under federal jurisdiction, then the paramedics should be excluded from the bargaining unit because they do not share a community of interest with the other employees. Specifically, the employer argues that the paramedics would not benefit from additional mobility nor do they share common employment conditions.

[21] Finally, the employer argues that the on-call advanced care paramedics are independent contractors and not employees within the meaning of the *Code*. It argues that after applying the "Wiebe Door test" to the work of the advanced care paramedics, it is apparent that they own their own businesses, they submit invoices for services to the employer, they are free to accept or reject any assignment, they have control over how they perform their services and they are not economically dependent on the employer.

[22] Alternatively, the employer argues that if the Board concludes the advanced care paramedics are employees within the meaning of the *Code*, they should be excluded from the bargaining unit nonetheless since they are casual employees and the Board's general practice is to exclude them.

[23] Northern Air asks the Board to dismiss the application if there is less than 35% support of employees in the appropriate unit and, in the event that there is between 35% and 50% support, to conduct a representation vote.

## III. Analysis

### A. The Board's Jurisdiction over Federal Works, Undertakings or Businesses

[24] The Board's constitutional jurisdiction over federal undertakings and their employees is anchored by section 4 of the *Code*:

> 4. This Part applies in respect of employees who are employed on or in connection with the operation of any federal work, undertaking or business, in respect of the employers of all such employees in their relations with those employees and in respect of trade unions and employers' organizations composed of those employees or employers.

[25] Such federal undertakings are defined by section 2 of the *Code*, the relevant section being as follows:

> 2. In this Act,
>
> "federal work, undertaking or business" means any work, undertaking or business that is within the legislative authority of Parliament, including, without restricting the generality of the foregoing,
>
> …
>
> (*e*) aerodromes, aircraft or a line of air transportation,

[26] Parliament's exclusive legislative authority over aeronautics is well established as being derived from its peace, order and good government power (see section 91 of *The Constitution Act, 1867* (U.K.), 30 & 31 Victoria, c. 3 (*The Constitution Act, 1867); Reference re Aeronautics in Canada,* [1932] A.C. 54; and *Johannesson* v. *Municipality of West St. Paul*, [1952] 1 S.C.R. 292. As such, airlines and air transportation generally are core federal undertakings falling within federal jurisdiction as explicitly stated in the *Code*.

[27] This is the first time that the Board has been asked to determine the constitutional jurisdiction of air ambulance services. While the Board has issued certification orders for various bargaining units at Ornge and has certified flight paramedics at Canadian Helicopters Limited, the issue of its constitutional jurisdiction over these operations was not in issue in those cases.

[28] That said, it is well settled that provincial competence over labour relations is the rule by virtue of their exclusive jurisdiction over property and civil rights under section 92(13) of *The Constitution Act, 1867*. Exceptionally, Parliament may assert jurisdiction where labour relations are shown to be "an integral part of its primary competence over some other single federal subject" (*NIL/TU, O Child and Family Services Society v. B.C. Government and Service Employees' Union*, 2010 SCC 45; [2010] 2 S.C.R. 696; and *Construction Montcalm Inc.* v. *Minimum Wage Commission et al.*, [1979] 1 S.C.R. 754 (*Construction Montcalm*)).

[29] There are three ways an entity can find itself within this exceptional federal jurisdiction and consequently within the jurisdiction of the Board (see *Tessier Ltée v. Quebec (Commission de la santé et sécurité du travail),* 2012 SCC 23 (*Tessier*); and *Exploration Production Inc.*, 2011 CIRB 583). First, the Board will examine the operations of the entity in question as a going concern to see if the entity is itself a core federal undertaking (see *Construction Montcalm*). If it is not, then the Board will consider whether it is operating in common with another core federal undertaking as a single, indivisible, functionally integrated entity (see *United Transportation Union* v. *Central Western Railway Corp.*, [1990] 3 S.C.R. 1112; and *Westcoast Energy Inc.* v. *Canada (National Energy Board)*, [1998] 1 S.C.R. 322). If it is not, in the final stage of its

