Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

International Brotherhood of Electrical Workers, Local 1541,

applicant,

and

Nasittuq Corporation; Raytheon Canada Limited; Canadian Base Operators Inc.,

employers,

and

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 787,

intervenor.

Board File: 30489-C

International Brotherhood of Electrical Workers, Local 1541,

complainant,

and

Raytheon Canada Limited; Canadian Base Operators Inc.; United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 787,

respondents.

Board File: 30562-C
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Canada

The Canada Industrial Relations Board (Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. Richard Brabander and Gaétan Ménard, Members. A hearing was held on July 14, 15 and 17, 2015 in Ottawa.

Appearances

Ms. Samantha Lamb and Ms. Frances Middleton, for the International Brotherhood of Electrical Workers, Local 1541;

Mr. Richard J. Charney and Ms. Heather Cameron, for Canadian Base Operators Inc.;

Mr. Blair McCreadie and Ms. Carmen Francis, for Raytheon Canada Limited;

Mr. Steven P. Williams, for Nasittuq Corporation; and

Ms. Laurie Kent, for the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 787.

These reasons for decision were written by Mr. Graham J. Clarke.

I. Nature of the Jurisdictional Objection

[1] This decision examines whether the Board has jurisdiction over a portion of Raytheon Canada Limited (Raytheon), a subcontractor which had won a competitive bid and obtained a contract from the Canadian government (Canada) to take over the "care, control and custody" of the Northern Warning System (NWS). The NWS provides the Department of National Defence (DND) with critical information about unidentified planes or missiles which might enter northern Canadian airspace.

[2] This decision also determines whether a portion of Raytheon's subcontractor, Canadian Base Operators Inc. (CBO), which performed some of the services under the Raytheon-Canada contract, fell within the Board's jurisdiction.

[3] Both CBO and Raytheon raised objections to the Board's jurisdiction when the International Brotherhood of Electrical Workers, Local 1541 (IBEW) filed an application for single employer and sale of business declarations. CBO and Raytheon similarly contested the Board's jurisdiction over the IBEW's related unfair labour practice complaint which also named the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 787 (UA) as a respondent.

[4] This decision addresses only the question of the Board's constitutional jurisdiction over these matters.

[5] The Board has concluded that Raytheon's services, including those of its subcontractor CBO, are vital and essential to Canada's NWS federal undertaking. A portion of their undertakings therefore falls within the Board's jurisdiction.

[6] This decision provides the Board's reasons.

II. Facts

A. Pleadings

[7] The parties' pleadings provide helpful context.

[8] On June 2, 2014, the IBEW filed an application requesting both a sale of business and a single employer declaration. The IBEW had had a collective agreement with Nasittuq Corporation (Nasittuq), the previous contractor providing services to Canada for the NWS.

[9] The IBEW alleged, *inter alia*, that Raytheon and CBO were successor employers when they commenced providing similar services to Canada for the NWS.

[10] In its June 27, 2014 response, Raytheon contested that any sale of business had taken place or that it could be subject to any single employer declaration. Rather, it alleged it was simply the successful bidder for an extensive Request for Proposal issued by Public Works and Government Services Canada (PWGSC).

[11] Raytheon also contested the Board's jurisdiction at paragraph 9(*d*) of its response:

> 9. At the outset, RCL submits that the Board should immediately dismiss the Application, based on the following preliminary objections:
>
> …
>
> (d) This Application is outside the scope of the Board's jurisdiction because the services to be provided under the NWS Contract would not be a federal undertaking.

[12] In its June 27, 2014 response, CBO similarly contested the merits of the IBEW's application, as well as the Board's jurisdiction over its operations:

> 55 CBO submits that the Application should be dismissed, as its performance of facilities maintenance work under the Contract is provincially regulated and not subject to the *Code*. Further, if CBO and the facilities maintenance work it performs locally is provincially regulated, the CIRB has no jurisdiction in to (*sic*) declare it a

single employer or successor employer pursuant to sections 35 and 44 of the *Code*.

56 While the pith and substance of the NWS may be within federal jurisdiction as being directly related to and necessarily integral to a core federal power pursuant to section 91(7) of the *Constitution Act, 1867*, being "Militia, Military and Naval Service, and Defence", this does not serve to automatically bring CBO, a contractor solely engaged to provide facilities maintenance services for the NWS, under federal jurisdiction.

[13] On July 7, 2014, the UA asked for intervenor status, which the Board later granted. The UA has a longstanding collective bargaining relationship with Black & McDonald (BML), one of CBO's parent companies. CBO and Raytheon had agreed to voluntarily recognize the UA for the work on the Raytheon-Canada contract (hereinafter Renewal Contract). That voluntary recognition put the UA at odds with the IBEW's claims regarding a sale of business and/or single employer relationship.

[14] On November 17, 2014, the Board decided various preliminary issues in *Nasittuq Corporation*, 2014 CIRB LD 3317 (*Nasittuq 3317*). In its initial application, the IBEW had sought a single employer declaration which would include, *inter alia,* both PWGSC and DND. The Government of Canada contested the Board's jurisdiction to make that type of finding. The Board in *Nasittuq*, *3317,* confirmed that the *Code* did not apply in respect of Crown employees.

[15] The Board also requested that notices of the constitutional question be sent to the Attorneys General under section 57 of the *Federal Courts Act*.

[16] On January 15, 2015, the Board set the dates of July 14–17, 2015 for evidence and argument concerning the jurisdiction issue.

B. The NWS Renewal Contract

[17] During the period 2003–2014, Nasittuq had provided NWS-related services to DND. In 2013, PWGSC issued a Request for Proposal for that work.

[18] In or about April, 2014, PWGSC announced that Raytheon's proposal for the Renewal Contract had been accepted (Exhibit 5, Tab 1). Raytheon would provide the services, as well as its invoices, to DND.

[19] The Renewal Contract provided helpful background on the NWS. All parties referred to various provisions of the Renewal Contract during the hearing.

[20] For example, article 1.1 described the diminishing need over time for northern radar sites to have permanent military personnel and civilian contractors:

> 1.1 During the early years of radar activity in the Arctic there was a permanent military and civilian contractor presence at all sites operating and maintaining the radars. **Over time the military element was removed, and with the advancement of technology and changing concepts, contactor** (*sic*) **presence diminished until the present day where North Warning System (NWS) radar sites in Canada run in a fully unattended mode, managed by an Operating and Maintenance (O&M) contractor.** Radar sites span the Arctic from Labrador to the Alaska/Yukon border, with North Bay being the center for monitoring and controlling critical site systems.
>
> (Exhibit 5, Tab 1; emphasis added)

[21] Article 3 of the Renewal Contract described the history of contractors who had operated and maintained the NWS and its predecessor. For example, article 3.1 described the predecessor Distant Early Warning (DEW) Line support:

> 3.1 **Distant Early Warning (DEW) Line Era Support.** During the DEW Line era all radar sites were co-manned 24/7 by military staff and contractor technicians. Resupply originated via weekly "vertical" flights from Winnipeg to CAM-M and FOX-M stations, from there carrying on with "horizontal" flights across the radar chain.
>
> (Exhibit 5, Tab 1)

[22] Article 3.2 described the NWS' construction and highlighted the fact that, for the first time, Canada had used "a contractor to operate and maintain a major defence system":

> 3.2 **North Warning System pre-2000**. Constructed between 1986 and 1992 (with the exception of eight existing Distant Early Warning Line sites, circa 1950) the NWS is the product of the North American Aerospace Defence Modernization (NAADM) Memorandum of Understanding between the United States and Canada. **The NWS O&M activity was a contracted service from its initial start-up and the first time that Canada used a contractor to operate and maintain a major defence system**. NWS support was designed using a five zone concept linking the southern operations to zone logistic sites and thence zone radar sites. Planning started in 1993 for unattended operations at nine LRR sites (with personnel remaining at CAM-M and FOX-M). The sites were then phased through minimum manning in 1994/5 to fully unattended in 1995. The other elements of the NWS, the Short Range Radar (SRR) sites, were designed to operate unattended.
>
> (Exhibit 5, Tab 1; emphasis added)

[23] Article 3.3 described the situation from 2000 onwards and noted that the operations and maintenance concept had evolved to "contractor Care, Custody and Control of the entire NWS and its components":

3.3 **NWS 2000 - Present. Today the operations and maintenance concept has evolved to contractor Care, Custody and Control of the entire NWS and its components. Under this concept, the contractor has full responsibility for delivering radar data**. This means, at he (*sic*) working level, responsibility for all NWS O&M activities, ensuring adherence and compliance with all regulatory requirements and responsibility for developing and implementing an effective sustainment program. **In return the contractor is given control over prime mission equipment, supporting equipment and site infrastructure while Canada maintains overall configuration authority and project implementation approval**.

(Exhibit 5, Tab 1; emphasis added)

[24] Article 6.1.1 expands on this concept of the contractor's "Care, Custody and Control":

6.1.1 Care, Custody and Control. Under this concept the contractor has full responsibility for delivering radar data, which at the working level means responsibility for all NWS O&M activities, ensuring adherence and compliance with all regulatory requirements and responsibility for developing and implementing an effective sustainment program. In return the contractor is given responsibility for prime mission equipment, supporting equipment and site infrastructure while Canada maintains overall configuration authority and project implementation approval.

