Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Public Service Alliance of Canada,

applicant,

and

Aéroport de Québec Inc.,

employer.

Board File: 26929-C
Neutral Citation: 2010 CIRB **557**
December 14, 2010

The Canada Industrial Relations Board (the Board) was composed of Ms. Louise Fecteau, Vice-Chairperson, and Messrs. André Lecavalier and Norman Rivard, Members. A pre-hearing conference was held in December 2008 and a teleconference was held on January 22, 2009, for the hearing scheduled for February 2009. The parties then asked the Board to postpone the hearing because they were in negotiations to renew their collective agreement, which had expired on December 31, 2008. On June 23, 2010, in response to the parties' request to put the case in abeyance until October 30, 2010, the Board allowed the request but scheduled a hearing in November 2010 should the parties be unable to come to an agreement. Finally, the Board heard the parties in Québec on November 8 and 9, 2010.

Appearances

Mr. James Cameron, for the Public Service Alliance of Canada;

Mr. Alphonse Lacasse, for the Aéroport de Québec Inc.

These reasons for decision were written by Ms. Louise Fecteau, Vice-Chairperson.

The union called three witnesses, Messrs. Richard Côté, Robert Picard and Normand Pelletier. The employer called one witness, Ms. Geneviève Desroches.

I – Background and Nature of the Application

[1] This is an application to review a bargaining unit structure, filed on June 16, 2008, pursuant to section 18.1 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*), by the Public Service Alliance of Canada (the applicant or the union). The union requests that the Board divide up the bargaining unit for which it is the certified bargaining agent in two separate units.

[2] On July 23, 2008, the Aéroport de Québec Inc. (the employer) submitted a preliminary objection in which it requested that the Board dismiss the union's application for review since the Board had found, on July 3, 2001, that only one unit was appropriate for collective bargaining, despite the fact the union had asked for two.

[3] In an administrative letter sent to the parties on November 12, 2008, the Board, after reviewing the parties' respective positions, dismissed the employer's argument that the principle of *res judicata* should apply in this case. Moreover, the Board noted that the labour relations might have changed since it issued the certification order on July 3, 2001, and also noted the power conferred on it pursuant to section 18.1 of the *Code*.

[4] The unit that is the subject to this application was determined by the Board on July 3, 2001, and the certification order was issued on August 14, 2001 (order no. 8104-U). On June 6, 2007, in response to a joint request by the parties to update the description of the bargaining unit further to the creation of new positions, the Board issued a new order (order no. 9290-U), which states:

> all employees of the Aéroport de Québec inc., excluding the General Manager, Strategic Planning Advisor and Executive Support, Senior Management Assistant, Director of Operations, Director of Finance and Administration, Executive Assistant, Director of Development, Manager of Technical Services and Maintenance, Manager of Firefighter Services, Manager of Airport Service, Human Resources Clerk,

> Assistant Manager of Finance and Administration, Accounting Comptroller, Director of Property Management and Project Management, and Executive Assistant.

[5] The union's application is therefore to divide up this unit in such a way that the firefighters could form a unit that is separate from the general unit described above. It must be noted that in 2001, the union had applied to exclude the firefighters from the general unit and the Board had refused, giving the following explanation:

> The Board determined, pursuant to section 27(1) of the *Code*, that a single all employee unit including firefighters is appropriate for collective bargaining. In rendering its decision, the Board considered the collective bargaining history of the parties, the fact that the transfer plan applies to all employees, the mobility of the work force and the community of interest between the employees . . .

[6] The union's certification by the Board in August 2001 was issued in the context of airport transfers, including that of Québec, by Transport Canada to private entities, in this case to the company Aéroport de Québec Inc. Two unions then sought certification as bargaining agent and, following a vote, the Public Service Alliance of Canada was recognized as the bargaining agent. Before their transfer to the Aéroport de Québec Inc., the firefighters for whom the union is requesting a separate unit were subject to a master agreement. That master agreement, signed by the Treasury Board of Canada and the current union, contained many collective agreements, including one for the firefighters.