analysis, the Board will consider whether the entity's activities are vital, essential or integral to a core federal undertaking (see *Northern Telecom no. 1*; and *Northern Telecom Canada Limited et al.* v. *Communication Workers of Canada et al.*, [1983] 1 S.C.R. 733 – *Northern Telecom no. 2*) (*Northern Telecom no. 2)*. The Board conducts its inquiry into whether an entity is a federal undertaking as a progressive analysis, proceeding only to the next stage if the previous one was inconclusive. Once an entity is found to be a federal undertaking, the presumption that the provinces have authority over its labour relations is displaced and its labour relations consequently fall within the jurisdiction of the *Code* and the Board.

[30] In the present case, Northern Air does not dispute that it is in the air transportation business. However, it has argued that it operates two distinct businesses: one a charter airline business; the other an air ambulance business. It admits that what it describes as its charter airline business is a federal undertaking but takes the position that its air ambulance business is not.

**B. The Functional Test**

[31] As stated above, the first stage of inquiry into whether Northern Air is a federal undertaking is to consider whether it is itself a core federal undertaking. To do so, the Board applies the functional test which is described in *Construction Montcalm* as follows:

> **The question whether an under-taking, service or business is a federal one depends on the nature of its operation**: Pigeon J. in *Canada Labour Relations Board* v. *City of Yellowknife*, at p. 736. But, **in order to determine the nature of the operation, one must look at the normal or habitual activities of the business as those of "a going concern"**, (Martland J. in the *Bell Telephone Minimum Wage* case at p. 772), **without regard for exceptional or casual factors; otherwise, the Constitution could not be applied with any degree of continuity and regularity**; *Agence Maritime Inc.* v. *Canada Labour Relations Board* (the *Agence Maritime* case); the Letter Carriers' case.
>
> (page 769, emphasis added)

[32] It is well understood that in applying the functional test, the Board is examining the nature of the employer's operations and not the nature of the role that any specific employees play in those operations (see *El Al Israel Airlines*, 2009 CIRB 437).

[33] The employer admits that it holds an aviation license issued by the Canadian Transportation Agency and discussed some of its obligations under the *Aeronautics Act*, RSC 1985, c A-2; and the *Canadian Aviation Regulations*, SOR/96-433 in order to maintain this

license. This license permits the employer to fly its aircrafts. The employer's aircrafts are used in the provision of all of its services, including its air ambulance service.

[34] The website materials submitted indicate that, Northern Air holds itself out as having been founded in order to fill a gap in medvac services in the Muskoka area. It describes the services it offers as "Air Ambulance, Corporate Charter, Aerial Photography and much more."

[35] With regard to its air ambulance services, the material from the employer's website states that it flies over a 1000 patients per year to destinations throughout North America and that it can provide private air ambulance services to individuals, hospitals, organizations and insurance companies in need of medical transport. It further states that it has over 10 years of experience conducting these types of flights. Additionally, it states that it is not an air ambulance broker and that its aircraft are staffed and prepared to respond within an hour. It describes the expertise of its equipment and crew as follows:

> With full critical care capabilites, Northern Air Solutions utilizes state of the art medical transport equipment which includes a LP-12 with full invasive monitoring options, IVAC 3 channel intravenous infusion pumps and a LTV 1200 transport ventilator capable of offering all the options required to ventilate patients while being transported. Our Advanced and Critical Care flight paramedics have no less then 10 years of experience in a dynamic air ambulance environment and can be accompanied by specialist physcians if required.
>
> [*sic*]

[36] As mentioned above, the employer also provides air ambulance services to Ornge on an on-call basis. There is no dispute that the employer provides these services to Ornge using its own airplanes.

[37] The unique character of the air ambulance services provided by Northern Air, regardless of whether for Ornge or otherwise, is the transportation of patients by airplane. Without the airplane, there would be no air ambulance service.