(Exhibit 5, Tab 1)

[25] Article 4.1 of the Renewal Contract described how the NWS provided Canada and the United States with the capability to detect airborne threats:

4.1 **NWS Mission.** The NWS provides the capability to detect airborne threats within the NWS surveillance area, to provide warning and assessment data on those threats, and provide a command and control capability to the Canadian Air Defence Sector (CADS) of the North American Aerospace Defence Command (NORAD).

(Exhibit 5, Tab 1)

[26] Out of strategic necessity, the NWS sites were positioned in some of the harshest of Canadian environments. The remote locations and severe Arctic climate provided only a small annual window for outdoor projects and major maintenance activities:

4.2.1 **The NWS sites are strategically positioned across the Arctic and down the Labrador coast, in the harshest of Canadian environments. The remote locations and severe Arctic climate afford the contractor only a small window of opportunity each year for outdoor projects and major maintenance activities, typically from June to September**. In addition to most regular preventive maintenance tasks, emergency repairs and indoor projects can be performed throughout the year, although access may be severely limited due to weather conditions which restrict flying (icing, conditions, high winds etc).

(Exhibit 5, Tab 1; emphasis added)

[27] Articles 4.3 and 4.4 in the Renewal Contract provide a helpful summary of both the Equipment and Facilities for which Raytheon became responsible.

[28] The NWS consists of 47 radar stations; 36 of which are short range and the remaining 11 are long range. The evidence indicated that one of the stations had burned down and was not replaced.

[29] In order to service these radar stations, five Logistical Support Sites (LSS) exist in five distinct zones: i) LSS Hall Beach; ii) LSS Cambridge Bay; iii) LSS Goose Bay; iv) LSS Iqaluit; and v) LSS Inuvik. The Renewal Contract further described the LSSs:

> 4.4.2 Logistics Support Sites (LSSs): **The NWS in Canada is divided into five zones, each with a supporting LSS**. Each LSS is comprised of warehousing and workshop facilities and is interconnected with other NWS elements via the Long Haul Communications Network (LHCN). **Each LSS is staffed to provide logistics and maintenance support for the assigned NWS sites within the zone**. LSS Hall Beach, LSS Cambridge Bay and LSS Goose Bay are co-located with commercial airfields. LSS Iqaluit and LSS Inuvik are within several kilometers of commercial airfields. LSSs are categorized as follows:
>
> …
>
> (Exhibit 5, Tab 1; emphasis added)

[30] Article 5.1 of the Renewal Contract set out Raytheon's operational obligations for the NWS. For example, article 5.1 made it an operational priority to maintain continuous radar surveillance of the northern approaches to North America:

> 5.1 **Operational Priorities. The mission of the NWS is to maintain continuous radar surveillance of, and a measure of control over, the northern approaches to North America; contributing to North American defence and Canadian sovereignty**. The Department of National Defence (DND) and the Canadian Forces (CF) are required by international and domestic obligation to ensure that the NWS is successful and properly maintained. **The ability of the facility to be self-preserving or survivable in an unattended mode with minimal human intervention is critical to mission success**. PME integrity is paramount at all times and the equipment must survive, to the greatest extent possible, any catastrophic site event in order to resume operations once the site is repaired and operations restored.
>
> (Exhibit 5, Tab 1; emphasis added)

[31] The Renewal Contract obliges Raytheon to provide useable radar at a minimum 96% of the time on a monthly basis for each site:

5.2 Operational Availability. The Contractor is expected to provide useable radar and G/A/G radio signals between NWS sites and the CADS demarcation point (Central Distribution Frame at North Bay (CDF)) a minimum of 96% of the time on a monthly basis for each site.

(Exhibit 5, Tab 1)

[32] The Renewal Contract also speaks of Raytheon's obligation to provide a normal level of radar readiness:

5.3.1 Readiness-Normal. The Contractor operates and maintains the NWS at a normal level of readiness such that radar data and G/A/G radio communications are available to the CDF at the performance standard specified in the SOW. The Contractor achieves PME outage restoral times as specified in the SOW except in cases where site preservation is at risk, wherein the Contractor provides an immediate response as specified in the SOW to ensure site preservation.

(Exhibit 5, Tab 1)

[33] Among the Royal Canadian Air Force's (RCAF) Wings and Squadrons is 22 Wing North Bay. Two key NWS nerve centers are located at 22 Wing. The NWS Control Centre (Control Centre) is described at article 4.4.3 in the Renewal Contract as the "focal point for reporting matters related to mission operations":

4.4.3 North Warming System Control Centre (NWSCC). The NWSCC is located in the 22 Wing North Bay Above Ground Complex (AGC) designated the David L. Pitcher Building. The NWSCC staff liaises with, and responds to, the 22 Wing System Maintenance (SM) Section to coordinate maintenance. **The NWSCC is the focal point for reporting matters related to mission operations. The NWSCC staff monitors site and system status, control systems and provides direction to maintenance technicians at the LSSs**. **The Contractor's staff at the NWSCC performs maintenance on NWS LHCN and Control and Monitoring equipment (CMS), Programmer Logic Control (PLC) and Supervisory Control and Data Acquisition (SCADA) system located in the David L. Pitcher Building.**

(Exhibit 5, Tab 1; emphasis added)

[34] The NWS Support Centre (Support Centre) is staffed and operated by Raytheon under article 4.4.4 of the Renewal Contract :

4.4.4 North Warning System Support Centre (NWSSC). **The NWSSC is located at 22 Wing North Bay (Building 109) and is staffed and operated by the Contractor. The role of the NWSSC is to provide depot level maintenance, training and logistics support for the AN/FPS-124 radar, LHCN equipment, and electronic control components of the NWS Power Generation Systems (PGS) and their associated Static Uninterruptible Power Supply (SUPS) units**. The Short Range Development Site (SRD), located approximately 20 kilometers outside North Bay, is an integral part

of the NWSSC and is used for training, problem resolution and testing as well as software and communications interface development.

(Exhibit 5, Tab 1; emphasis added)

[35] Article 6.5.1 further described Raytheon's obligation to deliver an operational NWS under the contract:

6.5.1 General. The Contractor is responsible for delivering an operational NWS, which requires administrative services, financial management, logistics management, risk management, quality management, security, health and safety, information services, site management, maintenance, monitoring and control, life cycle maintenance, configuration control, fire protection, sustainment engineering, Five Year Operations and Sustainment Planning, small project management, project contracting, third party customer support, customer (government) support, airlift/sealift fuel coordination and environmental stewardship. The Contractor reports progress regularly, and reports issues to the NWSO as they develop, both verbally and in writing.

(Exhibit 5, Tab 1)

[36] Maximizing the life expectancy of the NWS was another Raytheon responsibility under the Renewal Contract:

6.5.6 Life Cycle Management. **The NWS is expected to remain in operation until at least 2030. The onus is on the contractor to maximize the life expectancy of existing infrastructure and systems through the process of thorough assessment and analysis design and implement sustainment projects**.

(Exhibit 5, Tab 1; emphasis added)

[37] The Renewal Contract also sets out some of the "Organizational Interactions", such as the Canadian Air Defence Sector's job to monitor all radar feeds:

7.2 **CADS.** The Canadian Air Defence Sector (CADS), located at 22 Wing North Bay, is responsible for providing surveillance, identification, control and warning for the aerospace defence of Canada and North America at the Sector Air Operations Centre. Personnel of 21 Aerospace Control and Warning Squadron staff the "nerve center" of the CADS from 22 Wing's state-of-the-art two-story above ground complex that was officially opened in 2006. Duty crews, which include aerospace controllers and aerospace control operators, run the operation on eight-hour shifts. Their job is to monitor ail radar feeds of air traffic approaching Canadian airspace.

(Exhibit 5, Tab 1)

[38] The parties provided the Board with a colour-coded copy of the Renewal Contract indicating which functions had been assigned to CBO under its subcontract with Raytheon.

[39] The Renewal Contract also has a 219-page Statement of Work (SOW) which highlighted in minute detail the myriad functions Raytheon had to perform. In the SOW, the operations and maintenance of the NWS' systems and equipment receive the highest priority:

> 2. A.1.b Maintain a workforce capable of completing all required tasks of the SOW. In the establishment of work priorities, the Operations and Maintenance (O&M) of equipment and systems supporting the North Warming System (NWS) shall be the highest priority.

(Exhibit 5, Tab 1; SOW)

C. Oral Evidence

[40] CBO and Raytheon each called one witness. The IBEW, after hearing the evidence, decided not to call any witnesses of its own.

[41] The evidence was not overly contested. CBO is a joint venture corporation formed in 1995 by Canadian Firm BML and United States based Pacific Architects and Engineers Incorporated. BML has an ongoing collective agreement with the UA for diverse construction projects (Exhibit 3, Tab 125). BML also provides support in certain areas to CBO, such as with its financial records.

1. Steven Watt

[42] Mr. Steven Watt, CBO's General Manager, testified that BML was essentially a construction and maintenance company. Any contracts CBO obtained were subject to the BML-UA collective agreement. New BML and CBO projects were added as appendices to the ongoing collective agreement with the UA.

[43] Raytheon approached CBO about the NWS request for proposal (RFP) while it was preparing its bid. Canada ultimately awarded Raytheon the contract. Raytheon and CBO entered into a subcontract dated June 14, 2015, which divided up the tasks in the Renewal Contract. The Supplier SOW (Exhibit 1, Tab 2) set out the work CBO would perform under the Renewal Contract. Mr. Watt estimated that CBO carried out roughly 25% of the work in the Renewal Contract.