[7] The parties entered into a first collective agreement on June 23, 2004, which expired on December 31, 2008. The parties are in negotiations to renew the collective agreement and to date, only the non-monetary component has been settled.

II – The Evidence

[8] From the start, the Board reminded the parties that the burden of proof was on the union because it was the applicant in this case and, to convince the Board to grant its application, the union had to establish that the current unit was no longer appropriate for collective bargaining.

A–The Union

1–First Witness

[9] Mr. Richard Côté is the union's Regional Vice-President for Quebec. Previously, he worked for Transport Canada. He was responsible for the file on airport transfers to private entities, including the Aéroport de Québec Inc.

[10] He was also responsible for negotiating the first collective agreement between the parties, which took place between 2001 and 2004. He indicated that the four-year collective agreement was finally signed in June 2004, after 65 days of bargaining. He stated that he was not actually at the bargaining table for the renewal of the collective agreement. He noted that there were problems related to the merger of eight collective agreements into one, and that prior to the transfer of the Québec airport to a private entity that is the employer, there were many collective agreements in force, including the firefighters' agreement.

[11] He claimed that the firefighters' schedules differ from the other employees' schedules. Since 2009, their shifts have varied between 10 and 14 hours, either from 6:30 a.m. to 4:30 p.m. or from 4:30 p.m. to 6:30 a.m. Previously, the shifts lasted 18 hours.

[12] The witness described the tensions that existed during the strike in 2004. The firefighters and some other blue-collar workers who, at the time, were covered by an agreement entered into by the parties in 2003 on the maintenance of certain activities during a strike or lockout, were in favour of a strike. The strike lasted a long time, according to the witness. It went on for 115 days. Employees who wanted to return to work and resolve the conflict, including the white-collar workers, were required to strike, whereas those who were covered by the agreement to maintain certain activities, including the firefighters, did not want to return to work, but were paid all the same.

[13] The witness also stated that the employees' return after the conflict was difficult and the strike affected the work environment.

[14] The witness also noted that a general meeting of the firefighters included in the general unit was held in April 2008, and that 29 of 30 voted in favour of dividing up the current unit for the purpose of creating a separate unit consisting solely of firefighters.

[15] On cross-examination, the witness admitted that three different representatives replaced each other between 2001 and 2004, during the collective agreement negotiations. Clearly, the time required to replace these key people caused delays. The witness also admitted turning to the media to respond to the employer during the strike that went on from February to the end of May 2004. In his opinion, this approach was justified because the employer gave false information regarding the offers.

2–Second Witness

[16] Mr. Robert Picard is a firefighter. He worked at the Dorval airport from 1974 to 1981 and since 1981 he has been working for the Québec airport. He was at the bargaining table between 2001 and 2004 as union representative for the firefighters. He is also the firefighters' representative at the bargaining table for the renewal of the agreement.

[17] The witness described the life of a firefighter. Their work is to save lives and respond to emergencies, and they are the first respondents at the airport. They intervene when there are bomb threats and incidents involving contagious diseases, dangerous substances, piracy or other exceptional circumstances. He indicated that the response or reaction time in case of danger or an emergency call is three minutes.

[18] The witness also described the firefighters' work environment and stated that it is particular to them. Firefighters, in his opinion, make up a team of their own because they work at the fire station and live together, eat together, sleep in dormitories and participate in sports together to stay in the physical shape required of firefighters.

[19] As with the previous witness, he described the special work schedules of firefighters, which are completely different from those of other airport employees. Firefighters work on holidays such as

Christmas and New Year, as well as on weekends. The witness stated that the emergencies that firefighters handle differ from other situations, their work stations are different and he maintained that they are often in a separate classification within the collective agreement. He claimed that there is no possibility of work force mobility between firefighters and members of the other trades at the airport. Firefighters cannot strike because their activities must be maintained during a strike or lockout.