[38] Based on the materials before the Board, it is evident that the habitual activity of the employer's operations is that of air transportation on its airplanes. For whom or what end it flies these airplanes does not alter that it is in the business of providing air transportation. Since Parliament has seen fit to give the Board explicit jurisdiction over aircrafts and air transportation, the Board finds that Northern Air's entire operations, including its air ambulance operations, constitute a federal undertaking. Given this finding, Northern Air's labour relations are subject to the *Code* and within the jurisdiction of the Board.

[39] Having found that Northern Air is a federal undertaking in its own right, the Board need not go on to the next stages of its constitutional jurisdiction analysis, which would analyze whether two separate undertakings were operating as a single, indivisible, functionally integrated federal undertaking or whether there was a provincial undertaking that was vital, essential or integral to a core federal undertaking.

[40] As such, the Board rejects the employer's analysis of the constitutional jurisdiction question, which was largely based on the *Northern Telecom no. 2* factors. The employer's proposed analysis jumps right to the third stage of considering whether an otherwise provincially regulated local undertaking could be transformed into a federal undertaking because it is vital, essential or integral to one. Such an analysis fails to first examine whether Northern Air's operations, including its air ambulance services, constitute a core federal undertaking either in and of itself or as a single, indivisible and functionally integrated common operation with another core federal undertaking.

[41] The employer's arguments in support of this analysis, namely that Northern Air's air ambulance service and its paramedics are healthcare providers and that the paramedics are not vital to its charter business, are not viable in light of the Board's finding that the employer's operations are a federal undertaking in their own right. Neither the relationship between Northern Air and Ornge nor the paramedics' role on a flight changes the fact that the employer operates a business that transports people by airplane. In the Board's view, the air ambulance services performed by Northern Air's employees cannot be constitutionally characterized separately from the rest of the air transportation operation.

[42] Finally, the employer made various arguments regarding the significance of the Ontario Labour Relations Board certification order for a bargaining unit of paramedics at Ornge. Its view was that since that certification order exists, the paramedics that Northern Air employs should also be provincially regulated. The Board does not agree with this argument. The provincial certification, which the Board notes was made absent any examination of the constitutional issues at play here, is not determinative of the Board's jurisdiction (see *Dilico Anishinabek Family Care*, 2012 CIRB 655).

[43] As noted above, once the employer's operations are found to be a federal undertaking, then the labour relations governing its employees, including the paramedics, whose services form part of those air transportation operations, fall under federal jurisdiction. The question of

whether they should be included in the proposed bargaining unit is a separate issue and one for the Board to determine based on its finding of an appropriate unit for collective bargaining.

**C. Appropriate Bargaining Unit**

[44] When seized with an application for certification of a group of unrepresented employees, the Board must first determine the scope of the unit that the Board considers appropriate for collective bargaining. The *Code* provides the Board with the exclusive authority to determine the appropriateness of a unit. The relevant portions of section 27 state:

> 27. (1) Where a trade union applies under section 24 for certification as the bargaining agent for a unit that the trade union considers appropriate for collective bargaining, the Board shall determine the unit that, in the opinion of the Board, is appropriate for collective bargaining.
>
> (2) In determining whether a unit constitutes a unit that is appropriate for collective bargaining, the Board may include any employees in or exclude any employees from the unit proposed by the trade union.

[45] It is a well understood principle that in making this determination, the Board need not find the ideal or even the most appropriate bargaining unit. Rather, it will exercise its discretion to give employees a realistic opportunity to exercise their rights under the *Code*. In doing so, the Board weighs and considers a variety of factors, including the employer's organizational structure, community of interest and the viability of the unit. The Board described its approach in *Time Air Inc.* (1993), 91 di 34 (CLRB no. 991) as follows:

> When dealing with applications for certification, the Board has the power and the discretion to determine an appropriate bargaining unit.
>
> …
>
> In the numerous decisions that the Board has issued dealing with the appropriateness of bargaining units, whether they be applications for certification or applications for review of bargaining units, the Board has always jealously guarded its discretion to find the unit appropriate for collective bargaining in the circumstances of the case before it. In so doing the Board has identified a large number of criteria it will consider when determining what is an appropriate bargaining unit. Needless to say, not all of these criteria are applied nor are they applicable to any single case. Some of the criteria favour smaller bargaining units while some favour broader bargaining units; some are more applicable to a first time certification while some apply more appropriately to a review of bargaining units. Moreover, the criteria finally applied in any given case may be weighted differently than when they are applied in another case. The Board has always maintained that it did not have to determine the ideal unit, but only one which is an appropriate unit. The whole determination always depends on the facts of each particular case.
>
> As it was seen in **Royal Bank of Canada** v. **S.O.R.W.U.C.**, file no. A-849-77, October 4, 1978 (F.C.A.), the duty of the Board is neither to facilitate nor to hinder the certification of

> unions. However, the Board may exercise its discretion so as to give employees a realistic possibility of exercising their rights under the *Code*. While the Board has generally expressed a strong preference for large, all-employee industrial bargaining units, it has always had to balance that preference against giving employees a realistic and meaningful possibility of exercising their freedom of association under the *Code*.
>
> (pages 38-39; emphasis in original)

[46] Since the appropriateness of a bargaining unit is a question of fact, the weight given to each or any factor will depend on the circumstances of each case. In making its determination, the Board is guided by the fundamental purpose of the *Code*, which is to facilitate access to collective bargaining (see *Teleglobe Canada* (1979), 32 di 270; [1979] 3 Can LRBR 86; and 80 CLLC 16,025 (partial report) (CLRB no. 198), affirmed by the Federal Court of Appeal, unreported October 3, 1980, file nos. A-487-79 and A-514-79). The Board is also seeking to foster industrial stability in the workplace by establishing a viable structure for collective bargaining that also takes into consideration the wishes of the employees (see *AirBC Limited* (1990), 81 di 1; 13 CLRBR (2d) 276; and 90 CLLC 16,035 (CLRB no. 797) (*AirBC*).

[47] In this case, the union has applied for an all employee unit that includes the pilots, co-pilots, paramedics and that excludes the office and clerical staff as well as managers and those above the rank of managers. The union's proposed unit consists of 33 employees, which represents the majority of the employer's total workforce.

[48] The employer disagrees with this proposed unit and seeks to also have the paramedics excluded. The employer argues that there is no community of interest between the paramedics and the other employees in the proposed unit as they do not share common employment conditions. It also argues that on-call advanced care paramedics should be excluded because they are either independent contractors or because they are casual employees with insufficient connection to the bargaining unit.

[49] In *AirBC*, the predecessor to this Board, the Canada Labour Relations Board, discussed its approach to determining an appropriate bargaining unit in the airline industry and stated:

> Generally speaking, depending on the size of the airline (i.e. national, regional, etc.), the Board has indicated over the years that the larger the employer, the more likely the bargaining units would be specialized. Conversely, the smaller the airline the more likely it would be that the employees would be included in single or larger multi-skill bargaining units. (See **Victoria Flying Services Ltd.** (1977), 23 di 13; and 77 CLLC 16,072 (CLRB no. 74; and **General Aviation Services Limited** (1979), 34 di 791; and (1979) 2 Can LRBR 98 (CLRB no. 182).

> There is really no set rule when it comes to bargaining unit configurations in smaller airlines, it is the prevailing circumstances that will dictate the Board's response.
>
> ...
>
> In reality, depending on the circumstances, in a small airline any combination of occupational groups is possible. Any combination of pilots, flight attendants, dispatchers, maintenance, reservations, ramp and baggage handlers, etc., can form an appropriate unit. However, when numbers of employees warrant it the Board will divide some of these groups into separate units. The key consideration being divergent community of interest. As well, where possible the Board prefers to create company-wide units in the airline industry as opposed to single location units which are popular in other industries in the federal jurisdiction such as broadcasting, longshoring and, to a certain extent, in the trucking industry.
>
> (page 8; emphasis in original)

[50] There is no question that Northern Air is a small airline operation. Looking at the organizational chart provided by the employer, it is evident that the employees report to a small management team, with each departmental head reporting to the Operations Manager who ultimately reports to the President/Accountable Executive.