[44] Mr. Watt described various services CBO provided including fire services, building and structure maintenance, roads, grounds, heavy equipment, cleaning, cooking, health and safety and data entry into warehouse systems. He reviewed various job descriptions for CBO

employees (Exhibit 1, Tabs 16–27), including those for diesel mechanics, electricians, heavy equipment operators and crew facility technicians. The latter position assists in the maintenance of the NWS system.

[45] Mr. Watt explained in cross-examination that CBO did not repair the actual radar. Raytheon alone did that work. Since the NWS did not have access to the power grid, CBO ensured that multiple and redundant generators kept it operating. This power system ensured, *inter alia*, that LSS facilities remained heated and that radar stations had the uninterrupted power supply needed to operate.

[46] CBO employees in North Bay at 22 Wing monitored various systems, including one for the diesel generators. This allowed CBO to provide Raytheon with important fuel readings during meetings the latter held with DND and the US Air Force. The US Air Force supplies the fuel for the diesel generators.

[47] In order for DND to be able to do its work, CBO ensures critical replacement parts are held in inventory, especially those required for the diesel generators. CBO employees are in charge of inventory at the LSSs. Depending on the situation, employees from the LSS may have to travel on an urgent basis to effect repairs up north.

[48] Mr. Watt agreed that certain CBO and Raytheon employees were interchangeable depending on DND's needs.

2. Pierre Leblanc

[49] Raytheon called Mr. Pierre Leblanc as its sole witness. Mr. Leblanc, a former Colonel in the Canadian Forces, had extensive experience in Canada's north. He currently works for Raytheon as its program manager for the NWS contract. Raytheon hired him in May, 2014, though he had been working for them as a consultant prior to the awarding of the Renewal Contract.

[50] Mr. Leblanc's main role as a consultant to Raytheon had been to provide strategic advice on Inuit Benefits (IB) program management, which was one of the enumerated areas for program management and administration (Exhibit 5, Scope of Work, page 2 of 219). The IB ensured that a minimum amount of employment or work went to Inuit individuals and/or businesses.

[51] Mr. Leblanc regularly meets with the NWS leadership for project review. Senior officers from both the Canadian and US military may be involved. At some meetings, technical experts

from Raytheon will join him, or replace him, depending on the nature of the issues to be discussed.

[52] Mr. Leblanc described the NWS in detail and indicated that members of the Canadian Forces make the key decisions on how to respond if there has been an intrusion, whether by a plane or missile, into Canadian airspace.

[53] Raytheon partnered with CBO because of its arctic experience. Mr. Leblanc explained that Raytheon would look after radar work, while CBO would provide facilities management.

[54] Raytheon learned in March, 2014 that it had been awarded the Renewal Contract. The Renewal Contract had an effective date of April 1, 2014. The Renewal Contract required a transition period in order to ensure a smooth transfer of responsibilities from one contractor to another.

[55] The Renewal Contract (Exhibit 5, Section 3.A.1.a) required Raytheon to prepare a Transition In Plan (TIP) to assume care, custody and control of the NWS. The TIP had to align with the Transition Out Plan (TOP) Canada had negotiated with the outgoing contractor, Nasittuq. The TIP would start in April, 2014. Care, Custody and Control would transfer to Raytheon as of August 1, 2014.

[56] Mr. Leblanc described how Raytheon operated and maintained DND's assets. DND analyzed the data coming from those assets, such as radar information identifying an intruder in Canadian airspace. While Raytheon provided the "radar track" which DND used, only DND monitored that information. Raytheon and CBO monitored different alarms and reporting systems to ensure the assets were operating properly.

[57] The Renewal Contract also obliged Raytheon to manage the radar assets in order to ensure the NWS remained operational until 2030.

[58] DND provided significant oversight through the requirement of a large number of daily, weekly, monthly and annual reports. These reports allowed DND to monitor Raytheon's performance. DND would also carry out inspections, such as in the area of quality assurance. However, DND did not coordinate Raytheon's employees' day-to-day work.

[59] Raytheon would be required to carry out maintenance in order to respect its obligations under the Renewal Contract. Emergency maintenance might be required if the generators, which offer significant redundancy, all failed for one of the radar stations.

[60] The Renewal Contract also required Raytheon to identify obsolescence in the NWS' equipment and find solutions, particularly if the equipment's original manufacturer had gone out of business. A trend analysis helped identify when parts might fail so that they could be replaced before that time. It was much cheaper to maintain the NWS this way, rather than conduct emergency repairs using helicopters or fixed wing aircraft.

[61] The Renewal Contract also obliged Raytheon to staff 15 key positions, all of which were subject to government approval (Exhibit 5, Tab 1). Raytheon remained responsible for staffing other required positions, as long as the employees met the Renewal Contract's specifications.

[62] Mr. Leblanc contrasted Raytheon's contract, which involved a fixed fee, with that of the previous contractor, Nasittuq, whose contract was described as being "Cost plus".

[63] Section 5.A.1.a in the Renewal contract provided a description of Raytheon's responsibility for the NWS:

> 5.A.1.a **Operate and maintain the North Warning System (NWS) at a level of readiness to achieve not less than the minimum performance requirements for availability of radar data and Ground/Air/ Ground (G/A/G) radio communications, site preservation, equipment outage restoral times, operational flexibility and environmental protection detailed in this SOW.** Unless directed otherwise by NWSO, maintain all NWS sites in an operational status, providing radar data and G/A/G radio signals over government furnished communication circuits (satellite transponder) to the NWS Canadian Air Defence Sector (CADS) demarcation point. The CADS demarcation point shall be the Combined Distribution Frame (CDF) in the Above Ground Complex (David L. Pitcher building) at 22 Wing North Bay. **The Contractor shall operate out of the North Warning System Control Centre (NWSCC), located in the Above Ground Complex.**
>
> (Exhibit 5, Tab 1; emphasis added)

[64] Mr. Leblanc noted that Raytheon had roughly 900 contracts with other suppliers to assist it with the Renewal contract. CBO was by far the largest of these other contractors.

[65] Mr. Leblanc testified about certain other key responsibilities Raytheon had under the Renewal Contract. For example, radar sites needed 2–3 years of bulk fuel to run the generators. The US Air Force supplied the fuel. Technical experts would visit the site to ensure the fuel was moved from the supply ship to the holding tanks on the beach and also from those tanks to the actual radar site. Fuel delivery was weather dependent.

[66] Other Raytheon duties involved cargo movement to the NWS' different geographic areas, not all of which had roads. Vehicle fleet maintenance was also important, given the location of the radars in the far north.

[67] Section 13.A.1.a of the Renewal Contract described the scope of work for the NWS' radar, communications and ancillary equipment:

> 13.A.1.a **Provide all personnel and technical services required to manage, supervise and perform the operations and maintenance of the North Warning System (NWS) radar, communication and ancillary equipment.** This work includes, but is not limited to, testing, on-site repair, technical training, configuration management, depot level maintenance and engineering, and engineering functions in support of all NWS radar, communication and ancillary systems to ensure that the defined performance standards and life expectancies of the systems are met Reconfiguration, upgrade or modification of existing equipment or systems may be. required from time to time, as directed by the NWSO TA. Ensure that all work performed conforms to Technical Manuals, Original equipment Manufacturers' (OEM) Directives and best commercial practices using applicable codes, regulations and acts.

(Exhibit 5, Tab 1; emphasis added)

[68] The Renewal Contract also covered areas such as i) facilities management (Exhibit 5, page 159); ii) system sustainment (Exhibit 5, page 180); and iii) information management (Exhibit 5, page 212).

[69] Mr. Leblanc described CBO's involvement in the Renewal Contract as part of a "team approach". Indeed, Mr. Leblanc testified he would not be able to tell when visiting the Control Center or the Supply Centre which employees were from Raytheon or CBO because of this team approach. Exhibit 7, Tab 1, illustrated via colour coding how the Renewal Contract's work was divided between Raytheon and CBO.

[70] Mr. Leblanc noted that an organization chart (Exhibit 7, Tab 2) also used colour coding to distinguish Raytheon employees from those of CBO. Both Raytheon and CBO could have employees in similar job classifications working at 22 Wing in North Bay. The organization chart showed that both CBO and Raytheon employees worked together at the Control Centre and the Support Center.

[71] Mr. Leblanc described the Control Center in North Bay. Both Raytheon and CBO employees worked there in an "open office" concept. The Control Centre is housed in the same building at 22 Wing where DND analyzes data coming from the NWS. Due to the "open office"

concept at the Control Centre, both Raytheon and CBO employees can see and hear all the alarms which may come in from the NWS.

[72] At the Control Center, employees monitored various alerts coming from the radar stations, for items such as the diesel generators, temperature controls, open doors and the status of communications.

[73] The organization chart (Exhibit 7, Tab 2) also described who worked at the five LSS in Canada's north. The five LSS maintain a set number of the 47 radar sites which fall within their assigned zones.

[74] Mr. Leblanc also described the UA's representation rights, as he understood them. The UA had represented CBO employees for other projects. Raytheon and CBO wanted their employees to work as one team, with representation provided by the UA. This decision led to a Memorandum of Understanding (MOU) between Raytheon, CBO (BML) and the UA regarding the NWS work (Exhibit 4, Tab 13).

III. Law

[75] Section 4 of the *Canada Labour Code (Part I–Industrial Relations)* (*Code*) describes the Board's jurisdiction:

> 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.