[20] The witness described the training required to become a firefighter, which includes three years of training to obtain a vocational school diploma (DEP), and the obligation to retake a "certification" test every three years after obtaining the diploma. The firefighters' training is also subject to the *Canadian Aviation Regulations*, SOR/96-433, and they must also have first response training.

[21] According to the witness, firefighters must also be in very good physical condition. They are the first responders at the airport and must undergo an annual medical exam. Their career opportunities are limited to that of becoming captain.

[22] The witness stated that he is aware of only one case where a person who held a position of heavy equipment operator or technician, aerodrome maintenance, was transferred to the position of firefighter. He stated that it is a unique case and added that the person in question had been a firefighter in 1994 and a firefighter position became available in 2004. The witness stated that even though this person had already been a firefighter, she was subject to a six-month probationary period.

[23] The witness also stated that at other airports in Canada, such as in Montréal, Winnipeg and Edmonton, firefighters form a unit that is separate from the other employees at the airport.

[24] The witness described the negotiation period between 2001 and 2004. He noted that there were many disagreements and much frustration, particularly because the firefighters and other trades were subject to an agreement to maintain certain activities in accordance with subsection 87.4(1) of the *Code*. He also alleged that the firefighters' different work schedules mean their sick leave is calculated differently. The same applies to overtime. A minimum number of firefighters is required

24 hours a day. According to the witness, all these differences create tension and frustration during negotiations, as was the case during the negotiations of the first collective agreement.

[25] He described the situation that existed at the time of the strike vote in 2004. The firefighters voted in favour of the strike while they were all working. He noted that, based on the other employees' reaction, they seemed to believe the strike was only for the firefighters. He was of the opinion that the other employees resented the firefighters.

[26] With respect to the current negotiations to renew the collective agreement, the witness admitted the mood was better. He stated that there were 48 bargaining sessions to deal with the non-monetary component. According to the witness, negotiations of the monetary component will be more tedious and, in his opinion, the situation will be as difficult as during the first negotiation. He stated that the firefighters changed classification and that they have been included for a year in the same classification as the electricians, plumbers and mechanics. In his opinion, this reclassification had a significant impact on the firefighters as they are now at the top of the salary scale. As a result, their possibilities for wage increases are very minimal. According to the witness, there is no affinity that justifies keeping the firefighters in the general bargaining unit.

[27] On cross-examination, the witness indicated that he represents the firefighters at the bargaining table and stated that current negotiations to renew the collective agreement are going well. He declared that the mood is better and the points of contention were resolved as a result of good communications. He claimed that compromises were made by all.

[28] The witness admitted that other groups of employees at the airport also have schedules that differ from other employees. This is the case, for example, with electricians and plumbers who work from 5:00 a.m. to 7:00 p.m. from Monday to Friday inclusively. Moreover, in winter, heavy machinery operators must be present 24 hours a day, seven days a week, and have no statutory holidays.

[29] Regarding the reclassification committee established in the fall of 2006, the witness admitted that it was provided for in the collective agreement and he represented the firefighters himself,

although they did not want to participate. The witness admitted that the process the committee used was appropriate and decisions were made by consensus. He did however state that the firefighters never sought reclassification and regretted that the firefighters' training and the fact they must take a recertification test every three years were not considered as determinative factors in the reclassification process. He stated that the firefighters requested a review of the reclassification committee's decision regarding their new classification, but that request was denied.

[30] Regarding the firefighters' work force mobility, the witness was categorical on this point and stated that it is nonexistent, except for the case of one heavy equipment operator who obtained a firefighter position in 2005. He stated that this employee had previously been a firefighter and even so had to be "recertified," which explains her six-month probationary period.

[31] The witness also admitted that other trades are subject to the maintenance of activities during a strike or lockout, such as heavy equipment operators, but are not governed by the *Canadian Aviation Regulations*.