[51] Furthermore, given the small nature of the operations at Northern Air, the community of interest issue is different than it would be at a larger, national airline. In this case, because of the small number of aircrafts the employer flies, it is evident to the Board that the pilots, co-pilots, maintenance workers and paramedics share similar working conditions. While there may not be opportunities for mobility within the bargaining unit, that fact alone is not enough to find that no community of interest exists. The employer's concerns regarding different professional qualifications and different terms and conditions regarding wages, overtime and hours of work as between the paramedics and the other employees in the bargaining unit can be overcome by incorporating specific terms into the collective agreement.

[52] Finally, as mentioned above, this is a first time certification of the employees at Northern Air. As such, the Board will give more weight to allowing the employees to have access to collective bargaining in a unit that is viable. A collective bargaining structure that includes all groups will promote access to a meaningful collective bargaining process. However, the Board does accept the employer's argument to exclude the on-call advanced care paramedics from the unit on the basis that they are casual employees.

[53] Generally, the Board will exclude casual employees from a bargaining unit on the basis that they do not share a community of interest with regular and part time employees. The Board commented on the distinct character of casual employment in *Bank of Montreal, Sherbrooke, Quebec* (1987), 69 di 102; 19 CLRBR (NS) 112; and 87 CLLC 16,044 (CLRB no. 621), stating:

> In the Board's view, **genuine** casual employees do not share a sufficient community of interest with the other employees to include them in the same bargaining units as regular employees and part-time employees.
>
> What is a genuine casual employee? In the notion of casual work, there is an element of chance or a chance factor which requires that the voluntary and immediate availability of a potential employee coincide with the unforeseen need of an employer to have work done. Conversely, as soon as the need is foreseeable, only part-time work is automatically created: the employee is not a casual worker but a part-time one. Moreover, as soon as an employee's availability is guaranteed and assured, a part-time job is automatically created.
>
> Casual employment is therefore the product of a given employer's unforeseen need to have work performed and the chance, random and voluntary availability of a given employee. Some examples will illustrate this point.
>
> (page 108; emphasis in original)

[54] More recently, in *Parrish & Heimbecker*, *Limited*, 2008 CIRB 420, the Board stated its general approach regarding casual employees:

> [54] The Board's general practice is to exclude casual employees from a unit of regular and regular part-time employees. This is so because, generally, such casual employees do not share a sufficient community of interest with the other employees. For example, in *Alberta Wheat Pool* (1991), 86 di 172 (CLRB no. 907), set aside on other grounds in *Alberta Wheat Pool* v. *Canada Labour Relations Board and Grain Services Union (C.L.C.)* (1993), 157 N.R. 91; and 93 CLLC 14,051 (F.C.A., no. A-1271-91), the Board did not include part-time and casual employees in the appropriate bargaining unit, so as not to dilute the rights of the full-time grain employees. In the circumstances, the Board determines that the casual employee should be excluded from the bargaining unit as having an insufficient community of interest with the other regular employees in the proposed unit.

[55] In this case, the Board accepts the employer's evidence and argument that the on-call advanced care paramedics work irregular hours on an unpredictable basis at the request of the employer and that some have never worked for the employer. As such, the Board finds that the on-call advanced care paramedics do not have a sufficient attachment to the workforce to be considered to have a community of interest with the members of the bargaining unit.

## IV. Conclusion

[56] Having determined that Northern Air is a federal undertaking and based on the membership evidence that was submitted in support of the certification application, the Board is satisfied that, as of the date of the application, a majority of the employees in the unit wished to have the union represent them. Accordingly, the Board certifies the applicant union as the bargaining agent for the bargaining unit described in its Order no. 10733-U.

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

_____

Ginette Brazeau
Chairperson

_____

Gaétan Ménard
Member

_____

Robert Monette
Member