[76] Section 2 of the *Code* defines the term "federal work, undertaking or business" as it is used in section 4. Section 2 generally channels the wording in the *Constitution Act, 1867,* which sets out the various heads of federal jurisdiction.

[77] The parties agreed that the NWS is a federal undertaking, pursuant to article 91(7) of the *Constitution Act, 1867*:

> 91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to ail Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to ail Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

…

7. Militia, Military and Naval Service, and Defence.

[78] There is a clear presumption in favour of provincial competence over labour relations; federal jurisdiction is the exception: *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.

[79] The parties agreed that the legal issue in this case concerned whether Raytheon/CBO could be characterized as vital, essential and integral to the federal undertaking. The Supreme Court of Canada (SCC) recently examined this well-known test of derivative jurisdiction.

[80] In *Tessier Ltée* v. *Quebec (Commission de la santé et de la sécurité du travail)*, 2012 SCC 23 (*Tessier*), the SCC summarized how an otherwise provincial entity might nonetheless fall within federal jurisdiction under the derivative jurisdiction analysis:

> [17] In the *Stevedores Reference*, this **Court therefore established that the federal government has jurisdiction to regulate employment in two circumstances: when the employment relates to a work, undertaking, or business within the legislative authority of Parliament; or when it is an integral part of a federally regulated undertaking, sometimes referred to as derivative jurisdiction**. Dickson C.J. described these two forms of federal jurisdiction over labour relations as distinct but related in *United Transportation Union* v. *Central Western Railway Corp.*, [1990] 3 S.C.R. 1112, at pp. 1124-25.
>
> [18] In the case of direct federal labour jurisdiction, we assess whether the work, business or undertaking's essential operational nature brings it within a federal head of power. **In the case of derivative jurisdiction, we assess whether that essential operational nature renders the work integral to a federal undertaking. In either case, we determine which level of government has labour relations authority by assessing the work's essential operational nature**.
>
> [19] In this functional inquiry, the court analyzes the enterprise as a going concern and considers only its ongoing character: *Commission du salaire minimum* v. *Bell Telephone Co. of Canada*. The exceptional aspects of an enterprise do not determine its essential operational nature. A small number of exceptional extra-provincial voyages which are not part of the local transportation company's regular operations, for example, do not determine the nature of a maritime transportation operation (*Agence Maritime Inc.* v. *Conseil canadien des relations ouvrières*, [1969] S.C.R. 851), nor does one contract determine the nature of a construction undertaking (*Construction Montcalm Inc.* v. *Minimum Wage Commission*, [1979] 1 S.C.R. 754). Nor will a small amount of local activity overwhelm the nature of an undertaking that is otherwise an integral part of the postal service (*Letter Carriers' Union of Canada* v. *Canadian Union of Postal Workers*, [1975] 1 S.C.R. 178).
>
> (emphasis added)

[81] The parties further agreed that neither Raytheon nor CBO, in their own right, constituted federal undertakings. Rather, as the Board confirmed in its post Case Management Conference

letter, the debate concerned whether Raytheon and/or CBO were vital or essential to the NWS, an admitted federal undertaking. If they were found to be vital or essential, then they would come within the Board's jurisdiction.

[82] At the beginning of its hearing, the Board referred the parties to two recent decisions about which it asked for the parties' comments during final argument.

[83] In *Syndicat des agents de sécurité Garda, Section CPI-CSN* v. *Garda Canada Security Corporation*, 2011 FCA 302 (*Garda*), the Federal Court of Appeal (FCA) concluded that the CIRB had jurisdiction over Garda security guards providing services to a federal Immigration Prevention Center. The FCA at paragraph 38 described the applicable three part analysis:

> [38] Therefore, I propose to first examine the federal undertaking in question and then the services provided by Garda, in order to finally reach a conclusion as to whether there is a "vital", "essential" or "integral" link between the operations of the concerned federal undertaking and these services.

[84] For the first part of the analysis, the FCA noted that an Immigration Prevention Center was a federal undertaking:

> [39] The Immigration Prevention Centre is a detention centre of the Government of Canada managed by a federal agency, the CBSA. It is therefore a "federal undertaking" which forms an integral part of the federal government. Parliament is constitutionally responsible for the Centre under its power to make laws for the peace, order, and good government of Canada pursuant to the introductory paragraph to section 91 of the *Constitution Act, 1867*, under its exclusive legislative authority over naturalization and aliens (foreign nationals) pursuant to subsection 91(25) thereof, and under its power to make laws in relation to immigration pursuant to section 95 of the *Constitution Act, 1867*.

[85] For the second part of the analysis, the FCA examined the nature of the services provided by Garda:

> [46] Both the terms of the contract between the Government of Canada and Garda and the evidence adduced before the Board unequivocally demonstrate that the security guards take charge of the foreign nationals whose detention has been ordered by CBSA officers under the *Immigration and Refugee Protection Act*. These security guards handcuff, transport and escort these foreign nationals from where they were arrested to a CBSA-managed detention centre in the Montréal area, and they ensure their detention at this centre. In addition, they transport, handcuff and escort the foreign nationals so detained in the Montréal area in order to facilitate investigations, hearings and removal orders under the *Immigration and Refugee Protection Act*.
>
> [47] The Garda security guards must meet RCMP security requirements, and some must hold an airport pass for the restricted areas at the Montréal-Trudeau Airport. They must all perform their tasks under the authority of CBSA officers and comply with federal departmental policies and CBSA administrative guidelines regarding detention.

> [48] Their primary function is to monitor detained foreign nationals in order to prevent them escaping or avoiding a detention imposed on them under the *Immigration and Refugee Protection Act*. Indeed, it is undisputed that the security services provided by the approximately 125 Garda security guards in the Montréal area ensure the effective detention of the foreign nationals held at the Immigration Prevention Centre.

[86] Finally, for the third part of the analysis, the FCA concluded that Garda's services under the terms of its specific contract were vital, essential and integral to the federal undertaking:

> [56] Even though there is no reason to doubt that the "basic security services provided by Garda to its other clients include guarding, monitoring, and providing safety and protection for premises, assets and people", as pointed out by the majority of the reconsideration panel at paragraph 49 of its decision, there is no evidence in the record that Garda's other clients use the services of that corporation to ensure the detention of individuals within a detention centre. Indeed, the State holds a monopoly over coercion, and only the State (acting, in Canada, through the Crown in right of Canada or in right of a province) may forcefully detain an individual and manage a detention centre for such a purpose. This function is at the heart of the very concept of the modern State, without which our contemporary society could not operate.
>
> [57] **We are not dealing here with monitoring public access to a building, or verifying the identity of visitors, or monitoring buildings to prevent theft or other wrongdoings. Rather, Garda's services to the Immigration Prevention Centre ensure the detention of foreign nationals under a federal statute**. None of Garda's other clients may operate a detention centre or enter into a contract with Garda to provide for the detention of individuals. **It is therefore wrong to hold that the services provided by Garda for the Immigration Prevention Centre are similar to those services Garda provides to its other clients. Ensuring the detention of an individual is a service profoundly different and distinct from those provided to Garda's other clients, and this very specific detention service is moreover governed by federal government guidelines, standards and policies with which all the security guards must comply**.
>
> (emphasis added)

[87] The Board also requested comment on the relevance, if any, of its decision in *Avant-Garde Sécurité Inc.*, 2014 CIRB 728 (*Avant-Garde 728*), a decision in which, *inter alia*, the Board found that a severable portion of a security guard company fell within federal jurisdiction, due to the nature of the services it provided to a federal undertaking. The Board in *Avant-Garde 728* described its conclusion as follows:

> [200] The derivative jurisdiction test requires a finding that a "vital" or "essential" link exists between Termont's federal undertaking and the services AG provides to it.
>
> [201] The Board is satisfied this crucial link exists on the facts of this case.
>
> [202] The MTSR imposes significant legal responsibilities on Termont. Termont does not use the security guards merely to operate access gates at a public parking lot. Rather, it uses AG's guards to allow it to meet its significant legal obligations to ensure the safety of the Port and the persons working within it.

> [203] In this regard, the Board sees an analogy between the facts in this case and others where it took jurisdiction, such as for security guards providing perimeter security services at an airport (*Securiguard Services Limited*, 2005 CIRB 342), as well as for security screeners at various airports across the country.
>
> [204] The *Code* itself at section 47.3 has specific provisions applying to airport security screeners.
>
> [205] Termont would not be able to operate without the services provided by AG's guards. They ensure that only authorized drivers and licenced vehicles can enter Termont's premises. The obligation to comply with the MTSR, along with the other security functions that AG's guards perform on a regular basis, satisfy the Board that AG is vital and essential to Termont's ongoing operations.
>
> [206] AG's services to Termont bring a severable portion of its undertaking within the jurisdiction of this Board.

[88] The three-part analysis the FCA used in *Garda*, and which the Board applied in *Avant-Garde 728*, will similarly be used in this case when considering the issue of derivative jurisdiction.

IV. Parties' Positions

A. CBO

[89] As a result of the SCC's decision in *Canada Labour Relations Board et al.* v. *Yellowknife*, [1977] 2 S.C.R. 729, the parties agreed that the *Code* applied to employment in Canada's territories where certain CBO and Raytheon employees worked. CBO argued that, except for its employees in the territories, it performed no functions as a Raytheon subcontractor which would bring it within federal jurisdiction.