[32] The witness also admitted that firefighters are represented on the labour relations grievance committee, occupational health and safety committee and the joint committee on the employees' group insurance and pension fund. The witness also confirmed that there are no grievances pending. He also admitted that the employee Christmas party was held at the fire station last year to give the firefighters on duty the opportunity to attend.

3–Third Witness

[33] Mr. Normand Pelletier is a union advisor and chief negotiator for the current negotiations. He is a permanent union employee. Until 2006, he was an investigator at the Canada Revenue Agency. Mr. Pelletier explained that the notice to bargain for the renewal of the collective agreement was issued to the employer in 2007. Negotiations began in March 2009. The non-monetary component of the new agreement was settled after about 50 bargaining sessions. Like the prior witness, he stated that up until now, the bargaining had been done politely and respectfully.

[34] He claimed that the monetary component is a completely different issue and that, before bargaining started with the employer, there was already a great deal of frustration among the groups of employees. The witness told the Board that before the airport transfer to the private sector, the firefighters were at the same level as firefighters at National Defence; therefore, their classification was always compared to the classification of federal public servants. He also said that he is afraid of repercussions from the first collective agreement. He claimed that the firefighters' demands clash with those of the other groups of employees. The firefighters' special work schedules, along with their working conditions that differ from those of the other groups of employees, justify their exclusion from the general unit. He claimed that the firefighters' work environment is different from that of the other groups of employees. The firefighters have very close ties to each other. To date, the witness revealed that the firefighters' salary demands and expectations are much higher than the other unionized employees. He noted that the results of a study conducted in 2004 by Sobecco–regarding a comparison of a same occupational group, namely firefighters–showed that firefighters at the Québec airport earned less, which explains their high expectations. For example, the firefighters at the Halifax airport earn a salary 20 to 25% higher than those at the Québec airport. To show the difference between the firefighters and the other groups of unionized employees at the airport, the witness stated that the current collective agreement contains a specific chapter dealing with firefighters. The witness clearly stated that major problems are expected if the firefighters remain in the current bargaining unit.

[35] In terms of the job evaluation plan submitted in evidence by the employer, the witness indicated that the firefighters were at the highest salary level compared to other trades included in their classification. He sees a major problem with this as long as the firefighters remain in the general unit.

B–The Employer

[36] The employer presented one witness, Ms. Geneviève Desroches, environmental and safety management system specialist. The witness stated that she participated on the job evaluation committee with three union members. Initially, each employment group, or position, was classified. According to the job evaluation plan, the firefighters were included in class 4 with client service janitors, electricians, mechanics, plumbers, computer technicians, and planning and preventive

maintenance officers. Each classification was then evaluated in order to give it a percentage weight; this was done according to various factors and sub-factors that the committee had previously determined. Any evaluation by the committee could be challenged. According to the witness, the firefighters asked for a re-evaluation and obtained a higher classification.

[37] On cross-examination, the witness indicated that, before sitting on the job evaluation committee, she had not had any training in this regard, and she did not think that the other committee members had either. The witness indicated that each of the factors or sub-factors is of great significance because the weight of each factor helps determine the result of the evaluation of each job. For example, according to the job evaluation plan submitted as evidence, the "dexterity/coordination" factor was weighted at 5.8%, whereas the "unpleasant physical working conditions" factor was weighted at 4.1%. The witness admitted that the firefighters disagreed with the choice of factors. She stated that they challenged at least half of them, including the "human resources" factor, which was evaluated at 8.3%. The witness said that the fact that firefighters must submit to a "recertification" every three years and update their knowledge was not taken into consideration. Only the acquisition of new skills was considered. The same applies to English. Command of spoken or written English was not a criterion or factor considered because the captain of the firefighting team could intervene if necessary.

III – Parties' Arguments

A–The Union

[38] At the outset, counsel for the union admitted that he has the burden of satisfying the Board of the validity of amending the certification order issued in 2001, which created a general unit encompassing the firefighters and other trades. He also noted that he has the burden of showing the Board that the current unit cannot effectively bargain for the renewal of the collective agreement that expired on December 31, 2008. He indicated that the Board has the power to change the current bargaining structure and that the facts in evidence give ample justification.