[90] CBO argued its remaining employees working in both North Bay, Ontario and Labrador, Newfoundland and Labrador, remained subject to provincial labour relations legislation.

[91] In CBO's view, the IBEW had failed to rebut the presumption that labour relations fell within provincial jurisdiction. It characterized its business as providing "facilities maintenance and operations". Such work, which it did for numerous clients, had nothing to do with national defence.

[92] The services CBO provided, including security, fire protection, general repairs, snow removal, cooking, cleaning and the maintenance of generators, were similar to what any facilities maintenance business might provide to clients. It was not integrated into the federal undertaking as evidenced by the fact DND provided CBO with no direction of any kind. Just as a

contractor's cleaning service for a chartered bank would remain subject to provincial jurisdiction, CBO argued it remained a provincially regulated facilities maintenance business when providing services under the Raytheon subcontract.

[93] CBO highlighted the fact that DND was the entity which carried out all defence-related activities. These could include interpreting the radar data which it received directly. Neither Raytheon nor CBO acted as an intermediary for this data. Only DND monitored Canadian sovereignty; Raytheon and CBO had no role in this activity whatsoever.

[94] Because CBO argued it had no role in DND's operation of its federal defence undertaking, it described its services as being merely incidental or ancillary. Instead of being involved with work relating to the federal defence undertaking, CBO said its facilities management and maintenance operations remained a local and civil work. It could provide services, including cooking, maintaining accommodations, general labour and snow removal for virtually every client it had, depending on their needs.

[95] For work in the far north, CBO suggested that the maintaining of diesel generators was a normal service, since facilities in that area are not on the power grid. By analogy, CBO suggested that Ontario Hydro's non-atomic services were important to both provincial and federal undertakings, but those services did not change its status as a provincial undertaking.

[96] CBO referenced the SCC's decision in *Tessier* and argued the appropriate constitutional analysis had to focus on what the entity actually did, rather than for whom the services are provided.

[97] CBO referred to the SCC's decision in *Construction Montcalm Inc.* v. *Minimum Wage Commission et al.*, [1979] 1 S.C.R. 754 (*Montcalm*) in support of its position that a contractor can carry out construction activities without engaging in an aeronautics undertaking.

[98] CBO submitted that the Ontario Labour Relations Board's (OLRB) decision in *AXOR Construction Canada Inc.*, [1999] OLRB Rep. November/December 933 (*AXOR*) further supported its contention that its facilities management services were much like a construction company's contract to build a new bridge and maintain traffic access throughout the duration of the contract:

> 28. … To determine whether or not AXOR forms an integral part of the federal undertaking, or the operation of the bridge by the NCC, the Board must apply a functional or practical analysis. **When we review the normal or habitual activities of AXOR as a going**

> **concern, it is obvious that AXOR's involvement in the bridge project is a fleeting one which will end when the construction work is finished At that point the employees of AXOR will leave and barring any future projects that AXOR may successfully bid on, never return. Just as in the MONTCALM case, *supra*, once the project is completed the AXOR employees will have nothing more to do with the federal undertaking. Simply working on a federal undertaking does not make AXOR a federal undertaking**. As was pointed out by counsel for the union, to fall under federal jurisdiction there must be a high degree of operational integration between the two entities and the integration must be of an ongoing nature. Neither of these factors are present in our case. **Of particular importance is the fact that the relationship will only last for three years, or the life of the project**.
>
> (emphasis added)

[99] The Ontario Divisional Court later upheld the OLRB's reasoning: *Axor Construction Canada Inc.*, [2001] OLRB Rep. January/February 230.

[100] CBO further noted that *AXOR*'s contract, just like its subcontract with Raytheon, was for a set term.

[101] CBO referred to several cases which found that a contractor's services were not federal, even if the particular service was being performed for a federal undertaking:

i. *Six Seasons Catering Ltd.* v. *Saskatchewan*, [1992] S.J. No. 588 (QL) (food and janitorial services for a uranium mine);
ii. *Reliable Window Cleaners (Sudbury) Ltd.*, [1982] OLRB Rep. November 1714 (window cleaning for a nuclear refinery);
iii. *Service d'entretien Avant-Garde inc.* c. Canada (*Conseil canadien des relations du travail)*, [1985] J.Q. n^{o} 363 (QL) (cleaning services for Air Canada facilities at Mirabel Airport);
iv. *Caterair Chateau Canada Limited*, [1995] O.L.R.D. No. 1694 (QL) (providing meals to airlines);
v. *Burns International Security Services Ltd. and Canada Post Corporation* (1989), 78 di 39; and 3 CLRBR (2d) 264 (CLRB no. 746) (general security services for Canada Post);
vi. *Canadian Air Line Employees' Association* v. *Wardair Canada (1975) Ltd. et al., [1979] 2 F.C. 91*) (travel agency type business for airlines); and
vii. *Hazelwood* v. *Canadian Core of Commissionaires, Nova Scotia Division*, [2010] C.L.A.D. No. 393 (QL) (security services for a Canadian Forces base).

[102] CBO commented specifically on both *Garda* and *Avant-Garde 728*. For *Garda*, a decision in which the FCA found that security guards were vital and essential to a federal immigration undertaking, CBO noted that the guards were performing certain functions pursuant to an explicit statutory power, ie: the detaining, handcuffing and transporting of individuals.

[103] It was these specific services, which went beyond the provision of general security services, which justified the FCA's conclusion that the Board had jurisdiction. CBO countered, however, that the services it provided under Raytheon's contract were no different from the types of services it regularly provided to its clients.

[104] For *Avant-Garde 728*, CBO again highlighted the regulatory obligations the container facility was required to meet when examining the nature of the security guards' work. By contrast, CBO argued it carried out no duties which were linked to any statutory defence obligation.

[105] CBO reiterated that while work may be important, that criterion alone did not make it subject to federal jurisdiction. Moreover, even though Raytheon and CBO had a duty to ensure continuous data flow to DND, that duty did not make their work federal. CBO concluded it performed provincially-regulated facilities and maintenance work, in much the same way as a provincially regulated information technology (IT) company might provide high level IT services to a chartered bank.

B. Raytheon

[106] Raytheon contrasted its work with that of DND. In its view, the NWS under DND's control performed three important roles: i) detecting threats; ii) providing accurate data; and iii) providing control capability to the North American Aerospace Defence Command and the RCAF.

[107] By way of contrast, Raytheon described its role, and that of its subcontractor CBO, as providing systems support for DND. Its day to day tasks did not involve the federal defence undertaking, but involved instead general and regular maintenance duties. These activities fell within provincial jurisdiction.

[108] Raytheon then focused on the three-part analysis for derivative constitutional jurisdiction, a framework which generally examines these questions: i) is there a federal undertaking?;

ii) what is the nature of the services being provided to the federal undertaking? and iii) can those services be described as vital, integral and/or essential to the federal undertaking?

[109] The first part of the test was easily satisfied. No one disputed that the NWS was a federal undertaking.

[110] For the second question in the analysis, Raytheon argued its role was to provide maintenance and systems support work. This work consisted of various activities including site management, access security, information services, fire protection and electronics maintenance. The key work it performed involved different types of maintenance.

[111] Raytheon did not dispute it maintained radar equipment for the NWS, but it noted that its contract obliged it to perform maintenance for 19 different systems. Other work it performed included running diesel generators, maintaining a fleet of vehicles, as well as removing ice and snow. It also had responsibilities over inventory and supply chain logistics. Consumable items, such as oil filters, batteries, spark plugs, food and rations were also important requirements under the Renewal Contract.

[112] Raytheon noted it worked with over 900 different suppliers in order to perform these contractual duties.

[113] Raytheon suggested that the variety of this work demonstrated that, even if occasional maintenance of the radars might be defence-related work, its regular day to day functions were not enough to bring it within federal jurisdiction.

[114] For the third part of the test, Raytheon argued its tasks were neither vital nor essential to DND's federal undertaking.

[115] Raytheon argued that it would have to do defence work itself to come under federal jurisdiction. In its view, the surveillance data from the radars was part of the core federal undertaking. This data allowed DND to detect threats and decide on the response.

[116] But Raytheon employees had no dealings with that data. Raytheon employees did not receive radar data, they did not monitor radar tracks and they never interpreted surveillance data. Raytheon employees did not assess threats or determine possible responses.

[117] Raytheon suggested that there was little integration between its employees and those of DND, a factor which the OLRB found important in *KMT Technical Services*, [1993] OLRB Rep.

April 344. The fact that its employees all worked at 22 Wing, where the Control Centre and Support Centre operated, did not mean they were integrated with DND. Raytheon acknowledged that its employees' work may be important to DND, but the work was distinct from DND's federal undertaking.

[118] Raytheon did not dispute it met frequently with DND. But Raytheon alone gave daily direction to its workforce.

[119] Raytheon echoed the CBO's submission that the principles arising from *Garda* and *Avant-Garde 728* did not apply to the facts of this case. Both of those cases involved security guards either exercising statutory powers on behalf of the federal undertaking (*Garda*) or helping a federal undertaking fulfill a regulatory framework requirement (*Avant-Garde 728*). No similar situation existed in Raytheon's work for DND; it simply provided maintenance services to keep the NWS up and running.

[120] Raytheon suggested that the services provided in the *Garda* and *Avant-Garde 728* cases allowed the federal undertaking to operate. However, for the NWS, the significant redundancies built in, such as multiple backup generators, as well as access to Airborne Warning And Control System (AWACS) planes or other types of portable radar, demonstrated that Raytheon's services were not essential to the federal undertaking's operation. The day to day maintenance and systems support which Raytheon provided, while important, was not enough to set aside the presumption in favour of provincial jurisdiction over labour relations.

C. UA

[121] The UA agreed with CBO and Raytheon that this Board lacked jurisdiction. It has had successive collective agreements with CBO since 1995, in addition to an ongoing relationship with one of CBO's principals, BML. The UA noted it was clear from that long relationship that both BML and CBO were in the construction and facilities maintenance business.

D. IBEW

[122] The IBEW's most compelling argument highlighted the vital and essential nature of the work being performed by Raytheon and CBO for DND. For example, the RFP made it clear that the Renewal Contract was a defence contract within the meaning of the *Defence Production Act* (Exhibit 6, Tab 9, page 76/165). It was not, in other words, merely a contract for food, supplies

and snow removal. It was instead a contract providing Raytheon with the Care, Custody and Control of the NWS.

[123] The IBEW also suggested the evidence did not support the separate and distinct lines of authority that Raytheon had suggested existed. For example, Mr. Leblanc, a former Colonel in the Canadian Forces, candidly testified that he could not tell which employees belonged to which contractor. In his view, they operated as a single team.

[124] Moreover, many DND, Raytheon and CBO employees worked at 22 Wing in North Bay, even though the DND employees would be found on a different floor within the same building. A large 20 by 20 foot screen in the Control Centre provided both Raytheon and CBO employees with a visual status report of all the possible alarms they jointly had to monitor.

[125] In the IBEW's view, Raytheon did not have to do defence work in order to fall within federal jurisdiction. Indeed, if Raytheon actually did defence work, then there might be no need to conduct the derivative jurisdiction analysis. Instead, Raytheon would fall within federal jurisdiction due to their operation of a federal undertaking.

[126] The IBEW referenced the Northern Telecom decisions (*Northern Telecom* v. *Communication Workers*, [1983] 1 S.C.R. 733 (*Northern Telecom #2*); and *Northern Telecom* v. *Communications Workers*, [1980] 1 S.C.R. 115) (*Northern Telecom #1*)) and noted that the installers did not have to perform telecommunications work in order to fall within federal jurisdiction. Instead, they simply had to be vital and essential to Bell's telecommunications undertaking in order to fall within the Board's jurisdiction.

[127] The IBEW argued that DND's entire ability to meet its defence obligations was dependent on Raytheon's work. Without the data coming from the radars, DND could not operate the NWS. This demonstrated the vital and essential nature of Raytheon's work. In addition, while DND may get certain specific radar data, Raytheon and CBO also obtained and monitored data relevant to their obligations under the Renewal Contract, including that for fire alarms and diesel generators up north.

[128] The IBEW argued further than the mere possibility that AWACS planes or fighter jets would have to be sent if the system broke down showed how vital the contractors' work really was to DND.

[129] Similarly, it saw Raytheon's NWS work as a single unseverable operation which vied a stable and dedicated workforce. The workforce did not shuttle back and forth between multiple Raytheon and CBO contracts. The fact that the Renewal Contract was for an initial fixed term did not impact the jurisdictional analysis either. Rather, as the FCA noted in *Garda*, the NWS work requirements will continue, even if other contractors take over the responsibility. This was different from a one off construction contract, such as the one for a runway in the *Montcalm* case.

[130] The IBEW noted that one cannot break down each task in order to decide how many of them are vital to the federal undertaking. Rather, the overall work must be analyzed. The Renewal Contract itself in article 5.2 set a 96% operational availability standard as a minimum, given the importance of the NSW system to DND's ability to carry out its defence undertaking.

[131] The IBEW further pointed to the numerous meetings between DND and Raytheon. Those meetings showed DND's involvement in the subcontrators' daily activities. Raytheon and CBO were not acting autonomously. They provided myriad reports to DND and had to meet stringent and detailed contractual requirements.

[132] The IBEW also distinguished CBO from other contractors which might assist Raytheon. Raytheon and CBO partnered together before the former won the Renewal Contract. They operated together in a wholly different manner from any suppliers they chose to use during the course of the Renewal Contract. The organizational chart, for example, showed Raytheon and CBO employees working together, but made no mention of the employees of any other supplier.

[133] The transition from one NWS contractor to another also supported the notion of how vital and essential the work was. The IBEW highlighted the fact that the Renewal Contract had a clear provision ensuring a smooth transition to a new contractor. Raytheon had benefited from this type of transition period when it was taking over the duties formerly performed by Nasittuq. This clause similarly demonstrated how the NWS work continued regardless of who the contractor might be at any point in time.

E. Nasittuq

[134] Nasittuq did not take an active role in the proceeding, but advised the Board of its bottom-line position that the work being performed by Raytheon and CBO fell within federal jurisdiction.

V. Analysis and Decision

[135] Despite Raytheon and CBO putting forward helpful and detailed legal arguments, the Board, as mentioned at the beginning of this decision, agrees with the IBEW's arguments on jurisdiction.

A. Introduction

[136] Certain legal points are not in dispute. It has long been settled that there is a presumption in favour of provincial competence over labour relations. Similarly, neither Raytheon nor CBO contest that the *Code* applies to their employees working in Canada's territories.

[137] This case requires the Board to consider and apply, as it often does, the derivative jurisdiction test.

[138] The Board has often had to determine whether a contractor's services for a federal undertaking brought it, or a portion of it, within federal jurisdiction.

[139] In *Service d'Entretien Avant-Garde Inc.* v. *Canada Labour Relations Board* (1985), 26 D.L.R. (4th) 331 (Que. S.C.), the Quebec Superior Court quashed a finding of the Canada Labour Relations Board (CLRB) that a contractor cleaning Air Canada's warehouses was vital and essential to Air Canada's aeronautics undertaking:

> The cleaning operations carried out by the applicant at the two Air Canada facilities at Mirabel are indissociable from the applicants' sole activity—and not just its principal activity—and have, in themselves, nothing at all to do with any area which comes within the legislative jurisdiction of the Parliament of Canada.
>
> Thus it is entirely exceptional that the C.L.R.B. should assume jurisdiction over such activities, such jurisdiction being conditional on the fact that the activities were vital and necessary to the aeronautic operations of Air Canada or that they were an integral part of that company. The activities must be indispensable to the activities of Air Canada which fall within the jurisdiction of the Parliament of Canada, in other words air transport operations.
>
> …
>
> The court cannot see how, in the circumstances of the case before us, the cleaning of warehouses which are used for storing merchandise or for foodstuffs in transit, can be considered indispensable, vital and essential to the aeronautic operations of Air Canada and even less they can be considered as being an integral part of those operations. The court can see no difference whatsoever between cleaning the two buildings and cleaning the branch of a bank or a building belonging to a telephone company.
>
> (pages 345–346; CBO Book of Authorities, Tab 10)

[140] The CLRB itself had come to a similar conclusion in *Burns International Security Services Ltd.* and *Canada Post Corporation* (1989), 78 di 39; and 3 CLRBR (2d) 264 (CLRB no. 746) when it decided that security guard services being provided to Canada Post were not vital or essential to the federal undertaking:

> To re-emphasize the point, while businesses need to keep their premises clean and secure, such **general** functions, although necessary, are hardly vital or essential to a particular federal undertaking. In our view, the services supplied by Burns to CPC are not an integral part of CPC's core operations, they are merely one of the many **general** facets required by any business whether they be federal or provincial. There is nothing in these security guard services which has any real or **specific** relationship to the collection, transmission or delivery of mail. Taking the best assessment of the constitutional facts, there is simply not enough evidence of an integrated operational connection with the core federal undertaking to oust the primary provincial competence presumption. Burns' operations at the CPC plants are therefore not, in our respectful opinion, within the jurisdiction of this Board.
>
> (page 50; Book of Authorities of CBO, Tab 12)

[141] Evidently, each case is reliant on its specific constitutional facts.

[142] The Board earlier referred to the FCA's decision in *Garda,* which found that the detention work being performed by Garda security guards for an Immigration Prevention Centre was sufficient to bring that specific operation within federal jurisdiction. *Avant Garde 728* came to a similar conclusion for guards working at a container terminal in the Port of Montreal.

[143] The Board has also found that some security guard services relating to aeronautics, such as perimeter protection (*Securiguard Services Limited*, 2005 CIRB 342) and passenger security screening (*A.S.P. Incorporated*, 2006 CIRB 368), met the test for being vital and essential to a federal undertaking. The FCA referred to these cases in its *Garda* decision.

[144] The FCA similarly found in *XL Digital Services Inc.* v. *Communications, Energy and Paperworkers Union of Canada*, 2011 FCA 179, that a subcontractor's work connecting customers to Rogers Cable's federal undertaking met the test for being highly integrated into the federal undertaking:

> [28] To paraphrase Justice Estey, writing for the majority of the Court in *Northern Telecom* v. *Communication Workers*, [1983] 1 S.C.R. 733 at 770, the question is: to what extent was the work of HomeTech's employees integral to Rogers' federal undertaking? It is important to bear in mind here that I have already concluded that the Board did not err in concluding that Rogers' federal undertaking extends from the headend to the cable and equipment connecting its customers to the network.