[39] He claimed that the negotiation of the first collective agreement clearly shows how little the firefighters have in common with the other trades that are included in the bargaining unit. The negotiations went on for three years, required 65 sessions and led to a 115-day strike in the winter. He noted that this was the longest strike by airport employees in the country, that the effects of that strike linger among the white-collar workers and that tensions lingered even after the agreement was signed.

[40] Counsel for the union referred to Mr. Picard's testimony, which, in his opinion, shows that the firefighters are a group of their own. They wear a uniform and save lives in dangerous circumstances, such as a bomb threat, contagious illness or a plane crash. Counsel noted that the firefighters' work requires a great team spirit at the fire station. They work together, eat together, sleep at the fire station and participate in sports together to maintain their physical and psychological fitness. They have three minutes to intervene in an emergency. They are regularly tested for their physical fitness and must be "recertified" every three years, otherwise they cannot continue to work as firefighters.

[41] Counsel claimed that there is no possible work force mobility between firefighters and the members of other unionized trades. He noted only one exception, the case of Ms. Villeneuve, who had previously been a firefighter at the airport.

[42] Counsel reminded the Board that, during the negotiation of the first collective agreement, marked by a 115-day strike, all the firefighters had voted in favour of the strike, despite the fact they were paid because they were subject to the maintenance of services deemed essential. He also noted the recent vote where 29 of 30 firefighters were in favour of dividing up the current unit. He noted that the other unionized employees also wish to exclude the firefighters from the general unit.

[43] He also reminded the Board that the so-called "non-monetary" component of the current negotiations to renew the collective agreement that expired in December 2008 required 55 bargaining sessions. Referring to Mr. Pelletier's testimony, counsel claimed that negotiations of the monetary component will be difficult. The witness Pelletier stated that there were already tensions among employees in class 4, considering the firefighters' high demands. He expects that the firefighters will vote in favour of a strike once again.

[44] Counsel also recalled Ms. Desroches's testimony regarding the job evaluation plan and the percentage weight given to various factors or criteria. Counsel noted that the evidence shows the importance of weighting each factor. He noted, for example, that a weight of only 8.2% was given to the "working conditions" factor, which includes physical and psychological fitness that is very important for firefighters, but less important for other classifications.

[45] Lastly, counsel reminded the Board that reality indicates that the particularities of the firefighters' classification argues in favour of dividing up the general bargaining unit and creating a separate unit for them. Counsel for the union reminded the Board of the factors it considers when creating or maintaining large units, relying on Board decisions, including *AirBC Limited* (1990), 81 di 1; 13 CLRBR (2d) 276; and 90 CLLC 16,035 (CLRB no. 797). He noted that these factors, including lateral mobility of employees, stability and a framework of common employment conditions, are not present in this case; as a result, the Board must grant the application.

B–The Employer

[46] Counsel for the employer claimed to be surprised that counsel for the union stated that firefighters would vote to strike again in the current negotiations. He claimed that this statement violates the very essence of the *Code*. He claimed that the Board cannot support such a statement. There are 96 employees in class 4, including the firefighters. The firefighters represent around 20% of the classification.

[47] He also noted that it is normal for salary differences to exist between employees working for an airport such as the Québec airport and those working, for example, in Toronto. He added that the firefighters' situation is not unique and other job groups also have distinct conditions from the others. For example, he noted that the heavy equipment operators' work schedules are unique to them.

[48] Regarding the number of bargaining sessions involved in the non-monetary component of the renewal of the agreement, counsel reminded the Board that three different union representatives replaced each other at the bargaining table, which partially explains the length of the negotiations

to settle this component. He claimed that work sessions had already taken place on October 18 and 28, 2010, to address the monetary component and that the parties were not at each other's throats.

[49] According to counsel, nothing in the union's evidence shows that the current unit is no longer appropriate for collective bargaining, aside from the firefighters' interests, which he qualifies as "self-serving."