> [29] Nearly all the facts point to the conclusion that HomeTech's employees were highly integrated into the federal undertaking. In particular, HomeTech's operations "as a going concern" consisted of connecting Rogers' customers to the network and to providing related services. Although HomeTech was independently owned, Rogers was HomeTech's only customer, and the HomeTech employees in question devoted all their time to performing the work covered by the contracts between Rogers and HomeTech. The allocation and scheduling of the employees' work was controlled by Rogers.
>
> **[30] The principal submission on this issue made in oral argument by counsel for HomeTech was that connecting customers' television sets to the network through a digital box was a peripheral part of the federal undertaking. The "guts" of the network, he said, is to capture, convert and transmit signals to the distribution taps.**
>
> **[31] I do not agree. Each part of the network is essential to the transmission of signals to customers. The receipt of the signal by Rogers' customers cannot plausibly be said to be subsidiary to its transmission to an outlet in the street. The only purpose of Rogers' network is to enable its customers to receive the signal on equipment in their homes.**
>
> (emphasis added)

B. Applicable Constitutional Principles

[145] While some cases conclude that the Board has jurisdiction over a subcontractor's employees, and others do not, the same analytical process takes place in each case. Some of the important SCC decisions prior to *Tessier* provide a helpful reminder of the analysis the Board will apply.

[146] In *Northern Telecom #1,* Mr. Justice Dickson set out six principles governing Parliament's jurisdiction over labour relations:

> In an elaboration of the foregoing, Mr. Justice Beetz in *Construction Montcalm Inc.* v. *Minimum Wage Commission*[4] set out certain principles which I venture to summarize:
>
> > (1) Parliament has no authority over labour relations as such nor over the terms of a contract of employment; exclusive provincial competence is the rule.
> >
> > (2) By way of exception, however, Parliament may assert exclusive jurisdiction over these matters if it is shown that such jurisdiction is an integral part of its primary competence over some other single federal subject.
> >
> > (3) Primary federal competence over a given subject can prevent the application of provincial law relating to labour relations and the conditions of employment but only if it is demonstrated that federal authority over these matters is an integral element of such federal competence.
> >
> > (4) Thus, the regulation of wages to be paid by an undertaking, service or business, and the regulation of its labour relations, being related to an integral part of the operation of the undertaking, service or business, are removed from

> provincial jurisdiction and immune from the effect of provincial law if the undertaking, service or business is a federal one.
>
> (5) The question whether an undertaking, service or business is a federal one depends on the nature of its operation.
>
> (6) 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", without regard for exceptional or casual factors; otherwise, the Constitution could not be applied with any degree of continuity and regularity.

(pages 131–132)

[147] *Northern Telecom #1* noted the need for a proper record of the constitutional facts in order to allow the analysis to take place. Mr. Justice Dickson further described the type of analysis which had to be applied to those constitutional facts:

> A recent decision of the British Columbia Labour Relations Board, *Arrow Transfer Co. Ltd.*[5], provides a useful statement of the method adopted by the courts in determining constitutional jurisdiction in labour matters. First, one must begin with the operation which is at the core of the federal undertaking. Then the courts look at the particular subsidiary operation engaged in by the employees in question. The court must then arrive at a judgment as to the relationship of that operation to the core federal undertaking, the necessary relationship being variously characterized as "vital", "essential" or "integral". As the Chairman of the Board phrased it, at pp. 34-5:
>
> > In each case the judgment is a functional, practical one about the factual character of the ongoing undertaking and does not turn on technical, legal niceties of the corporate structure or the employment relationship.
>
> **In the case at bar, the first step is to determine whether a core federal undertaking is present and the extent of that core undertaking. Once that is settled, it is necessary to look at the particular subsidiary operation, *i.e.*, the installation department of Telecom, to look at the "normal or habitual activities" of that department as "a going concern", and the practical and functional relationship of those activities to the core federal undertaking.**

(pages 132–133; emphasis added)

[148] Mr. Justice Dickson commented further in *Northern Telecom #1* about the need to examine the continuity and regularity of the connection between the federal undertaking and the subcontractor's services:

> McNairn's comment is borne out by the cases. On the one hand, a single enterprise may entail more than one undertaking, *e.g.* Canadian Pacific Railway's Empress Hotel was found to be an undertaking separate and independent from the railway undertaking in *Canadian Pacific Railway Co. v. Attorney-General for British Columbia*[10]. On the other hand, two separate corporate enterprises may be found to be included within one single and indivisible

undertaking, as in stevedores employed by a stevedoring company loading and unloading ships in the *Stevedoring*[11], sub. nom. In re the validity of the Industrial relations and disputes Investigation Act.] case, or a trucking company which did 90 per cent of its business for the Post Office in *Letter Carriers' Union of Canada v. Canadian Union of Postal Workers*[12].

Another, and far more important factor in relating the undertakings, is the physical and operational connection between them. Here, as the judgment in *Montcalm* stresses, there is a need to look to continuity and regularity of the connection and not to be influenced by exceptional or casual factors. Mere involvement of the employees in the federal work or undertaking does not automatically import federal jurisdiction. Certainly, as one moves away from direct involvement in the operation of the work or undertaking at the core, the demand for greater interdependence becomes more critical.

On the basis of the foregoing broad principles of constitutional adjudication, it is clear that certain kinds of "constitutional facts", facts that focus upon the constitutional issues in question, are required. Put broadly, among these are:

> **(1) the general nature of Telecom's operation as a going concern and, in particular, the role of the installation department within that operation;**
>
> (2) the nature of the corporate relationship between Telecom and the companies that it serves, notably Bell Canada;
>
> **(3) the importance of the work done by the installation department of Telecom for Bell Canada as compared with other customers;**
>
> **(4) the physical and operational connection between the installation department of Telecom and the core federal undertaking within the telephone system and, in particular, the extent of the involvement of the installation department in the operation and institution of the federal undertaking as an operating system.**

(pages 134–135; emphasis added)

[149] The *Northern Telecom #1* principles have been applied and referred to in other SCC decisions. In *Tessier*, the SCC commented on the "Northern Telecom" test:

[37] In *Northern Telecom Ltd. v. Communications Workers of Canada*, [1980] 1 S.C.R. 115 (*Northern Telecom 1*), Dickson J. expanded on the rule of derivative qualification and explained the proper analytical framework for assessing whether a related company is vital to a federal undertaking. The issue in that case was whether the employees at Northern Telecom working as supervisors in its Western Region Installation Department were subject to federal or provincial labour jurisdiction. Dickson J. described the analytical framework as follows:

> **First, one must begin with the operation which is at the core of the federal undertaking. Then the courts look at the particular subsidiary operation engaged in by the employees in question. The court must then arrive at a judgment as to the relationship of that operation to the core federal undertaking, the necessary relationship being variously characterized as "vital", "essential" or "integral".** [p. 132]

> [38] **The focus of the analysis is on the relationship between the activity, the particular employees under scrutiny, and the federal operation that is said to benefit from the work of those employees: *United Transportation Union*, at pp. 1138-39.** The appeal in *Northern Telecom 1* was dismissed because of the absence of relevant evidence, but the theory behind the framework for assessing derivative labour jurisdiction has been consistently applied by this Court.
>
> (emphasis added)

[150] At paragraph 49 of *Tessier*, the SCC further discussed the derivative jurisdiction test and described why the Court had concluded that the Northern Telecom installers were vital and essential to Bell Canada's operations:

> [49] **Second, this Court has recognized that federal labour regulation may be justified when the services provided to the federal undertaking are performed by employees who form a functionally discrete unit that can be constitutionally characterized separately from the rest of the related operation.** In *Northern Telecom 2*, for example, the installers were functionally independent of the rest of Telecom. **This Court was therefore able to assess the essential operational nature of the installation department as a separate entity, as Dickson J. noted:**
>
> > . . . **the installers are functionally quite separate from the rest of Telecom's operations. The installers . . . never actually work on Telecom premises; they work on the premises of their customers. In respect of Bell Canada, the installation is primarily on Bell Canada's own premises and not on the premises of Bell Canada's customers. . . . The installers have no real contact with the rest of Telecom's operations. Telecom's core manufacturing operations are conceded to fall under provincial jurisdiction, but there would be nothing artificial in concluding that Telecom's installers come under different constitutional jurisdiction. [pp. 770-71]**
>
> (See also *Ontario Hydro*, where the employees who fell under federal jurisdiction were only those employed on or in connection with facilities for the production of nuclear energy; *Johnston Terminals and Storage Ltd.* v. *Vancouver Harbour Employees' Association Local 517*, [1981] 2 F.C. 686 (C.A.), and *Actton Transport Ltd.* v. *British Columbia (Director of Employment Standards)*, 2010 BCCA 272, 5 B.C.L.R. (5th) 1, where certain workers were severable from their employer's overall operation and were therefore subject to different labour jurisdiction.)
>
> (emphasis added)

[151] The Board's analytical task is thus three fold: i) examine the federal undertaking in question; ii) examine the services provided by employees of Raytheon and CBO under the Renewal Contract to that undertaking; and iii) come to a conclusion whether there is a "vital", "essential" or "integral" link between the operations of the federal undertaking and those services.

C. The Derivative Jurisdiction Analysis

1. The Federal Undertaking

[152] The parties did not dispute that section 91(7) of the Constitution granted Parliament jurisdiction over "Militia, Military and Naval Service, and Defence". Parliament has jurisdiction over an undertaking like the NWS.

[153] The NWS undertaking is in fact an international military undertaking pursuant to a Memorandum of Understanding between Canada and the United States. Article 3.2 of the Renewal Contract refers to this MOU:

> 3.2 **North Warning System pre-2000**. Constructed between 1986 and 1992 (with the exception of eight existing Distant Early Warning Line sites, circa 1950) the NWS is the product of the North American Aerospace Defence Modernization (NAADM) Memorandum of Understanding between the United States and Canada. The NWS O&M activity was a contracted service from its initial start-up and the first time that Canada used a contractor to operate and maintain a major defence system. …
>
> (Exhibit 5, Tab 1)

[154] The mission of this international military undertaking is to detect airborne threats within the NWS surveillance area, to provide warning and assessment data on those threats and to provide a command and control capability to the Canadian Air Defence Sector (CADS): Article 4.1 of the Renewal Contract.

[155] Article 5.1 of the Renewal Contract expands on this description of the NWS' mission by highlighting Canada's international surveillance obligations:

> 5.1 **Operational Priorities.** The mission of the NWS is to maintain continuous radar surveillance of, and a measure of control over, the northern approaches to North America; contributing to North American defence and Canadian sovereignty. The Department of National Defence (DND) and the Canadian Forces (CF) are required by international and domestic obligation to ensure that the NWS is successful and properly maintained. …
>
> (Exhibit 5, Tab 1)

[156] In order to carry out this mission, the NWS undertaking has put in place a significant array of assets, including, but not limited to, long and short range radar facilities. The NWS also has a permanent Control Centre and Supply Centre located at 22 Wing in North Bay.

2. What services do employees of Raytheon and CBO provide to the federal undertaking?

[157] In *Northern Telecom #1*, Mr. Justice Dickson wrote that this part of the analysis required an examination of the subsidiary operation (Telecom's installation department) and the normal or habitual activities of that department as a going concern.

[158] Raytheon argued that it was providing maintenance services to the NWS. These services included maintaining the radar equipment, but also covered many other areas. CBO described its activities as being far removed from any defence undertaking, since it provided similar services to other clients. Those "facilities management" services included snow removal, cooking services, supplies/rations and vehicle maintenance.

[159] The Board does not dispute the description of some of the services that both Raytheon and CBO provided. If examined in isolation from the Renewal Contract, they might be the types of services provided to other customers. However, that type of analysis would overlook the broader picture of what Raytheon is contractually bound to provide.

[160] In the Board's view, the examination of the services provided to the federal undertaking must go beyond the minute mechanics of various tasks. The Board must examine the normal or habitual activities of Raytheon/CBO employees with reference to the Renewal Contract.

[161] What services does the Renewal Contract oblige Raytheon and CBO employees to provide to DND?

[162] In *Garda*, the FCA examined both the contractual relationship, as well as the evidence from the hearing, when describing the services rendered by Garda's security guards. The Board must do likewise in this case.

[163] Article 6.1.1 of the Renewal Contract provides Raytheon with the care, custody and control of the NWS:

> 6.1.1 **Care, Custody and Control. Under this concept the contractor has full responsibility for delivering radar data, which at the working level means responsibility for all NWS O&M activities**, ensuring adherence and compliance with all regulatory requirements and responsibility for developing and implementing an effective sustainment program. In return the contractor is given responsibility for prime mission equipment, supporting equipment and site infrastructure while Canada maintains overall configuration authority and project implementation approval.

(Exhibit 5, Tab 1)

[164] The Renewal Contract gives Raytheon the Care, Custody and Control of NWS assets so that it can provide DND with all the data it needs to defend Canadian and North American interests. Raytheon is given responsibility for prime mission equipment and site infrastructure in order to meet this obligation. Raytheon moreover has to develop and implement an effective sustainment program so that the NWS will continue to operate until at least 2030.

[165] In order to have effective Care, Custody and Control of the NWS, many different services must be provided. Evidently, the radar itself must be maintained. But the ability to maintain the radar sites requires the care and control of an entire existing infrastructure.

[166] Since there is no electrical grid in the far north, diesel generators must operate at all times to keep the entire operation up and running. Alarms must be maintained and monitored as well in order to keep the NWS functioning at the level required under the Renewal Contract. Employees, such as those working at the five LSS, must be taken care of in order to allow them to supply and maintain the 47 radar stations.

[167] Raytheon's Care, Custody and Control of the NWS also requires it to have staff at both the Control Centre and the Supply Centre in North Bay. The Board heard that the Raytheon and CBO employees worked as a team, so much so that Mr. Leblanc would be unable to identify each employer's specific employees.

[168] The open office concept at the Control Centre allowed these Raytheon and CBO employees to see the important alarms coming from the NWS and to respond immediately.

[169] When the Board characterizes Raytheon's services with reference to the terms of the Renewal Contract, and the evidence at the oral hearing, it becomes clear that Raytheon's services ensure the entire NWS infrastructure operates at all times. That is the essence of the service being provided to DND. The various tasks, some of which are more important than others, are not, by themselves, determinative.

[170] The Board also notes that the Raytheon/CBO employees constituted a distinct workforce, just like the Northern Telecom installers. Indeed, one of the IBEW's arguments in support of its allegation that a sale of business occurred comes from the fact that, allegedly, Raytheon/CBO could not have obtained and carried out the Renewal Contract except by hiring many former Nasittuq employees. In the IBEW's view, this employee know-how constituted a "business" which could pass from one contractor to another.

[171] The Board will consider that particular allegation, about which no evidence has yet been heard, at the next stage of its hearing.

3. Are Raytheon's and CBO's services "vital", "essential" and/or "integral" to the NWS undertaking?

[172] Raytheon/CBO argued that, while their services such as maintaining the radar sites might be important, they did not reach the threshold of being vital, essential or integral. They also argued that their fixed term contract was comparable to the situation the SCC examined in *Montcalm*.

[173] They further argued that DND did the actual Defence work when it analyzed the data coming from the radar sites. Their obligations did not extend to receiving or analyzing this data in any way. They received different data, which was solely relevant to their obligation to keep the infrastructure up and running.

[174] The Board notes that while a new airport runway only needs to be constructed once, as occurred in *Montcalm*, the Care, Custody and Control of the NWS is not a one-time activity. The contractor providing the services to the NWS may change, as Nasittuq's situation demonstrated, but the required services themselves will continue on. That was the reason the Renewal Contract contained transition language, since another contractor might take over at some point to provide the same overall services.

[175] The Board also notes that the derivative jurisdiction test does not require Raytheon/CBO to perform actual defence work. The Northern Telecom installers were not operating a telecommunications undertaking when they did their installations. The question in *Northern Telecom #1* asked instead whether their installation services were vital or essential to Bell's telecommunications undertaking.

[176] Most of the derivative jurisdiction cases which come before the Board involve a small, discrete service, like security services, being provided to a federal undertaking. The federal undertaking usually dwarfs the actual service a contractor supplies. In the instant situation, it appears, at least initially, that the scope of the contractors' services dwarf the actual NWS federal undertaking being operated by DND.

[177] The Board is not aware of a previous derivative jurisdiction case where a federal undertaking contracted out its entire infrastructure to a third party, albeit subject to very detailed contractual requirements.

[178] The impact of contracting out the entire Care, Custody and Control of the NWS to Raytheon is enormous. DND analyzes the vital radar information about intrusions into Canadian airspace and Raytheon ensures that the entire NWS infrastructure remains operational. It is only the receipt of accurate and continuous NWS data which allows DND to detect and analyze possible threats to Canada and North America.

[179] Raytheon's services under the Renewal Contract essentially allows DND to "see" what is taking place up north in Canadian airspace. Without that infrastructure working properly, DND would be operating partially or completely blind. It might use other means to restore its sight, such as AWACs planes or portable radar stations. But these two options are clearly temporary and far from optimum.

[180] In *Garda*, the FCA made a further point that it would be incongruous if provincial authorities could interfere in the operation of labour relations at a federal facility:

> 74 I note finally that federal authorities must be in a position to keep the Centre operating in the event of a labour conflict, be that through the Board acting pursuant to section 87.4 of the *Canada Labour Code* or through Parliament pursuant to back-to-work legislation. **It would in fact be incongruous if provincial authorities were called upon to make decisions regarding essential services at a Government of Canada detention centre, or if they were otherwise called upon to interfere in the management of the labour relations affecting the operations of such a centre.**
>
> (emphasis added)

[181] The Board would similarly find it incongruous, in the event of a labour dispute impacting the NWS and Canada's security, that this Board could deal only with employees in the Territories, while the Ontario and Newfoundland labour boards would have to deal with all other Raytheon/CBO employees.

[182] While labour relations efficiency is not necessarily a factor for decisions about a labour Board's jurisdiction, it can provide helpful perspective on how vital, essential and integral a particular service might be to a federal undertaking.

[183] The Board concludes that Raytheon's and CBO's services under the Renewal Contract meet the threshold of being vital, essential and integral to DND's ability to carry out its federal defence undertaking.

VI. Conclusion

[184] For the reasons expressed herein, the Board concludes that it has jurisdiction over a severable portion of Raytheon's and CBO's operations relating to the Renewal Contract.

[185] The Board understands that the IBEW has also filed certification applications to represent Raytheon and CBO employees. A different panel is assigned to these matters.

[186] The Board requests that the IBEW advise of its intentions now that the jurisdictional issue has been resolved. The Board will then consider its next steps.

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

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Graham J. Clarke
Vice-Chairperson

_____
Richard Brabander
Member

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Gaétan Ménard
Member