[50] He noted that the training requirements for firefighters are not exceptional either. Many of the trade groups at the airport also require vocational school diplomas, such as electricians, plumbers and welders. He also claimed that, according to the evidence, the firefighters are represented at all levels on the company's labour-management committees, from the labour relations committee to group insurance and occupational health and safety committees.

[51] Regarding the job evaluation plan, counsel for the employer said he was surprised at the negativity expressed towards the joint committee's work in this regard; the classification system was provided for at article 35.06 of the agreement at the union's specific request. He added that the committee's work was done in close collaboration with the union. Counsel for the employer alleged that the union's evidence does not justify dividing up the general unit determined by the Board in 2001, or creating a separate unit for the firefighters.

[52] Counsel for the employer filed a book of case law and doctrine, restating the criteria that applied in cases with similar applications as the one the union filed in this case. He stated that the fact that certain employees, including the firefighters, must work during a strike or lockout to respect the requirements of section 87.4 of the *Code* does not impede the Board from determining or reviewing the bargaining unit structure.

[53] He requested that the Board dismiss the union's application.

IV – The Law

[54] Section 18.1(1) of the *Code* reads as follows:

> 18.1(1) On application by the employer or a bargaining agent, the Board may review the structure of the bargaining units if it is satisfied that the units are no longer appropriate for collective bargaining.

[55] As we know, the burden of proof rests with those who allege that the units are no longer appropriate for collective bargaining. The Board considered this question in *Expertech Network Installations Inc.*, 2002 CIRB 182, in which it states as follows:

> [108] Unlike section 45, section 18.1(1) provides that the Board must be satisfied that the units in question "are no longer appropriate for collective bargaining." This wording implies the demonstration that the current bargaining structure is inappropriate, a sort of negative proof . . .

[56] With respect to the nature and the content of the burden of proof, the Board is of the opinion that it is much higher than for an application for review filed under sections l8.1(2), 35 or 45 of the *Code*. In any event, Parliament has made a point of specifying in section 18.1(1) that the Board had to be satisfied that the units are no longer appropriate for collective bargaining, which is not the case for sections 35 and 45 of the *Code*.

[57] The Board is of the opinion that it is necessary to that end to establish a serious degree of proof to warrant a review of the current bargaining unit structure rather than simply to show that another structure would be appropriate or more appropriate for collective bargaining.

[58] On that point, in *Canadian Broadcasting Corporation*, 2003 CIRB 218, a majority decision, the Board decided as follows:

> [113] Because the new statutory provision differs, while the Board agrees that there is some onus, it does not fully agree with the CEP's suggestions respecting the nature and content of that onus. The Board is of the view that section 18.1(1) should not always be interpreted as creating a high threshold or heavy onus, but rather, must be given a definition consistent with the actual language contained in the *Code*, applied in the context and in consideration of the applicable facts. ... **The facts and circumstances which have led an employer or a bargaining agent to apply for a review must be carefully considered.** ... the Board must take a broad and contextual view and should not necessarily impose a burden of proof that is not required or implied by the relevant *Code* provisions, considered in their factual and statutory context. The Board does not, therefore, view the bargaining unit review provisions of section 18.1(1) as necessarily imposing a high threshold or high burden of proof.
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> (emphasis added)

[59] In the above-noted case, one of the points raised by the minority member was that in his opinion, the majority endorsed a "much broader basis for conducting bargaining unit reviews" pursuant to section 18.1(1), whereas the Board had, until then, based its decisions on compelling reasons.

[60] The aforementioned decision was subject to an application for reconsideration under section 18 of the *Code*. In its application, the applicant (the Communications, Energy and Paperworkers Union of Canada) claimed that Parliament, through section 18.1(1) of the Code, empowered the Board to review the structure of the existing bargaining units and had henceforth established a lower threshold than the one that previously existed.

[61] In *Canadian Broadcasting Corporation*, 2003 CIRB 253, the Board unanimously dismissed the application for reconsideration and stated the following with respect to the grounds warranting a review of bargaining unit structures under section18.1(1) of the *Code*:

> [68] In essence, the majority members of the initial panel concluded that, in conducting a review under section 18.1(1) of the *Code*, it must take a broad and balanced view of the relevant factors, including the reasons or motives behind a review application. It found as well that it should not refuse to address problems relating to bargaining units until problems become so **serious** or **completely intolerable** when it is apparent that the units are no longer appropriate. It also endorsed a broad approach, as opposed to a narrowly remedial approach as is presently reflected in the Board's decisions relating to common employer declarations and declarations of sale of business. **The present panel agrees with this broad and balanced approach of considering the context in which any section 18.1 application is initiated, as well as considering all of the facts and circumstances of an application before the Board.**
>
> [69] In the opinion of the present panel and contrary to the applicant's submissions, **this clearly does not mean that the Board has done away with the requirement of an applicant establishing compelling or sound reasons for undertaking a bargaining unit review pursuant to section 18.1(1) of the *Code*.**
> ...
>
> ...
>
> [73] Consequently, the present panel cannot agree with the proposition advanced by the applicant to the effect that the decision of the majority rests entirely in its conclusion that Parliament, through section 18.1(1) of the *Code*, has expanded the jurisdiction of the Board to review existing bargaining units, **thereby lowering the threshold previously applied.** ...
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> ...
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> [77] As stated above, **the reconsideration panel does not agree that**, in the decision under review, **the Board has abandoned the "compelling reasons threshold."** It is clear from a reading of the decision

> as a whole and, in particular, the passage referred to in paragraph 69 above that the Board still requires compelling or sound reasons before it will review the structure of bargaining units.
>
> (emphasis added)

[62] In *Rogers Cablesystems Limited*, 2000 CIRB 51, the Board decided that **compelling** reasons were needed to review the bargaining unit structure under section 18.1(1) of the *Code*. It had this to say on that issue:

> [31] Under the new provisions of section 18.1, it is not sufficient to show that the remedy requested is more appropriate than what currently exists; **there must be compelling reasons why the bargaining structure is no longer appropriate and warrants interference.** ...
>
> (emphasis added)

[63] With respect to the relevant factors for the application of section 18.1(1) of the *Code*, in *Canadian Broadcasting Corporation (218)*, *supra*, the Board indicated as follows:

> [114] ... The parties and the Board should be prepared to address such problems and situations as arise in a flexible manner aimed at ensuring effective industrial relations and sound and constructive labour management and collective bargaining practices. The Board should not refuse to address problems with inappropriate bargaining units until the problems grow serious or completely intolerable, if it is apparent that the bargaining units are no longer appropriate **to the extent that effective industrial relations have been significantly impaired.**
>
> (emphasis added)

V – Decision

[64] There is no doubt that the Board, and all labour relations boards in Canada, is reluctant to authorize dividing up an existing unit unless there are serious reasons to do so, as mentioned in the analysis of the recent case law described above. Dividing up a certified unit is therefore an exception.

[65] In this case, in light of the union's submissions and the evidence that was presented during the two days of hearing, the Board finds that it must divide up the unit. There are numerous arguments that justify dividing up the current bargaining unit in two units.

[66] As of November 2000, after the transfer of the Québec airport by Transport Canada to the employer, a private company, the union had requested the Board to create a separate unit for the firefighters. Under section 27(1) of the *Code*, the Board had determined that a single unit for all employees, including the firefighters, was appropriate for collective bargaining. In reaching this conclusion, the Board had, at the time, correctly considered the history of collective bargaining between the parties, namely the Treasury Board and the union, the fact that the transfer plan applied to all employees, work force mobility and the employees' community of interests.

[67] What has happened since then to justify the Board's decision to amend the current bargaining unit? Are there compelling reasons to take a different point of view? First, there is the issue of the negotiation of the first collective agreement for the employees recently transferred to the Aéroport de Québec Inc. between the new employer and the union. Those negotiations started in 2001 and lasted three years; as the evidence showed, they did not go smoothly and left wounds. In addition to being lengthy, they led to a strike that lasted 115 days. The evidence showed that negotiations were a source of frustration, not only for the firefighters who supported the strike but also for the groups of employees who wished to return to work.

[68] The collective agreement has expired since December 2008, almost two years now. The parties began negotiations to renew the agreement but have only recently settled the non-monetary component. The monetary component, a very important part of the bargaining, is still to be settled. According to the evidence, 40 some bargaining sessions were required for the parties to agree on the non-monetary component. It is true that three different union representatives replaced each other at the bargaining table, but the testimony given by Mr. Pelletier, the chief negotiator for the union, was clear. Negotiations will likely be difficult and significant problems are expected if the firefighters remain in the general unit.

[69] The firefighters are also dissatisfied with the job evaluation plan submitted in evidence by the employer. According to the evidence, their dissatisfaction stems from the fact that the percentage weight, based on predetermined factors and sub-factors, does not take into consideration the ongoing training firefighters must take since they are required to submit to a "recertification" every three years. Moreover, the fact that their working conditions have nothing in common with those of the

other classifications was not taken into consideration, or only partially, by the joint job evaluation committee. In addition, again in regard to the job evaluation plan, as noted by the witness Pelletier, the fact the firefighters are at the top of the salary scale compared to other trade groups in their classification indicates that major problems will arise when negotiating the monetary component of the renewal of the collective agreement that expired on December 31, 2008.

[70] The evidence also showed that there was no possible work force mobility between firefighters and the other unionized trade groups at the airport, except for the one person who had previously been a firefighter 10 years earlier, because of the firefighters' specialized training and their being subject to the *Canadian Aviation Regulations*. Another compelling reason to divide up the general unit is that firefighters, at least at an airport, form a separate group of employees. They wear a uniform, work, eat, sleep at the fire station and participate in sports together because of the requirements of their job.

[71] The facts also show that the firefighters, although currently subject to the same agreement, have working conditions, in terms of work schedules, leave and overtime, that are distinct from the other members of the general unit.

[72] As a result, the Board is of the opinion that the evidence produced meets the criteria set out at section 18.1(1) of the *Code* and those developed by the Board's case law regarding the degree of evidence required to satisfy it to divide up a current unit on the ground that it is no longer appropriate for collective bargaining. Based also on the difficulties experienced during the negotiation of the first collective agreement, and according to the evidence heard, more than nine months after the certification order was issued, the Board was able to assess the relevance of amending the current unit.

[73] In a decision rendered on January 23, 2003, in *Quebec Tugs Limited*, 2003 CIRB 213, the Board granted the application for review of the bargaining unit structure. The Board divided up the unit, as in the present case, to form a separate unit including pilot boat captains. In that case, the parties were also in negotiations to renew the collective agreement that had expired two years earlier. The Board stated the following regarding the ability to enter into a collective agreement:

> [23] The fact that the two groups were not able to enter into a collective agreement that can satisfy their divergent interests must also be taken into consideration. As noted above, the ability to enter into a collective agreement is the very essence of a bargaining unit's viability and the most important criterion in determining appropriateness.

[74] For these reasons, the Board grants the union's application to divide up the bargaining unit certified on August 14, 2001, and amended on June 6, 2007, by order no. 9290-U. Therefore, the Board confirms that certification order no. 9290-U shall exclude the firefighters from now on. Moreover, the Board issued a new order for a new unit consisting solely of firefighters. In this regard, the Board is satisfied that the applicant meets all the essential criteria related to certification, including the majority support.

[75] The orders regarding these reasons for decision shall be issued under separate cover.

[76] For the above-noted reasons, the Board grants the union's application. This is a unanimous decision.

Certified Translation
Communications

Louise Fecteau
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Norman Rivard
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